

SENATE BILL NO. 121
INTRODUCED BY J. ELLIOTT
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE AND RESTRICTING THE DISCLOSURE AND USE OF TAX RETURN INFORMATION BY A TAX RETURN PREPARER; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Prohibition on sales -- restrictions on certain disclosures and uses.

(1) A tax return preparer may not sell ~~and may not~~ RECEIVE ANY CONSIDERATION FOR, OR otherwise disclose tax return information for the benefit of the tax return preparer or of any persons controlling, controlled by, or under common control of the tax return preparer.

(2) A tax return preparer may not disclose return information to a tax return preparer located outside of the ~~United States~~ STATE unless:

(A) the taxpayer has requested the disclosure;

(B) THE TAX RETURN PREPARER LOCATED OUTSIDE OF THE STATE AGREES:

(I) NOT TO SELL OR RECEIVE ANY CONSIDERATION FOR THE TAX RETURN INFORMATION; AND

(II) NOT TO OTHERWISE DISCLOSE THE TAX RETURN INFORMATION FOR ITS BENEFIT OR FOR THE BENEFIT OF ANY PERSON CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH IT; AND

(C) THE LOCAL TAX RETURN PREPARER INDEMNIFIES THE TAXPAYER FOR THE DAMAGES PROVIDED FOR IN SUBSECTION (3)(D) FOR ANY SALE OR DISCLOSURE BY THE TAX RETURN PREPARER LOCATED OUTSIDE THE STATE IN VIOLATION OF SUBSECTION (2)(B).

(3) (a) A person whose tax return information is or will be used or disclosed in violation of subsection (1) OR (2) may bring an action to enjoin the violation and for the recovery of damages.

(b) An action under this section may be brought in Montana district court in the county where the plaintiff resides or maintains its principal place of business or in the Montana first judicial district.

(c) If the court finds that the defendant is violating or has violated any of the provisions of subsection (1) OR (2), the court shall enjoin the defendant. It is not necessary to allege or prove actual damages to the plaintiff.

(d) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant in an amount that

is the greater of three times the amount of actual damages sustained by the plaintiff or ~~\$1,000~~ UP TO \$10,000.

(e) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action. A person who brings an action on the person's own behalf without an attorney may receive equivalent fees at the judge's discretion.

(4) A tax return preparer may disclose or use return information for quality or peer reviews or when statutorily authorized to do so.

~~(5) This section does not apply to an individual providing services in connection with the preparation or filing of a tax return who is certified or licensed under Title 37, chapter 50, part 3, or Title 37, chapter 61, part 2.~~

~~(6)~~(5) As used in this section, the following definitions apply:

(a) (i) "Return information" includes a taxpayer's identity, the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, or any other data received by, recorded by, prepared by, furnished to, or collected by the department with respect to a return or with respect to the determination of the existence or possible existence of liability or the amount of a liability of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition or any offense.

(ii) The term does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(b) "Tax return preparer" means:

(i) any person who:

(A) is engaged in the business of preparing tax returns;

(B) is engaged in the business of providing services in connection with the preparation of tax returns;

(C) prepares or assists in preparing or presents to the public that the person prepares or assists in preparing a tax return for compensation;

(D) develops software used to prepare or file tax returns; or

(E) is an electronic return originator; and

(ii) an individual who, as a part of that individual's duties or employment with a person described in subsection ~~(6)(b)(i)~~ (5)(B)(i), performs services relating to:

(A) the preparation or filing of or the provision of services in connection with the preparation or filing of a tax return; or

(B) the development of software used to prepare or file tax returns.

NEW SECTION. **Section 2. Rulemaking authority.** The department may adopt rules to administer and enforce the provisions of [section 1].

NEW SECTION. **Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [sections 1 and 2].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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