

House Bill 444

By: Representative 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. Except as provided in subsection (d) of this Code
28 section, the determination of whether there is an understatement of liability shall be made
29 without regard to any administrative or judicial action involving the taxpayer. For
30 purposes of this paragraph, the amount determined as an underpayment of estimated
31 income tax under the relevant provisions of this chapter is not considered an
32 understatement of liability.

33 (b)(1) Any tax return preparer who prepares any return or claim for refund for which any
34 part of an understatement of liability is due because of a position described in paragraph
35 (2) of this subsection shall pay a penalty for each such return or claim for refund in an
36 amount equal to the greater of \$1,000.00 or 50 percent of the income derived, or to be
37 derived, by the tax return preparer for the return or claim for refund.

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

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

40 (B) There was not a realistic possibility of being sustained on its merits; and

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

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

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

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

54 (2) A reckless or intentional disregard of rules or regulations.

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

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

64 (1) Any tax return preparer who prepares any return or claim for refund and is required
65 by regulations prescribed by the commissioner to sign such return or claim for refund but
66 fails to comply with such regulations shall pay a penalty of \$50.00 for such failure, unless
67 it is shown that such failure is due to reasonable cause and not due to willful neglect or
68 that the practice conformed to accepted industry standards. The maximum penalty
69 imposed under this paragraph on any tax return preparer during any calendar year shall
70 not exceed \$25,000.00;

71 (2) Any tax return preparer who prepares any return or claim for refund and fails to
72 furnish the preparer's identifying number on such return or claim for refund shall pay a
73 penalty of \$50.00 for such failure, unless it is shown that such failure is due to reasonable
74 cause and not due to willful neglect or that the practice conformed to accepted industry
75 standards. The maximum penalty imposed under this paragraph on any tax return
76 preparer during any calendar year shall not exceed \$25,000.00; and

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

84 (f) Any claim for refund of any penalty paid under this Code section shall be filed in
85 accordance with rules and regulations promulgated by the commissioner. Any penalty
86 under subsection (b) or (e) of this Code section shall be assessed within three years after
87 the return or claim for refund was filed, and no proceeding in court without assessment for
88 the collection of such tax shall begin after the expiration of such period. In the case of any
89 penalty under subsection (c) of this Code section, the penalty may be assessed, or a
90 proceeding in court for the collection of the penalty may be begun without assessment, at
91 any time. Except as provided in subsection (d) of this Code section, any claim for refund
92 of an overpayment of any penalty assessed under subsection (b), (c), or (e) of this Code
93 section shall be filed within three years from the time the penalty was paid.

94 (g) Except as otherwise provided by this Code section, proceedings to assess, collect, or
95 seek a refund of any penalty imposed under this Code section shall be conducted in the
96 same manner and subject to the same rights of appeal as assessments, collections, and
97 claims for refund of the related taxes under Chapter 7, 7A, or 8 of this title, as the case may
98 be."

99

SECTION 2.

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

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SECTION 3.

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