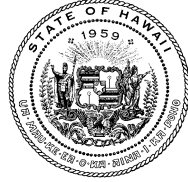


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To: The Honorable Roy M. Takumi, Chair;
The Honorable Linda Ichiyama, Vice Chair;
and Members of the House Committee on Consumer Protection & Commerce

From: Rona M. Suzuki, Director
Department of Taxation

Re: H.B. 2246, H.D. 1, Relating to Tax Return Preparers

Date: Monday, February 10, 2020

Time: 2:00 P.M.

Place: Conference Room 329, State Capitol

The Department of Taxation (Department) supports H.B. 2246, H.D. 1, and offers the following comments.

H.B. 2246, H.D. 1, adds a new section to chapter 231, Hawaii Revised Statutes (HRS), requiring tax return preparers to have a valid Preparer Tax Identification Number (PTIN) issued by the Internal Revenue Service to prepare any return or claim for refund for compensation, and to disclose the PTIN where the Department requires the preparer to do so. It also sets forth administrative penalties for violations and authorizes the Department to bring a civil action against violators in certain circumstances. H.D. 1 has a defective effective date of July 1, 2050, but penalties for violations begin on January 1, 2021.

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 supports this measure and will be able to implement it as written.

Thank you for the opportunity to testify in support.

HB-2246-HD-1

Submitted on: 2/10/2020 6:41:40 AM

Testimony for CPC on 2/10/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kekoa McClellan	H&R Block	Support	Yes

Comments:

TAX FOUNDATION OF HAWAII

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LATE

SUBJECT: ADMINISTRATION, Require PTIN Use by Paid Preparers

BILL NUMBER: HB 2246, HD-1

INTRODUCED BY: House Committee on Intrastate Commerce

EXECUTIVE SUMMARY: Requires a person who prepares or assists in the preparation of a state income tax return, and all the preparer's agents, to obtain a valid and current federal preparer tax identification number. Requires the person who has primary responsibility for the overall accuracy of the tax return to sign the return and provide the person's federal preparer tax identification number.

SYNOPSIS: Adds two new sections 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. Financial penalties are imposed as follows: (1) \$100 per violation for the first 100 violations; (2) \$500 per violation for the 101st violation to the 500th violation; and (3) \$1,000 per violation for all subsequent violations.

Provides that a preparer may have the penalty enforcement stayed by paying at least 15% of the penalty amount and then filing a claim for refund.

The director of taxation may bring a civil action to enjoin a preparer from further acting as a preparer.

EFFECTIVE DATE: July 1, 2050. Penalties will not go into effect prior to January 1, 2021.

STAFF COMMENTS: 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).

Given that the PTIN is just a registration number and that it can be issued to anyone who wants one in about 15 minutes, 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 2/9/2020