

CHAPTER 136

TAXATION

HOUSE BILL 08-1138

BY REPRESENTATIVE(S) Borodkin, Labuda, Madden, and Todd;
also SENATOR(S) Isgar, and Tupa.

AN ACT

**CONCERNING THE AUTHORITY OF THE DEPARTMENT OF REVENUE TO ASSESS PENALTIES AGAINST
PROFESSIONAL TAX RETURN PREPARERS WHO UNDERSTATE TAX LIABILITIES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-21-113 (4), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

39-21-113. Reports and returns. (4) (d) THE EXECUTIVE DIRECTOR AND ANY AGENT, CLERK, OR EMPLOYEE OF THE DEPARTMENT MAY:

(I) DISCLOSE THE NAME OF A TAX RETURN PREPARER TO THE STATE BOARD OF ACCOUNTANCY IN ACCORDANCE WITH SECTION 39-22-621 (2) (g.5) UNDER THE CIRCUMSTANCES DESCRIBED IN THAT SECTION; AND

(II) DISCLOSE TO A TAX RETURN PREPARER WHO IS POTENTIALLY SUBJECT TO A PENALTY UNDER SECTION 39-22-621 (2) (g.5) THE TAXPAYER NAME, ACCOUNT NUMBER, ALLEGED UNDERSTATEMENT OF LIABILITY, AND APPLICABLE LAWS PERTAINING TO THE UNDERSTATEMENT GIVING RISE TO THE POTENTIAL IMPOSITION OF THE PENALTY.

SECTION 2. 39-22-621 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

39-22-621. Interest and penalties. (2) (g.5) (I) IF A TAX RETURN OR A CLAIM FOR REFUND IS PREPARED, FOR COMPENSATION, BY A PERSON OTHER THAN THE TAXPAYER AND IF AN UNDERSTATEMENT OF LIABILITY WITH RESPECT TO SUCH RETURN OR CLAIM IS DUE TO THE PREPARER'S WILLFUL OR RECKLESS DISREGARD OF APPLICABLE LAWS OR RULES, AS EVIDENCED BY THE REPEATED ASSERTION OF A

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

POSITION THAT THE PREPARER KNEW OR SHOULD HAVE KNOWN DID NOT HAVE A REALISTIC POSSIBILITY OF BEING SUSTAINED ON ITS MERITS, THERE SHALL BE COLLECTED FROM THE PREPARER A PENALTY OF FIVE HUNDRED DOLLARS. IF THE TAX RETURN PREPARER IS EMPLOYED BY ANOTHER PERSON IN THE BUSINESS OF TAX RETURN PREPARATION AND IF THE EMPLOYER EITHER ORDERED THE UNDERSTATEMENT OF LIABILITY OR HAD KNOWLEDGE OF THE UNDERSTATEMENT OF LIABILITY AND DID NOT ATTEMPT TO PREVENT THE TAX RETURN PREPARER FROM MAKING THE UNDERSTATEMENT OF LIABILITY, AN EQUIVALENT PENALTY MAY ALSO BE COLLECTED FROM THE EMPLOYER. A SEPARATE PENALTY SHALL BE COLLECTED FOR EACH TAX RETURN OR CLAIM FOR REFUND PREPARED AS DESCRIBED IN THIS PARAGRAPH (g.5).

(II) THIS PARAGRAPH (g.5) SHALL NOT APPLY TO:

(A) A CERTIFIED PUBLIC ACCOUNTANT WHO IS PERMITTED TO PRACTICE UNDER ARTICLE 2 OF TITLE 12, C.R.S. IF THE EXECUTIVE DIRECTOR BECOMES AWARE OF CONDUCT BY A TAX RETURN PREPARER EXEMPTED BY THIS SUBPARAGRAPH (II) THAT WOULD, BUT FOR SUCH EXEMPTION, SUBJECT THE TAX RETURN PREPARER TO A PENALTY UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (g.5), THE EXECUTIVE DIRECTOR MAY DISCLOSE THE NAME OF SUCH TAX RETURN PREPARER TO THE STATE BOARD OF ACCOUNTANCY.

(B) A PERSON WHO IS REGULARLY OR CONTINUOUSLY EMPLOYED BY ANOTHER AND, ACTING AT THE DIRECTION OF THE EMPLOYER, PREPARES THAT EMPLOYER'S RETURN OR CLAIM FOR REFUND; OR

(C) A PERSON WHO FURNISHES ONLY TYPING, REPRODUCING, OR OTHER MINISTERIAL OR ADMINISTRATIVE ASSISTANCE TO A TAX RETURN PREPARER.

SECTION 3. Effective date - applicability. This act shall take effect July 1, 2008, and shall apply to offenses committed on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 14, 2008