



**STATE OF HAWAII  
DEPARTMENT OF TAXATION**

830 PUNCHBOWL STREET, ROOM 221

HONOLULU, HAWAII 96813

<http://tax.hawaii.gov/>

Phone: (808) 587-1540 / Fax: (808) 587-1560

Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Sylvia Luke, Chair  
and Members of the House Committee on Finance

Date: Wednesday, February 6, 2019  
Time: 2:00 P.M.  
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: H.B. 1046, Relating to Tax Return Preparers

The Department of Taxation (Department) strongly supports H.B. 1046, an Administration measure, and provides the following comments for the Committee's consideration.

H.B. 1046 would require tax return preparers to have a Preparer Tax Identification Number (PTIN) issued by the Internal Revenue Service (IRS), and to furnish their PTIN on any return or claim for refund as required by the Department. A summary of key provisions are as follows:

- Adds a new section to chapter 231, Hawaii Revised Statutes (HRS), requiring a tax return preparer to have a valid PTIN issued by the IRS in accordance with section 6109 of the Internal Revenue Code and 26 Code of Federal Regulations section 1.6109-2;
- Uses the same definition of "tax return preparer" as in section 231-36.5, HRS, meaning any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed under title 14, HRS, or any claim for refund of tax imposed under title 14, HRS;
- Prohibits tax return preparers from preparing any return or claim for refund for compensation without having a valid PTIN, or omitting their PTIN from any return or claim or refund prepared for compensation where the Department requires a PTIN to be disclosed;
- Establishes penalties for violations of the two prohibitions, but permits the Director to waive penalties in part or in full if the preparer shows that the violation was due to reasonable cause;
- Establishes a mechanism for preparers to stay penalty collection and appeal to the Tax Appeal Court for determination of the preparer's liability for the penalty;

- Allows for any portion of the penalty paid and later determined to have been improperly assessed to be refunded to the tax return preparer as an overpayment of tax, without regard to any period of limitations that might otherwise apply;
- Authorizes a civil action to be brought at the request of the Director to enjoin the preparer from engaging in conduct subject to penalty under the measure, or to enjoin the preparer from acting as a tax return preparer in the State if an injunction would prevent the preparer's interference with the proper administration of taxes under chapter 231, HRS;
- Authorizes the Department to adopt rules to effectuate the measure's implementation; and
- Effective upon approval, provided that preparers shall not be liable for any penalties under this measure prior to January 1, 2020.

The Department notes that many tax return preparers in Hawaii operate with little State oversight or accountability. Requiring all tax return preparers to have a PTIN will help taxpayers and the Department to ensure that tax return preparers are accountable for the returns they prepare. Taxpayers will have greater assurance that they can rely on the services of their preparers, and the Department will be able to better monitor tax return preparers and detect noncompliance. The provisions relating to penalties and injunctive relief will give the Department more tools to protect taxpayers from harm, ensure fair and accurate tax administration, and prevent malfeasance by bad actors and unintended losses in revenue.

The Department believes that the public will greatly benefit from this improved accountability. Accordingly, the Department strongly supports this measure, and will be able to implement it as written.

Thank you for the opportunity to provide testimony in support of this measure.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, Require PTIN Use by Paid Preparers

BILL NUMBER: HB 1046; SB 1272 (Identical)

INTRODUCED BY: HB by SAIKI by request; SB by KOUCHI by request

EXECUTIVE SUMMARY: Requires those who prepare tax returns for compensation to have a federally issued Preparer Tax Identification Number, or PTIN. This may make sense for income tax returns, but much of Hawaii tax involves excise taxes such as the GET. It takes a different skill set entirely to properly prepare an excise tax return, so the requirement of a PTIN makes less sense as to such returns.

SYNOPSIS: Adds a new section to chapter 231, HRS. Provides that a tax return preparer shall have a valid PTIN issued by the Internal Revenue Service, and that the PTIN shall be entered on any tax return prepared for compensation whenever DOTAX requires disclosure of the number on that return.

EFFECTIVE DATE: Upon approval, but tax return preparers shall not be liable for penalties under this Act prior to January 1, 2020.

STAFF COMMENTS: This is an Administration bill sponsored by the Department of Taxation and designated TAX-06 (19).

The Preparer Tax Identification Number (PTIN) is an identification number that all paid tax return preparers must use on U.S. federal tax returns or claims for refund submitted to the Internal Revenue Service (IRS). Anyone who, for compensation, prepares all or substantially all of any federal tax return or claim for refund must obtain a PTIN issued by the IRS.

The PTIN was created in 1999 to protect the privacy of tax return preparers. Preparers were required to sign the tax forms they prepared and provide their Social Security Numbers. Starting with the 2000 tax season, the IRS gave preparers the option of using either their SSNs or PTINs. Between August 1999 and August 2010, the IRS issued more than 1 million PTINs.

The PTIN, however, is not a license or a professional credential. On January 18, 2013, in a decision in *Loving v. Internal Revenue Service*, Judge James E. Boasberg of the U.S. District Court for the District of Columbia ruled that the Internal Revenue Service lacked the statutory authority to regulate tax return preparers. On February 1, 2013, the Court issued an additional order clarifying that the IRS is "not required to suspend its PTIN program," but that "no tax-return preparer may be required to pay testing or continuing-education fees or to complete any testing or continuing education." In 2014, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the judgment of the district court. *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014).

Re: HB 1046  
Page 2

Given that the PTIN is just a registration number and that it can be issued to anyone who wants one, it may be a mistake to think that those with PTINs are smarter or more reliable than others, and it may be a mistake to give the public the impression that they are.

Digested 2/4/2019

To: The Honorable Sylvia Luke, Chair  
And Members of the House Committee on Finance  
Date: Wednesday, February 6, 2019  
Time: 2:00 P.M.  
Place: Conference Room 308, State Capitol  
From: Jeremy Stohs, Director, H&R Block

Re: Support for House Bill 1046, relating to tax return preparers

On behalf of about 40 H&R Block retail tax offices and several hundred tax return preparers in Hawaii, H&R Block appreciates the opportunity to support House Bill 1046.

H&R Block has excelled for more than 60 years as an industry leader because of our commitment to competent, ethical tax return preparation. Unfortunately, not all tax preparers share this view. Each day, unscrupulous preparers find new and exploitative ways to steal from the taxpayers of Hawaii.

House Bill 1046 will provide the Department of Taxation with an important consumer protection tool. This bill will enable the Department to track individuals who are compensated for preparing tax returns in the state by leveraging an IRS identification number that is already required for those preparing federal tax returns. Such an identification mechanism is an important step for protecting taxpayers from fraudulent preparers who wish to do them harm.

Tax preparers have a responsibility to work alongside our partners in government to fight tax refund fraud. We appreciate the efforts of the Department of Taxation and members of the Legislature in advancing this goal.



Jeremy Stohs  
Director, Government Relations  
H&R Block  
816-854-6207