

February 11, 2019

The Honorable Caryn Tyson, Chairperson
Senate Committee on Assessment and Taxation
Statehouse, Room 123-E
Topeka, Kansas 66612

Dear Senator Tyson:

SUBJECT: Fiscal Note for SB 104 by Senate Select Committee on Federal Tax Code Implementation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 104 is respectfully submitted to your committee.

SB 104 would enact the Kansas Taxpayer Protection Act. The bill would require a paid tax return preparer to sign and include their federal Internal Revenue Service Preparer Tax Identification Number on each tax return that they prepare or substantially prepare on the taxpayer's behalf beginning in tax year 2020. Any paid tax return preparer who fails to sign or include their identifying number would be liable for a \$50 civil penalty to the Department of Revenue for each violation and a paid tax return preparer could not be fined more than \$25,000 per calendar year.

The bill would allow the Department of Revenue to prohibit a paid tax return preparer from preparing tax returns if they violate the provisions of the Kansas Taxpayer Protection Act. The Department of Revenue may request the assistance of the Attorney General to enforce the provisions of the Act. The Department of Revenue would be allowed to ask the courts to issue an injunction if the paid tax return preparer has engaged in any of the following conduct:

1. Preparing an income tax return or refund claim that understates the taxpayer's liability due to an unreasonable position or by willful or reckless conduct;
2. Failed to provide a copy of the income tax return or claim for refund; failed to sign the income tax return or claim for refund; failed to provide an identifying number; failed to maintain a copy of the income tax return or claim for refund; or failed to be diligent in determining the eligibility of tax benefits;
3. Negotiated a check issued to the taxpayer by the Department of Revenue without the permission of the taxpayer;
4. Any violations of any tax statutes for conduct that received a criminal penalty;
5. Misrepresented the paid tax return preparer's eligibility to practice before the Department of Revenue or otherwise misrepresented the paid tax return preparer's experience or education;

6. Guaranteed the payment of any income tax refund or allowance of any income tax credit; or
7. Engaged in any other fraudulent or deceptive conduct.

The Department of Revenue would be required to produce an annual report that would be published on its website that details the summary of actions that prohibited paid tax return preparers from preparing tax returns. The provisions of the bill would apply to in-state and out-of-state paid tax return preparers. Any consent judgement between the Department of Revenue and the paid tax return preparer would be required to be approved by the district court. The Department of Revenue would have the authority to adopt rules and regulations to implement the bill.

The Department of Revenue indicates SB 104 would increase State General Fund revenues; however, the Department does not have data on the amount of potential violations of the Kansas Taxpayer Protection Act to provide an accurate estimate of the fiscal effect of the bill. Paid tax return preparers would be fined \$50 for each violation that would be deposited in the State General Fund. The Department indicates that the costs to implement the bill are estimated to be negligible and could be absorbed within existing resources.

The bill has the potential for increasing litigation in the courts because of the new violation created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources.

The Attorney General's Office indicates the bill has the potential to increase litigation costs starting in FY 2020. However, the Office did not provide an estimate of the additional litigation costs or how long the estimated litigation costs would continue from enactment from the bill, or if the bill would require the hiring of outside counsel. Any fiscal effect associated with SB 104 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,



Larry L. Campbell
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Willie Prescott, Office of the Attorney General
Janie Harris, Judiciary