

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; PROHIBITING THE DEPARTMENT OF REVENUE FROM PROVIDING ACTIVE OR PASSIVE TAX RETURN PREPARATION SERVICES; 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) ~~A~~ SUBJECT TO SUBSECTION (1)(B), 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.

(B) THE PROVISIONS OF THIS SECTION DO NOT PREVENT THE BONA FIDE SALE OF A TAX RETURN PREPARATION, ACCOUNTING, OR LAW PRACTICE IN THE ORDINARY COURSE OF BUSINESS.

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

(A) (i) the taxpayer has requested the disclosure; OR

(ii) DISCLOSURE IS REQUIRED IN CONNECTION WITH AN INTERNAL AUDIT;

(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:

(A) for quality or peer reviews;

(B) ~~or when statutorily~~ authorized to do so BY MONTANA LAW;

(C) WHEN REQUIRED TO DO SO BY FEDERAL OR STATE LAW; OR

(D) PURSUANT TO A COURT SUBPOENA OR ADMINISTRATIVE SUMMONS.

~~(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. PROHIBITION ON TAX RETURN PREPARATION SERVICES. (1) THE DEPARTMENT IS PROHIBITED FROM USING ANY FUNDS MADE AVAILABLE THROUGH ANY LEGISLATIVE APPROPRIATION TO CONTRACT FOR THE USE OF, LEASE, OWN, OR OTHERWISE USE ANY SOFTWARE PROGRAM THAT ALLOWS AN INDIVIDUAL TO SUBMIT TAX RETURN INFORMATION DIRECTLY TO THE DEPARTMENT, ANY POLITICAL SUBDIVISION, OR ANY THIRD-PARTY CONTRACTOR.

(2) THE DEPARTMENT MAY NOT PERFORM ANY FUNCTION OF A TAX PREPARER AS DESCRIBED IN [SECTION 1]. THE DEPARTMENT MAY NOT USE ANY SOFTWARE PROGRAM THAT ACCEPTS THE TRANSFER OF AN INDIVIDUAL TAXPAYER'S RETURN INFORMATION TO ANY COMPUTER PROGRAM OVER WHICH THE DEPARTMENT EXERTS LEGAL CONTROL. ALL INDIVIDUAL TAX RETURNS SUBMITTED ELECTRONICALLY MUST HAVE AT LEAST ONE VERIFIABLE LEVEL OF INTERVENTION. THE RESTRICTION DOES NOT INCLUDE PROGRAMS USED BY PRIVATE SECTOR TAX PREPARERS, PROGRAMS USED FOR ELECTRONIC FILING, OR PROGRAMS USED BY THE INTERNAL REVENUE SERVICE TO PROCESS STATE INFORMATION IN CONJUNCTION WITH A FEDERAL TAX RETURN.

NEW SECTION. Section 3. Rulemaking authority. The department may adopt rules to administer and enforce the provisions of ~~[section 1]~~ [SECTIONS 1 AND 2].

NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2 THROUGH 3] 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 THROUGH 3].

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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