

2023 Kansas Statutes

79-32,280. Actions to enjoin prohibited conduct; reporting. (a) The secretary or the secretary's designee is hereby authorized to enjoin any person from engaging in conduct described in subsection (b) or from further action as a paid tax return preparer under the provisions of the Kansas taxpayer protection act who is found to be in violation of this act and the secretary or the secretary's designee shall be entitled, in any proceeding brought for such purpose to have an order restraining such person from engaging in conduct in violation of the provisions of this act, and no bond shall be required for any such restraining order, nor for any temporary or permanent injunction issued in such proceedings. The secretary may commence suit in a court of competent jurisdiction to enjoin any paid tax return preparer from further engaging in any conduct described in subsection (b) or from further action as a paid tax return preparer in this state. The secretary may request the assistance of the attorney general or the attorney general's duly authorized designee to enforce provisions of this section.

(b) In an action pursuant to subsection (a), the court may enjoin the paid tax return preparer from further engaging in any conduct described in this subsection, if the court finds that injunctive relief is appropriate to prevent occurrence of such conduct. The court may issue an injunction when the paid tax return preparer has engaged in any of the following conduct:

- (1) Prepared any income tax return or claim for refund that includes an understatement of a taxpayer's liability due to an unreasonable position. As used in this subsection, "unreasonable position" shall have the meaning ascribed by section 6694(a)(2) of the federal internal revenue code;
 - (2) prepared any income tax return or claim for refund that includes an understatement of a taxpayer's liability due to the paid tax return preparer's willful or reckless conduct. As used in this subsection, "willful or reckless conduct" shall have the meaning ascribed by section 6694(b)(2) of the federal internal revenue code;
 - (3) where required, failed to do any of the following:
 - (A) Furnish a copy of the income tax return or claim for refund;
 - (B) sign the income tax return or claim for refund;
 - (C) furnish an identifying number;
 - (D) retain a copy of the income tax return or claim for refund; or
 - (E) be diligent in determining eligibility for tax benefits;
 - (4) negotiated a check issued to the taxpayer by the department of revenue without the permission of the taxpayer;
 - (5) engaged in any conduct subject to any criminal penalty provided for in chapter 79 of the Kansas Statutes Annotated, and amendments thereto;
 - (6) 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;
 - (7) guaranteed the payment of any income tax refund or the allowance of any income tax credit; or
 - (8) engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws of the state of Kansas.
- (c) If the court finds that a paid tax return preparer has continually or repeatedly engaged in any conduct described in subsection (b) and that an injunction prohibiting the conduct would not be sufficient to prevent the person's interference with the proper administration of the tax laws of the state of Kansas, the court may enjoin the person from acting as a paid tax return preparer in the state of Kansas. The fact that the person has been enjoined from preparing tax returns or claims for refund for the United States or any other state in the five years preceding the petition for an injunction shall establish a prima facie case for an injunction to be issued pursuant to this section. For purposes of this subsection, "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.
- (d) The secretary or the secretary's designee shall annually report a summary of the secretary's enjoinder actions on the department of revenue's website.

History: L. 2021, ch. 101, § 4; May 27.