

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

**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 Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

Date: Monday, February 11, 2019
Time: 10:00 A.M.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 1504, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of S.B. 1504 and provides the following comments for the Committee's consideration.

S.B. 1504 adds a new section to chapter 235, Hawaii Revised Statutes (HRS), requiring any person who prepares or assists in the preparation of all or "substantially all" of a state income tax return, for compensation, to obtain a valid and current Preparer Tax Identification Number (PTIN) issued by the Internal Revenue Service (IRS) prior to preparing the return. The measure, which applies to taxable years beginning after December 31, 2018, would also require each enrolled agent of the preparer to have a PTIN, and would require the preparer who has the primary responsibility for the overall accuracy of the preparation of the return to sign the return and furnish their PTIN to the Department.

The Department appreciates this measure's efforts to improve tax administration and accountability, but notes that several additional provisions would be required to properly implement and administer a PTIN requirement for tax preparers, such as operational procedures, reference to applicable federal rules and sections of the Internal Revenue Code, verification and adjudication mechanisms, penalties for noncompliance, rights of appeal for penalized return preparers, adoption of implementation rules, and so forth. The Department recommends amending this measure to insert the language of S.B. 1272, an Administration bill, implementing PTIN requirements which the Department strongly supports.

Further, the Department notes that although this measure only applies to state income tax returns, the term "tax return preparer" has a separate definition under 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. The definition of "tax return preparer" in section 231-36.5, HRS, also provides that "for purposes of this definition, the preparer of a substantial

portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund." The language of section 231-36.5, HRS, conflicts with language in this measure categorizing as a tax return preparer anyone who prepares or assists in the preparation of "all or substantially all" of a state income tax return. It is unclear what the measure means by "substantially all" of a state income tax return. The Department suggests that this measure be amended to apply section 231-36.5's definition of tax return preparer and to clarify or delete the contradictory language.

Finally, if the Committee wishes to advance this measure, the Department requests that it be made applicable to returns filed on or after January 1, 2020 to allow the Department sufficient time to update forms and instructions. An effective date which applies to taxable years may not be appropriate for this measure as tax return preparers could be preparing prior year tax returns.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Require PTIN Use by Paid Preparers

BILL NUMBER: SB 1504

INTRODUCED BY: INOUYE, DELA CRUZ

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 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.

Also requires each enrolled agent of the tax return preparer to have a valid PTIN.

States that the preparer who has the primary responsibility for the overall accuracy of the preparation of the income tax return shall sign the return and provide the preparer's preparer tax identification number to the department of taxation.

EFFECTIVE DATE: Taxable years beginning after December 31, 2018.

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, 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 2/5/2019