

JAN 24 2019

A BILL FOR AN ACT

RELATING TO TAX RETURN PREPARERS.

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

1 SECTION 1. Chapter 231, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§231- Preparer tax identification number required. (a)
5 A tax return preparer, as defined in section 231-36.5, shall
6 have a valid preparer tax identification number. As used in
7 this section, "preparer tax identification number" means an
8 identifying number issued by the Internal Revenue Service in
9 accordance with section 6109 of the Internal Revenue Code and 26
10 Code of Federal Regulations section 1.6109-2.

11 (b) A tax return preparer shall not:

12 (1) Prepare any return or claim for refund for
13 compensation without having a valid preparer tax
14 identification number; or

15 (2) Omit its preparer tax identification number from any
16 return or claim for refund prepared for compensation
17 where the department requires the preparer tax
18 identification number to be disclosed.

S.B. NO. 1272

1 (c) A tax return preparer who violates subsection (b) (1)
2 or (2) shall be liable for the following penalties:

3 (1) \$100 per violation for the first 100 violations;

4 (2) \$500 per violation for the 101st to the 500th
5 violations; and

6 (3) \$1,000 per violation for all subsequent violations.

7 Each return or claim for refund prepared by a tax return
8 preparer or submitted to the department in violation of either
9 subsection (b) (1) or (2) shall be a separate violation; provided
10 that preparing and submitting the same return or claim for
11 refund shall not be two separate violations. The director of
12 taxation may waive these penalties in part or in full if the tax
13 return preparer shows that the violation was due to reasonable
14 cause.

15 (d) If within thirty days after the notice and demand of
16 any penalty under subsection (c) is made, the tax return
17 preparer:

18 (1) Pays an amount that is not less than fifteen per cent
19 of the penalty amount; and

20 (2) Files a claim for refund of the amount so paid, no
21 action to levy or file a proceeding in court to

S.B. NO. 1272

1 collect the remainder of the penalty shall be
2 commenced except in accordance with subsection (e).

3 (e) An action that is stayed pursuant to subsection (d)
4 may be brought thirty days after either of the following events,
5 whichever occurs first:

6 (1) The tax return preparer fails to file an appeal to the
7 tax appeal court within thirty days after the day on
8 which the claim for refund of any partial payment of
9 any penalty under subsection (c) is denied; or

10 (2) The tax return preparer fails to file an appeal to the
11 tax appeal court for the determination of the tax
12 return preparer's liability for the penalty assessed
13 under subsection (c) within six months after the day
14 on which the claim for refund was filed.

15 Nothing in this subsection shall be construed to prohibit any
16 counterclaim for the remainder of the penalty in any proceeding

17 (f) If there is a final administrative determination
18 pursuant to section 231-7.5, or a final judicial decision that
19 the penalty assessed under subsection (c) should not apply, then
20 that portion of the penalty assessed shall be voided. Any
21 portion of the penalty that has been paid shall be refunded to
22 the tax return preparer as an overpayment of tax without regard

S.B. NO. 1272

1 to any period of limitations that, but for this subsection,
2 would apply to the making of the refund.

3 (g) At the request of the director of taxation, a civil
4 action may be brought to enjoin a tax return preparer from
5 further acting as a tax return preparer or from engaging in
6 conduct as follows:

7 (1) Any action under this subsection may be brought in the
8 circuit court of the circuit in which the tax return
9 preparer resides or has a principal place of business,
10 or in which the taxpayer with respect to whose tax
11 return the action is brought resides;

12 (2) The court may exercise its jurisdiction over the
13 action separate and apart from any other action
14 brought by the State against the tax return preparer
15 or taxpayer;

16 (3) If the court finds that a tax return preparer has
17 engaged in conduct subject to penalty under subsection
18 (c) and that injunctive relief is appropriate to
19 prevent the recurrence of that conduct, the court may
20 enjoin the preparer accordingly; and

21 (4) If the court finds that a tax return preparer has
22 continually or repeatedly engaged in conduct

S.B. NO. 1272

1 prohibited under subsection (b) and that an injunction
2 prohibiting that conduct would not be sufficient to
3 prevent the preparer's interference with the proper
4 administration of this chapter, the court may enjoin
5 the preparer from acting as a tax return preparer.

6 (h) The department may adopt rules necessary to effectuate
7 the implementation of this section pursuant to chapter 91."

8 SECTION 2. New statutory material is underscored.

9 SECTION 3. This Act shall take effect upon its approval;
10 provided that tax return preparers shall not be liable for
11 penalties under this Act prior to January 1, 2020.

INTRODUCED BY: 

BY REQUEST

S.B. NO. 1272

Report Title:

Tax Return Preparers; Preparer Tax Identification Number;
Penalties

Description:

Requires any tax preparer with a preparer tax identification number issued by the Internal Revenue Service to furnish the preparer's tax identification number on any return or claim for refund as required by the Department of Taxation. Authorizes the Department of Taxation to require preparer tax identification number disclosure on any form or document and provides penalties for failure to comply. Effective upon approval; provided that tax return preparers shall not be liable for penalties prior to January 1, 2020.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO TAX RETURN PREPARERS.

PURPOSE: Requires all tax return preparers to have a preparer tax identification number issued by the Internal Revenue Service and to furnish their number on any return or claim for refund as required by the department.

MEANS: Add a new section to chapter 231, Hawaii Revised Statutes.

JUSTIFICATION: Many tax return preparers operate with little State oversight or accountability. Requiring all tax return preparers to have a preparer tax identification number will help taxpayers and the department to ensure that tax return preparers are accountable for the returns they prepare.

Impact on the public: Taxpayers will have greater assurance that their tax return preparers will be accountable for the returns that they prepare.

Impact on the department and other agencies: The department will be able to better monitor tax return preparers and detect noncompliance.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE:

Upon approval; provided that tax return preparers shall not be liable for penalties under this Act prior to January 1, 2020.