

118TH CONGRESS
1ST SESSION

S. 1209

To regulate tax return preparers and refund anticipation payment arrangements.

IN THE SENATE OF THE UNITED STATES

APRIL 19, 2023

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To regulate tax return preparers and refund anticipation payment arrangements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tax Refund Protection
5 Act”.

6 **SEC. 2. REGULATION OF TAX RETURN PREPARERS.**

7 (a) IN GENERAL.—Section 330 of title 31, United
8 States Code, is amended to read as follows:

1 **“§ 330. Practice before the department and tax return**
2 **preparers**

3 “(a) Subject to section 500 of title 5, the Secretary
4 of the Treasury may—

5 “(1) regulate the practice of representatives of
6 persons before the Department of the Treasury
7 through licensure;

8 “(2) certify the practice of tax return pre-
9 parers; and

10 “(3) before admitting a representative or a tax
11 return preparer to practice, require that the rep-
12 resentative or tax return preparer demonstrate—

13 “(A) good character;

14 “(B) good reputation;

15 “(C) necessary qualifications to enable the
16 representative or tax return preparer to provide
17 to persons valuable service; and

18 “(D) competency to advise and assist per-
19 sons in presenting their cases or in preparing
20 tax returns, claims for refund, or other submis-
21 sions related to the Internal Revenue Code of
22 1986 or other laws or regulations administered
23 by the Internal Revenue Service.

24 “(b) Any enrolled agents properly licensed to practice
25 as required under rules promulgated under subsection (a)

1 shall be allowed to use the credentials or designation of
2 ‘enrolled agent’, ‘EA’, or ‘E.A.’.

3 “(c)(1) After notice and opportunity for a proceeding,
4 the Secretary may, with respect to a representative or tax
5 return preparer who is described in paragraph (2)—

6 “(A) suspend or disbar from practice before the
7 Department a representative;

8 “(B) decertify a tax return preparer; or

9 “(C) censure a representative or tax return pre-
10 parer.

11 “(2) A representative or tax return preparer is de-
12 scribed in this paragraph if the representative or tax re-
13 turn preparer—

14 “(A) is incompetent;

15 “(B) is disreputable;

16 “(C) violates regulations prescribed under this
17 section; or

18 “(D) with intent to defraud, willfully and know-
19 ingly misleads or threatens the person being rep-
20 resented or a prospective person to be represented.

21 “(3) The Secretary may impose a monetary penalty
22 on any representative or tax return preparer described in
23 paragraph (2). If the representative or tax return preparer
24 was acting on behalf of an employer or any firm or other
25 entity in connection with the conduct giving rise to such

1 penalty, the Secretary may impose a monetary penalty on
2 such employer, firm, or entity if it knew, or reasonably
3 should have known, of such conduct. Such penalty shall
4 not exceed the gross income derived (or to be derived)
5 from the conduct giving rise to the penalty and may be
6 in addition to, or in lieu of, any suspension of the rep-
7 resentative, the decertification of the tax return preparer,
8 or censure of the representative or the tax return preparer.

9 “(d) After notice and opportunity for a hearing to
10 any appraiser, the Secretary may—

11 “(1) provide that appraisals by such appraiser
12 shall not have any probative effect in any adminis-
13 trative proceeding before the Department of the
14 Treasury or the Internal Revenue Service, and

15 “(2) bar such appraiser from presenting evi-
16 dence or testimony in any such proceeding.

17 “(e) Nothing in this section or in any other provision
18 of law shall be construed to limit the authority of the Sec-
19 retary of the Treasury to impose standards applicable to
20 the rendering of written advice with respect to any entity,
21 transaction plan or arrangement, or other plan or arrange-
22 ment, which is of a type which the Secretary determines
23 as having a potential for tax avoidance or evasion.

1 “(f)(1) The Secretary of the Treasury may impose
2 fees on tax return preparers necessary to implement such
3 programs as required by subsection (a).

4 “(2) In addition to paragraph (1), the Commissioner
5 of Internal Revenue may impose an annual fee necessary
6 for any competency testing and training required for licen-
7 sure and certification under this section.

8 “(3) Nothing in this section may be construed to limit
9 the authority of the Commissioner of Internal Revenue to
10 issue orders and establish fees related to the other pur-
11 poses, including the issuing of Preparer Tax Identification
12 Numbers.

13 “(g) For purposes of this section—

14 “(1) the term ‘tax return preparer’ has the
15 meaning given such term by section 7701(a)(36) of
16 the Internal Revenue Code of 1986;

17 “(2) the term ‘tax return’ has the meaning
18 given to the term ‘return’ under section 6696(e)(1)
19 of such Code; and

20 “(3) the term ‘claim for refund’ has the mean-
21 ing given such term under section 6696(e)(2) of
22 such Code.”.

23 (b) CLERICAL AMENDMENT.—The chapter analysis
24 for chapter 3 of title 31, United States Code, is amended

1 by striking the item relating to section 330 and inserting
2 the following:

“330. Practice before the department and tax return preparers.”.

3 **SEC. 3. CLARIFYING AUTHORITY TO IMPOSE CIVIL PEN-**
4 **ALTIES FOR IMPROPER DISCLOSURES.**

5 Subsection (c) of section 6713 of the Internal Rev-
6 enue Code of 1986 is amended to read as follows:

7 “(c) EXCEPTIONS.—

8 “(1) EXCEPTIONS.—The rules of section
9 7216(b) shall apply for purposes of this section.

10 “(2) CROSS REFERENCE.—See section 7216 for
11 criminal penalty for disclosure or use of information
12 by preparers of returns.”.

13 **SEC. 4. REGULATION OF REFUND ANTICIPATION PAYMENT**
14 **INSTRUMENTS.**

15 (a) DISCLOSURE REQUIREMENTS FOR TAX RETURN
16 PREPARERS.—Subchapter A of chapter 80 of the Internal
17 Revenue Code of 1986 is amended by adding at the end
18 the following new section:

19 **“SEC. 7813. DISCLOSURE REQUIREMENTS FOR TAX RETURN**
20 **PREPARERS.**

21 “(a) IN GENERAL.—The Secretary may require tax
22 return preparers to provide disclosures to a person receiv-
23 ing tax return preparation services or a prospective person
24 to receive such services. Such disclosures shall—

1 “(1) identify the amount of fees the tax return
2 preparer charges for preparing a tax return, filing a
3 tax return, submitting a claim for refund, executing
4 a refund anticipation payment arrangement, or sub-
5 mitting other submissions related to this title or
6 other laws or regulations administered by the Inter-
7 nal Revenue Service,

8 “(2) identify where on the website published by
9 the Internal Revenue Service the average amount of
10 time in which an individual who files a Federal in-
11 come tax return can expect to receive a refund,

12 “(3) in the case of a refund anticipation pay-
13 ment arrangement involving a depository account
14 not controlled by the person receiving tax return
15 preparation services or a prospective person to re-
16 ceive such services, describe—

17 “(A) the difference in days between the av-
18 erage amount of time by which a person receiv-
19 ing tax return preparation services or a pro-
20 spective person to receive such services receives
21 the tax refund (in whole or in part) from a re-
22 fund anticipation payment arrangement, and

23 “(B) the average amount of time by which
24 a person receiving tax return preparation serv-
25 ices or a prospective person to receive such

1 services who files a Federal income tax return
2 electronically receives the tax refund deposited
3 directly to that person's account by the taxing
4 authority,

5 “(4) state that a refund anticipation payment
6 arrangement is not necessary to receive a tax re-
7 fund,

8 “(5) state that, if a person receiving tax return
9 preparation services or a prospective person to re-
10 ceive such services does not receive a tax refund or
11 the amount of the tax refund is less than the
12 amount anticipated under the refund anticipation
13 payment arrangement, the person receiving tax re-
14 turn preparation services or a prospective person to
15 receive such services may be responsible for paying
16 any fees and interest associated with a refund antici-
17 pation payment arrangement, and

18 “(6) include any such other disclosures not
19 specified in the preceding paragraphs to carry out
20 this section that the Secretary deems appropriate.

21 “(b) REFUND ANTICIPATION PAYMENT ARRANGE-
22 MENT DEFINED.—For purposes of this section, the term
23 ‘refund anticipation payment arrangement’ means an ar-
24 rangement under which, in exchange for Federal income
25 tax preparation services, a consumer agrees to pay a fee

1 or interest upon receipt of the consumer's tax refund to
 2 a tax return preparer, lender, or other affiliated lender
 3 by—

4 “(1) requesting the Federal Government to de-
 5 posit such tax refund, in whole or in part, directly
 6 into a depository account designated by either the
 7 consumer or the tax return preparer, lender, or
 8 other affiliated lender, or

9 “(2) directly paying the fee or interest to the
 10 tax return preparer, lender, or other affiliated lend-
 11 er.”.

12 (b) FAILURE TO DISCLOSE.—Part I of subchapter
 13 B of chapter 68 of such Code is amended by adding at
 14 the end the following:

15 **“SEC. 6720D. FAILURE TO MEET DISCLOSURE REQUIRE-**
 16 **MENTS FOR TAX RETURN PREPARERS.**

17 “(a) GENERAL RULE.—If a tax return preparer fails
 18 to meet the requirements of section 7813, the Secretary
 19 may impose a penalty of up to \$1,000 per each such fail-
 20 ure.

21 “(b) PENALTY IN ADDITION TO OTHER PEN-
 22 ALTIES.—The penalty imposed by this section shall be in
 23 addition to any other penalty imposed by law.”.

24 (c) CLERICAL AMENDMENTS.—

1 (1) The table of sections for subchapter B of
2 chapter 68 of such Code is amended by inserting
3 after the item related to section 6720C the following
4 new item:

“Sec. 6720D. Failure to meet disclosure requirements for tax return pre-
parers.”.

5 (2) The table of sections for subchapter A of
6 chapter 80 of such Code is amended by inserting
7 after the item related to section 7812 the following
8 new item:

“Sec. 7813. Disclosure requirements for tax return preparers.”.

9 (d) **EFFECTIVE DATE.**—The amendments made by
10 this section shall apply with respect to returns filed after
11 December 31, 2023.

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