

117TH CONGRESS
1ST SESSION

S. 2856

To regulate tax return preparers and refund anticipation payment arrangements.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2021

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. REGULATION OF TAX RETURN PREPARERS.**

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

6 **“§ 330. Practice before the department and tax return**
7 **preparers**

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

1 “(1) regulate the practice of representatives of
2 persons before the Department of the Treasury
3 through licensure;

4 “(2) certify the practice of tax return pre-
5 parers; and

6 “(3) before admitting a representative or a tax
7 return preparer to practice, require that the rep-
8 resentative or tax return preparer demonstrate—

9 “(A) good character;

10 “(B) good reputation;

11 “(C) necessary qualifications to enable the
12 representative or tax return preparer to provide
13 to persons valuable service; and

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

20 “(b) Any enrolled agents properly licensed to practice
21 as required under rules promulgated under subsection (a)
22 shall be allowed to use the credentials or designation of
23 ‘enrolled agent’, ‘EA’, or ‘E.A.’.

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

4 “(A) suspend or disbar from practice before the
5 Department a representative;

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

7 “(C) censure a representative or tax return pre-
8 parer.

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

12 “(A) is incompetent;

13 “(B) is disreputable;

14 “(C) violates regulations prescribed under this
15 section; or

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

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

1 should have known, of such conduct. Such penalty shall
2 not exceed the gross income derived (or to be derived)
3 from the conduct giving rise to the penalty and may be
4 in addition to, or in lieu of, any suspension of the rep-
5 resentative, the decertification of the tax return preparer,
6 or censure of the representative or the tax return preparer.

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

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

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

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

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

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

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

10 “(g) For purposes of this section—

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

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

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

20 (b) CLERICAL AMENDMENT.—The chapter analysis
 21 for chapter 3 of title 31, United States Code, is amended
 22 by striking the item relating to section 330 and inserting
 23 the following:

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

1 **SEC. 2. CLARIFYING AUTHORITY TO IMPOSE CIVIL PEN-**
 2 **ALTIES FOR IMPROPER DISCLOSURES.**

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

5 “(c) EXCEPTIONS.—

6 “(1) EXCEPTIONS.—The rules of section
 7 7216(b) shall apply for purposes of this section.

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

11 **SEC. 3. REGULATION OF REFUND ANTICIPATION PAYMENT**
 12 **INSTRUMENTS.**

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

17 **“SEC. 7813. DISCLOSURE REQUIREMENTS FOR TAX RETURN**
 18 **PREPARERS.**

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

23 “(1) identify the amount of fees the tax return
 24 preparer charges for preparing a tax return, filing a
 25 tax return, submitting a claim for refund, executing
 26 a refund anticipation payment arrangement, or sub-

1 mitting other submissions related to this title or
2 other laws or regulations administered by the Inter-
3 nal Revenue Service,

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

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

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

19 “(B) the average amount of time by which
20 a person receiving tax return preparation serv-
21 ices or a prospective person to receive such
22 services who files a Federal income tax return
23 electronically receives the tax refund deposited
24 directly to that person’s account by the taxing
25 authority,

1 “(4) state that a refund anticipation payment
2 arrangement is not necessary to receive a tax re-
3 fund,

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

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

17 “(b) REFUND ANTICIPATION PAYMENT ARRANGE-
18 MENT DEFINED.—For purposes of this section, the term
19 ‘refund anticipation payment arrangement’ means an ar-
20 rangement under which, in exchange for Federal income
21 tax preparation services, a consumer agrees to pay a fee
22 or interest upon receipt of the consumer’s tax refund to
23 a tax return preparer, lender, or other affiliated lender
24 by—

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

6 “(2) directly paying the fee or interest to the
 7 tax return preparer, lender, or other affiliated lend-
 8 er.”.

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

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

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

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

21 (c) CLERICAL AMENDMENTS.—

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

“Sec. 6720D. Failure to meet disclosure requirements for tax return preparers.”.

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

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

5 (d) EFFECTIVE DATE.—The amendments made by
6 this section shall apply with respect to returns filed after
7 December 31, 2021.

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