Atneciv Rodriguez

Written Testimony SB814

September 22, 2023

Hello,

Senators, Representatives and members of the Finance, Revenue and Bonding Committee. My name is Atneciv Rodriguez from Meriden.

I'm speaking **AGAINST** Proposed S.B. No. 814 AN ACT CONCERNING TAX PREPARER LIABILITY FOR UNDERPAID INCOME TAX. (FIN)

> *That chapter 229 of the general statutes be amended would require that, where a taxpayer underpaid income tax due to tax preparer error, the tax preparer shall file an amended return at no cost to the taxpayer and be liable for any additional tax, penalties or interest owed.*

I am a small business owner that provides insurance, business consulting, credit restoration and tax preparations services. I disagree with the section that states tax preparer be liable for any additional tax, penalties or interest owed because additional tax and interests is responsibility of taxpayer. These interests are based on actual amount of taxes owed something that tax preparers have no control of. Per the IRS. The failure-to-pay penalty is one-half of one percent for each month, or part of a month, up to a maximum of 25%, of the amount of tax that remains unpaid from the due date of the return until the tax is paid in full. This is also interest that accrues on any unpaid tax from the due date of the return until the date of payment in full. The interest rate is determined quarterly and is the federal short-term rate plus 3 percent. Interest compounds daily. The one-half of one percent rate increases to one percent if the tax remains unpaid 10 days after the IRS issues a notice of intent to levy property. The IRS applies payments to the tax first, then any penalty, then to interest. Any penalty amount that appears on your bill is generally the total amount of the penalty up to the date of the notice, not the penalty amount charged each month.

If the taxpayer takes years to pay off the taxes owed – this would mean that a tax preparer would be liable for all that interest. How is this fair? This also means that the penalties and interests are left for last which would leave an "account" open until the taxpayer pays off the tax, and it is not until that's paid off that the penalty and interest owed payments could be applied.

As a small business owner, it seems it becomes more and more difficult to maintain a business in CT. This affects the economy and middle-class families. We try to advance ourselves so that we don't live under poverty limits and depend on the state, and we then get penalized for taking care of ourselves.

As preparers we maintain malpractice insurance. I don't see the need for this law make us statutorily responsible. **What opportunities would we have as small business owners to defend ourselves?** It's the taxpayers responsibility to pay the tax and it is unfair for professionals. We too are taxpayers and understand that we are responsible for our own taxes.

This bill would require a complete revision of tax law on a federal level.

We are already responsible if we were negligent why the need for this bill? There are also other avenues a taxpayer can take in effort to fix an issue it if were to arise such as amending their return. Such stated below:

Sec. 12-728. Deficiency assessments. Notice. Penalty.

> *(a)(1) After a final return pursuant to the provisions of this chapter is filed, the commissioner shall cause the same to be examined and may make such further audit or investigation or reaudit as the commissioner deems necessary, and* ***if the commissioner determines that there is a deficiency with respect to the payment of any tax due under this chapter, the commissioner shall assess or reassess the additional taxes, penalties and interest due to this state, give notice of such assessment or reassessment to the taxpayer and make demand upon the taxpayer for payment****. Not later than sixty days after the mailing of such notice, the taxpayer shall pay to the commissioner, in cash or by check, draft or money order drawn to the order of the commissioner, the amount of the deficiency. Such amount shall bear interest at the rate of one per cent per month or fraction thereof from the date when the original tax became due and payable.*
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> *(2) (A) When it appears that any part of the deficiency for which a deficiency assessment is made is due to negligence or intentional disregard of the provisions of this chapter or regulations adopted thereunder, there shall be imposed a penalty equal to ten per cent of the amount of such deficiency assessment. When it appears that any part of the deficiency for which a deficiency assessment is made is due to fraud or intent to evade the provisions of this chapter or regulations adopted thereunder, there shall be imposed a penalty equal to twenty-five per cent of the amount of such deficiency assessment.*

This states that there would be an assessment based on info.

> *B) (i) For audits of returns commencing on or after January 1, 2006, and prior to January 1, 2018, when it appears that any part of the deficiency for which a deficiency assessment is made is due to failure to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, on the taxpayer's federal tax return, there shall be imposed a penalty equal to seventy-five per cent of the amount of such deficiency assessment.*

If an audit is made and a failure to disclose was noted – that should be on the taxpayer as they did not provide full information to tax preparer- yet we could be held accountable for a discrepancy the taxpayer created.

> *4) Any decision rendered by any federal court holding that a taxpayer has filed a fraudulent return with the Director of Internal Revenue shall subject the taxpayer to the twenty-five per cent penalty imposed by this subsection without the necessity of further proof thereof, except when it can be shown that the return to the state so differed from the return to the federal government as to afford a reasonable presumption that the attempt to defraud did not extend to the state.*

Once the preparation is complete it is up to the taxpayer to review and sign therefore this holds the taxpayer liable and responsible for what they are filing the same way you would a legal document/contract.

> ***Sec. 12-729. Final assessment of deficiency. Protest. Notice of determination.*** *(a) Sixty days after the date on which it is mailed, a notice of proposed assessment of a deficiency shall constitute a final*

assessment of the amount of tax specified together with interest, additions to tax and penalties except only for such amounts as to which the taxpayer has filed a protest with the Commissioner of Revenue Services.

(b) Within sixty days after the mailing of a deficiency notice, the taxpayer may file with the commissioner a written protest against the proposed assessment in which he shall set forth the grounds on which the protest is based. If a protest is filed, the commissioner shall reconsider the assessment of the deficiency and, if the taxpayer has so requested, may grant or deny the taxpayer or the taxpayer's authorized representatives an oral hearing.

(c) Notice of the commissioner's determination shall be mailed to the taxpayer and such notice shall set forth briefly the commissioner's findings of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer.

(d) The action of the commissioner on the taxpayer's protest shall be final upon the expiration of one month from the date on which he mails notice of his action to the taxpayer unless within such period the taxpayer seeks judicial review of the commissioner's determination.

This gives taxpayer another opportunity to dispute an error. Again, why would a preparer be held liable if these processes are being performed and once again the taxpayer is reviewing their own forms that they signed.

> ***Sec. 12-730. Appeals.*** *Notwithstanding the provisions of chapter 54 to the contrary, any taxpayer aggrieved because of any determination or disallowance by the commissioner under section 12-729, 12-729a or 12-732 may, not later than thirty days after notice of the commissioner's determination or disallowance is mailed to the taxpayer, take an appeal therefrom to the superior court for the judicial district of New Britain, which shall be accompanied by a citation to the commissioner to appear before said court. Such citation shall be signed by the same authority, and such appeal shall be returnable at the same time and served and returned in the same manner, as is required in case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to the state of Connecticut, with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases, to be heard unless cause appears to the contrary, at the first session by the court or by a committee appointed by it. Said court may grant such relief as may be equitable and, if such tax has been paid prior to the granting of such relief, may order the Treasurer to pay the amount of such relief, with interest at the rate of two-thirds of one per cent per month or fraction thereof, to the aggrieved taxpayer. If the appeal has been taken without probable cause, the court may charge double or triple costs, as the case demands, and upon all such appeals which may be denied, costs may be taxed against the appellant at the discretion of the court, but no costs shall be taxed against the state.*

Above is another opportunity for errors to be fixed. **And if fixed, what would occur to the penalties given to tax preparer?**

What would happen if a preparer was penalized, and the error is then fixed afterward?

Sec. 12-731. Understatement of tax due to mathematical error*. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the Commissioner of Revenue Services shall notify the taxpayer that an amount of tax in excess of that shown on the return, plus interest at the rate of one per cent per month or fraction thereof from the due date of such tax, is due and has been assessed. Such a notice of additional tax due shall not be considered a notice of a deficiency assessment nor shall the taxpayer have any right of protest or appeal as in the case of a deficiency assessment based on such notice, and the assessment and collection of the amount of tax erroneously omitted in the return shall not be prohibited by any provision of this chapter.*

(June Sp. Sess. P.A. 91-3, S. 82, 168; May Sp. Sess. P.A. 92-5, S. 21, 37; P.A. 95-26, S. 42, 52.)

History: June Sp. Sess. P.A. 91-3, S. 82, effective August 22, 1991, and applicable to taxable years of taxpayers commencing on or after January 1, 1991; May Sp. Sess. P.A. 92-5 made various technical and minor changes, effective June 19, 1992, and applicable to taxable years of taxpayers commencing on or after January 1, 1992; P.A. 95-26 lowered interest rate from 1.25% to 1%, effective July 1, 1995, and applicable to taxes due and owing on or after July 1, 1995, whether or not those taxes first became due before said date.

There is another opportunity to fix an error and leniency to taxpayer for mathematical error, why would a tax preparer be penalized?

This "Error" piece is vague – what defines an error? And who defines it? While we have loyal clients, we also come across clients who are referred or find you on the internet and we don't always know what the character of a person is until you truly get to know them. **What would happen if a taxpayer lied to tax preparer, then claimed it was a tax preparer error?** This puts us a too much risk. And when small businesses are at risk so is the economy.

As a professional, I already make at my discretion to protect the face of my business, would already offer a complimentary amendment if it was necessary due to an error of either party, as this portrays positive customer service. For someone to demand how we conduct our business is appalling. Sometimes preparers might even "inherit" a mistake if an error made by another preparer on a prior return has a continuing effect going forward, including on a return we are preparing. That is already a risk we take.

We also have ethical standards applicable to practitioners. Section 10.21 of Treasury Circular 230, which dictates practice before the IRS for CPAs, attorneys, enrolled agents, enrolled retirement agents, and appraisers, instructs tax practitioners who know of an error or omission on a client's tax return to promptly notify the client and advise the client of the consequences of such an error or omission under the Code and regulations.

In addition, the AICPA Statements on Standards for Tax Services (SSTSs, as revised effective Jan. 1, 2010), dictate the professional standards of AICPA members with respect to all tax engagements, not just federal tax. Most state boards of accountancy refer to them and to Circular 230 in setting forth their own requirements for CPAs. The SSTSs set forth a similar directive to that of Circular 230: "It is the taxpayer's responsibility to decide whether to correct the error" (SSTS no. 6, *Knowledge of Error: Return Preparation and Administrative Proceedings*, paragraph 8).

I'm concerned on how this will affect myself as a preparer, my credentials are at risk God forbid there were false claims or errors. I'm concerned for my fellow tax preparers, their businesses, and how this will affect our economy.

Per US Bureau of Labor Statistics there are 83,190 tax preparers in the US. Typically, and when CT create statute other states tend to follow suit and I'm concerned for that.

There are over 1000 in CT alone with different credentials, anyone with a Preparer Tax Identification Number (PTIN) including:

- Attorney credential
- Certified public accountant credential
- Enrolled agent credential
- Enrolled actuary credential
- Enrolled retirement plan agent credential
- Annual filing season program participant

The number of businesses and people it will affect is immense.

I urge your not to pass this bill.

I appreciate the opportunity to provide testimony before this Committee. I look forward to answering any questions you may have.

Sincerely,

Atneciv Rodriguez

References:

Topic No. 653 IRS Notices and Bills, Penalties, and Interest Charges
https://www.irs.gov/taxtopics/tc653#:~:text=The%20failure%2Dto%2Dpay%20penalty,tax%20is%20paid%20in%20full.

Soled, Jay, ESQ., June 2010, Tax Return Preparation Mistakes , retrieved 2.22.23 from
https://www.journalofaccountancy.com/issues/2010/jun/20102524.html

AICPA, Statements on Standards for Tax Services (SSTS)
https://www.aicpa.org/resources/toolkit/statements-on-standards-for-tax-services

Occupational Employment and Wages, May 2021,13-2082 Tax Preparers
https://www.bls.gov/oes/current/oes132082.htm

Directory of Federal Tax Return Preparers with Credentials and Select Qualifications

https://irs.treasury.gov/rpo/rpo.jsf