

House Bill 444 (AS PASSED HOUSE AND SENATE)

By: Representatives Knight of the 126th and O`Neal of the 146th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated,
2 relating to state administration of revenue and taxation, so as to provide for civil penalties
3 and injunctive relief regarding certain tax return preparers; to provide for definitions; to
4 provide for procedures, conditions, and limitations; to provide for an effective date; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
9 administration of revenue and taxation, is amended by adding a new Code section to read as
10 follows:

11 "48-2-62.

12 (a) As used in this Code section, the term:

13 (1) 'Tax return preparer' means any person who prepares for compensation, or who
14 employs one or more persons to prepare for compensation, any return of tax imposed
15 under Chapter 7, 7A, or 8 of this title or any claim for refund of such tax. The
16 preparation of a substantial portion of a return or claim for refund shall be treated as if
17 it were the preparation of such return or claim for refund. A person shall not be
18 considered a tax return preparer merely because the person does any of the following:

19 (A) Furnishes typing, reproducing, or other mechanical assistance;

20 (B) Prepares a return or claim for refund of the employer, or an officer or employee of
21 the employer, by whom the person is regularly and continuously employed;

22 (C) Prepares as a fiduciary a return or claim for refund for any person; or

23 (D) Prepares a claim for refund for a taxpayer in response to a notice of proposed
24 assessment issued to the taxpayer.

25 (2) 'Understatement of liability' means an understatement of the net amount payable for
26 a tax imposed under Chapter 7, 7A, or 8 of this title or an overstatement of the net amount

27 creditable or refundable from such tax. For purposes of this paragraph, the amount
 28 determined as an underpayment of estimated income tax under the relevant provisions of
 29 this chapter is not considered an understatement of liability.

30 (b)(1) Any tax return preparer who prepares any return or claim for refund for which any
 31 part of an understatement of liability is due because of a position described in paragraph
 32 (2) of this subsection shall pay a penalty not to exceed \$500.00 for each such return or
 33 claim for refund.

34 (2) A position is described in this subsection if:

35 (A) The tax return preparer knew or reasonably should have known of the position;

36 (B) There was not a reasonable basis for the position; and

37 (C) The position was frivolous or not adequately disclosed in the return or claim for
 38 refund or in a statement attached to the return or claim for refund.

39 (3) No penalty shall be imposed under this subsection if it is shown that there is
 40 reasonable cause for the understatement of liability and the tax return preparer acted in
 41 good faith.

42 (c) Any tax return preparer who prepares any return or claim for refund for which any part
 43 of an understatement of liability is due because of conduct described in this subsection
 44 shall pay a penalty for each such return or claim for refund in an amount equal to the
 45 greater of \$5,000.00 or 50 percent of the income derived, or to be derived, by the tax return
 46 preparer for the return or claim for refund. Conduct described in this subsection is conduct
 47 by the tax return preparer which is:

48 (1) A willful attempt in any manner to understate the liability for tax on the return or
 49 claim for refund; and

50 (2) A reckless or intentional disregard of the law.

51 (d) If at any time there is a final administrative determination or a final judicial decision
 52 that there was no understatement of liability in the case of the taxpayer's underlying return
 53 or claim for refund for which a penalty under subsection (b) or (c) of this Code section has
 54 been assessed against the tax return preparer, such assessment shall be canceled; and if any
 55 portion of such penalty has been paid, the amount so paid shall be refunded to the tax
 56 return preparer as an overpayment of tax without regard to any period of limitations which,
 57 but for this subsection, would apply to the making of such refund.

58 (e) Other assessable penalties on the preparation for other persons of returns of tax
 59 imposed under Chapter 7, 7A, or 8 of this title shall be as follows:

60 (1) Any tax return preparer who prepares any return or claim for refund and is required
 61 by regulations prescribed by the commissioner to sign such return or claim for refund but
 62 who fails to sign such return shall pay a penalty of \$50.00 for such failure, unless it is
 63 shown that such failure is due to reasonable cause and not due to willful neglect or that

64 the practice conformed to accepted industry standards. The maximum penalty imposed
65 under this paragraph on any tax return preparer during any calendar year shall not exceed
66 \$25,000.00;

67 (2)(A) Any tax return preparer who prepares any return or claim for refund and fails
68 to furnish the preparer's identifying number on such return or claim for refund shall pay
69 a penalty of \$50.00 for such failure, unless it is shown that such failure:

70 (i) Is due to reasonable cause and not due to willful neglect; or

71 (ii) Failed to conform to accepted industry standards.

72 (B) The maximum penalty imposed under this paragraph on any tax return preparer
73 during any calendar year shall not exceed \$25,000.00; and

74 (3) Any tax return preparer who fraudulently endorses or otherwise negotiates directly
75 or through an agent any check made for the taxes imposed under Chapter 7, 7A, or 8 of
76 this title which is issued to a taxpayer other than the tax return preparer shall pay a
77 penalty of \$500.00 for each such check. This paragraph shall not apply to the deposit by
78 a bank, within the meaning of Section 581 of the Internal Revenue Code of 1986, of the
79 full amount of the check in the taxpayer's account in such bank for the benefit of the
80 taxpayer.

81 (f)(1) A civil action in the name of the State of Georgia may be commenced at the
82 request of the commissioner to enjoin any tax return preparer, or employer having
83 knowledge of an employee tax return preparer, who is doing business in this state and
84 engaging in conduct described in this subsection from further engaging in preparing tax
85 returns. This action may be brought by the department in the superior court of the county
86 of the tax return preparer's residence or principal place of business or in which the
87 taxpayer for whose tax return the action is brought resides. The court may exercise its
88 jurisdiction over the action separate and apart from any other action brought by the State
89 of Georgia against the tax return preparer or any taxpayer.

90 (2) In an action under this subsection, the court may issue an injunction prohibiting a
91 person from acting as a tax return preparer if the court finds that the individual has:

92 (A) Engaged in any pattern of conduct subject to civil penalty under subsection (b), (c),
93 or (e) of this Code section; or

94 (B) Guaranteed the payment of any tax refund or the allowance of any tax credit.

95 (g) Any claim for refund of any penalty paid under this Code section shall be filed in
96 accordance with rules and regulations promulgated by the commissioner. Any penalty
97 under subsection (b) or (e) of this Code section shall be assessed within three years after
98 the return or claim for refund was filed, and no proceeding in court without assessment for
99 the collection of such tax shall begin after the expiration of such period. In the case of any
100 penalty under subsection (c) of this Code section, the penalty may be assessed, or a

101 proceeding in court for the collection of the penalty may be begun without assessment, at
102 any time. Except as provided in subsection (d) of this Code section, any claim for refund
103 of an overpayment of any penalty assessed under subsection (b), (c), or (e) of this Code
104 section shall be filed within three years from the time the penalty was paid.
105 (h) Except as otherwise provided by this Code section, proceedings to assess, collect, or
106 seek a refund of any penalty imposed under this Code section shall be conducted in the
107 same manner and subject to the same rights of appeal as assessments, collections, and
108 claims for refund of the related taxes under Chapter 7, 7A, or 8 of this title, as the case may
109 be."

110 **SECTION 2.**

111 This Act shall become effective on its approval by the Governor or upon its becoming law
112 without such approval.

113 **SECTION 3.**

114 All laws and parts of laws in conflict with this Act are repealed.