

DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LT. GOVERNOR



ISAAC W. CHOY  
DIRECTOR OF TAXATION

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

To: The Honorable Rosalyn H. Baker, Chair  
and Members of the Senate Committee on Commerce and Consumer Protection

From: Isaac W. Choy, Director  
Department of Taxation

Date: Thursday, February 4, 2021  
Time: 9:30 A.M.  
Place: Via Video Conference, State Capitol

**Re: S.B. 320, Relating to Tax Return Preparers**

The Department of Taxation (Department) supports S.B. 320. This measure 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.

S.B. 320 also establishes administrative penalties for violations and authorizes the Department to bring a civil action against violators in certain circumstances. The measure is effective upon approval, but the imposition of penalties for violations begin on January 1, 2022.

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 can implement it as currently written.

Thank you for the opportunity to testify 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: SB 320

INTRODUCED BY: KEOHOKALOLE

EXECUTIVE SUMMARY: Requires each tax return preparer to have a valid preparer tax identification number issued by the Internal Revenue Service and to furnish the preparer's tax identification number on any return or claim for refund if required by DOTAX. Establishes penalties for failure to comply. Provides that tax return preparers shall not be liable for penalties prior to January 1, 2022.

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.

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 used to be 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).

Five years later, the D.C. Circuit upheld the authority of the IRS to charge a user fee to tax return preparers, not because the IRS had authority to regulate tax return preparers, but because it was entitled under another federal statute to recover its direct costs because practitioners received a benefit from using a PTIN (they did not have to disclose their personal social security numbers).

*Montrois v. United States*, 916 F.3d 1056 (D.C. Cir. 2019). There, the court noted that the Internal Revenue Code “establishes no professional constraints on who may act as a tax-return preparer, with the result that preparers range from uncredentialed persons to attorneys and certified public accountants.”

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 1/30/2021



## HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS

Organized August 7, 1943  
P.O. BOX 61043  
HONOLULU, HAWAII 96839



### Committee on Commerce, Consumer Protection, and Health

Thursday, February 4, 2021 at 9:30 a.m.  
Conference Room 229  
State Capitol

**LATE**

**Re: Support for SB 320 Relating to Tax Return Preparers, with Comments**

**Chair Baker, Vice Chair Chang, and Committee Members:**

The Hawaii Association of Public Accountants (HAPA) is the only statewide public accounting organization with chapters on Oahu, Maui, Big Island, and Kauai. HAPA has approximately 550 members, consisting primarily of small to mid-sized CPA firm owners and employees. The Hawaii consumer relies heavily upon our members to provide financial, tax, and consulting services for their businesses and personal affairs.

HAPA supports SB 320 as a measure to improve tax compliance. Any paid tax preparer who obtains an IRS Preparer Tax Identification Number (PTIN) is authorized to prepare federal tax returns. Among practitioners who prepare tax returns, those who are CPAs, Attorneys, or Enrolled Agents have unlimited representation rights before the IRS. Limited representation rights are provided to Annual Filing Season Program Participants, who must obtain some education and filing season readiness. CPAs, Attorneys, Enrolled Agents, and Annual Filing Season Program Participants are required to obtain continuing education.

A person who obtains a PTIN without a professional credential and who is not participating in the Annual Filing Season Program can prepare tax returns, but cannot represent a client before the IRS on any matters. A person obtaining a PTIN must 1) provide personal and business information, 2) be at least 18 years or older, 3) explain felony convictions (if any), and 4) explain personal problems concerning U.S. individual or business tax obligations.

Tax preparation has come to the point where an uneducated and uninformed paid tax preparer can do serious financial harm to an unsuspecting client. Tax laws that are not followed mean that the State will not collect tax money that is due to the State.

Due to the increased complexity in tax laws, HAPA recommends that anyone preparing and signing Hawaii tax returns for a fee 1) obtain a PTIN and 2) obtain Federal and State of Hawaii tax education. Having better educated tax preparers will better insure that taxpayers are not harmed by those who are not knowledgeable about tax laws, and will help the State in collecting the proper amount of taxes in the most cost-effective way. After-the-fact tax audits require too much in manpower and time, and are inefficient in collecting the proper amount of Hawaii taxes.

Please note that other states such as California, Oregon, Maryland, and New York have their own state tax preparer registration laws that are much more robust and test knowledge of both federal and state tax laws. These state tax preparer registration laws have proven to be successful in state tax collections, and also require that the tax preparer obtain knowledge about the respective state tax laws. Hawaii state tax education is very important since there are so many differences between Federal and Hawaii tax laws, but at this time, no Hawaii state tax exam is available to test a preparer's knowledge of Hawaii state tax laws.

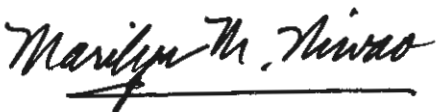
The Hawaii State Tax Department provides low-cost continuing education on Hawaii tax matters and many professional organizations also provide continuing education credits on Hawaii tax issues. Both the Hawaii State Tax Department and other professional organizations issue certificates of attendance when a person takes continuing education tax courses. Perhaps the easiest way to verify that state tax courses have been taken is to require a Hawaii tax preparer to not only provide a PTIN, but also check a box on the state tax return indicating that Hawaii state tax courses have been taken.

**We recommend that, at a minimum, a paid tax preparer signing Hawaii returns - 1) obtain a PTIN, 2) participate in the IRS' Annual Filing Season Program or be a CPA, Attorney, or Enrolled Agent, and 3) take a minimum of 3 hours annually of continuing professional education on Hawaii State tax matters.**

Attached are the IRS' Annual Filing Season Continuing Education Requirements and the various tax preparer credentials and qualifications.

Please do not hesitate to contact us with any questions or concerns. Thank you for considering the above.

Respectfully submitted,



**Marilyn M. Niwao, M.S.P.H., J.D., CPA, CGMA**  
**Legislative Committee Chair**  
**Hawaii Association of Public Accountants**  
**Telephone (808) 242-4600, ext. 224, [niwao@mauicpa.com](mailto:niwao@mauicpa.com)**



# Understanding Tax Return Preparer Credentials and Qualifications

Any tax professional with an IRS Preparer Tax Identification Number (PTIN) is authorized to prepare federal tax returns. However, tax professionals have differing levels of skills, education and expertise.

An important difference in the types of practitioners is “representation rights.” Here is guidance on each credential and qualification:

**Unlimited Representation Rights:** Enrolled agents, certified public accountants, and attorneys have unlimited representation rights before the IRS. Tax professionals with these credentials may represent their clients on any matters including audits, payment/collection issues, and appeals.

- **Enrolled Agents** – Licensed by the IRS. Enrolled agents are subject to a suitability check and must pass a three-part Special Enrollment Examination, which is a comprehensive exam that requires them to demonstrate proficiency in federal tax planning, individual and business tax return preparation, and representation. They must complete 72 hours of continuing education every 3 years. Learn more about the Enrolled Agent Program.
- **Certified Public Accountants** – Licensed by state boards of accountancy, the District of Columbia, and U.S. territories. Certified public accountants have passed the Uniform CPA Examination. They have completed a study in accounting at a college or university and also met experience and good character requirements established by their respective boards of accountancy. In addition, CPAs must comply with ethical requirements and complete specified levels of continuing education in order to maintain an active CPA license. CPAs may offer a range of services; some CPAs specialize in tax preparation and planning.
- **Attorneys** – Licensed by state courts, the District of Columbia or their designees, such as the state bar. Generally, they have earned a degree in law and passed a bar exam. Attorneys generally have on-going continuing education and professional character standards. Attorneys may offer a range of services; some attorneys specialize in tax preparation and planning.

**Limited Representation Rights:** Some preparers without one of the above credentials have limited practice rights. They may only represent clients whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees, including the Taxpayer Advocate Service. They cannot represent clients whose returns they did not prepare and they cannot represent clients regarding appeals or collection issues even if they did prepare the return in question. Tax return preparers with limited representation rights include:

- **Annual Filing Season Program Participants** – This voluntary program recognizes the efforts of return preparers who are generally not attorneys, certified public accountants, or enrolled agents. It was designed to encourage education and filing season readiness. The IRS issues an Annual Filing Season Program Record of Completion to return preparers who obtain a certain number of continuing education hours in preparation for a specific tax year.
- Beginning with returns filed after December 31, 2015, only Annual Filing Season Program participants have limited practice rights. Learn more about this program.
- **PTIN Holders** – Tax return preparers who have an active preparer tax identification number, but no professional credentials and do not participate in the Annual Filing Season Program, are authorized to prepare tax returns. Beginning January 1, 2016, this is the only authority they have. They have no authority to represent clients before the IRS (except regarding returns they prepared and filed December 31, 2015, and prior).

**Directory of Federal Tax Return Preparers with Credentials and Select Qualifications:** To help taxpayers determine return preparer credentials and qualifications, the IRS has a public directory [↗](#) containing certain tax professionals. The searchable, sortable database includes the name, city, state, and zip code of attorneys, CPAs, enrolled agents, enrolled retirement plan agents, and enrolled actuaries with valid PTINs for 2016, as well as Annual Filing Season Program Record of Completion recipients.

**Reminder:** Everyone described above must have an IRS issued preparer tax identification number (PTIN) in order to legally prepare your tax return for compensation. Make certain your preparer has one and enters it on your return filed with the IRS. (They are not required to enter it on the copy they provide you.)

Tax return preparers who have PTINs but are not listed in the directory may provide quality return preparation services, but choose any return preparer wisely. Always inquire about their education and training.



# General Requirements

The Annual Filing Season Program is intended to recognize and encourage unenrolled tax return preparers who voluntarily increase their knowledge and improve their filing season competency through continuing education (CE).

## How do I obtain an AFSP – Record of Completion?

- Take 18 hours of continuing education from IRS-Approved CE Providers [↗](#), including:
  - a six (6) hour Annual Federal Tax Refresher (AFTR) course that covers filing season issues and tax law updates, as well as a knowledge-based comprehension test administered at the end of the course by the CE Provider;
  - ten (10) hours of other federal tax law topics; and
  - two (2) hours of ethics.
- Have an active preparer tax identification number (PTIN).
- Consent to adhere to specific practice obligations outlined in Subpart B and section 10.51 of Treasury Department Circular No. 230 [PDF](#).

## How and when will I get my Record of Completion?

After PTIN renewal season begins in October, a Record of Completion will be generated to you once all requirements have been met, including renewal of your PTIN for the upcoming year and consent to the Circular 230 obligations.

If you have an online PTIN account, you will receive an e-mail from [TaxPros@ptin.irs.gov](mailto:TaxPros@ptin.irs.gov) [✉](#) with instructions on how to sign the Circular 230 consent and receive your certificate in your online secure mailbox. (Note: The [TaxPros@ptin.irs.gov](mailto:TaxPros@ptin.irs.gov) [✉](#) mailbox only sends messages. It does not accept or process messages.)

If you don't have an online PTIN account, you will receive a letter with instructions for completing the application process and obtaining your certificate.

## Social Media

[Completing the Circular 230 Consent](#)

## Helpful Links

- [Annual Federal Tax Refresher Course Outline \(PDF\)](#)
- [AFTR Test Parameters \(PDF\)](#)
- [Frequently Asked Questions: Annual Filing Season Program](#)
- [IRS Approved CE Providers \[↗\]\(#\)](#)



## **Is it true that some unenrolled return preparers can get an AFSP – Record of Completion without taking the AFTR course?**

Yes. Some unenrolled preparers are exempt from the AFTR course requirement because of their completion of other recognized state or national competency tests. These exempt groups are still required to meet other program requirements, including 15 CE credits: 10 federal tax law, three (3) federal tax law updates, and two (2) ethics.

Chart of Annual Filing Season Program CE Requirements [PDF](#)

*Page Last Reviewed or Updated: 20-Sep-2020*

**Annual Filing Season Continuing Education Requirements**

<b>Return Preparer Categories</b>	<b>Description of preparer category</b>	<b>Annual Federal Tax Refresher (AFTR) Course &amp; Test</b>	<b>Tax Law Update CE Credits</b>	<b>Federal Tax Law CE Credits</b>	<b>Ethics CE Credits</b>	<b>Total CE Credits</b>
<b>AFTR Course Exempt Preparers</b>						
<b>State Based Return Preparer Program Participants</b>						
<b>Oregon Board of Tax Practitioners</b>	Return preparers who are currently registered with Oregon	Exempt from AFTR Course & Exam	3	10	2	15
<b>California Tax Education Council (CTEC)</b>	Return preparers who are currently registered with CTEC					
<b>Maryland State Board of Individual Tax Preparers</b>	Return preparers who have passed the Maryland examination and are registered with Maryland by 12/31					
<b>Organization Based Return Preparer Program Participants</b>						
<b>Former IRS Registered Tax Return Preparers</b>	Return preparers who passed the RTRP test	Exempt from AFTR Course & Exam	3	10	2	15
<b>IRS Special Enrollment Exam (SEE) Part 1</b>	Tax preparers who have passed the Special Enrollment Exam Part I within the past two calendar years. i.e. for Filing Season 2021 return preparers must have passed within calendar years 2019 or 2020					
<b>IRS Volunteer Income Tax Assistance (VITA) volunteer</b>	VITA quality reviewers, instructors and preparers who pass the advanced VITA examination with Active PTINs. <u>See Fact Sheet for additional information.</u>					
<b>Accreditation Council for Accountancy and Taxation (ACAT)</b>	Return preparers who hold an Accredited Tax Preparer (ATP) or Accredited Business Accountant/Advisor credential (ABA).					

**Annual Filing Season Continuing Education Requirements**

<b>Credentialed Return Preparers</b>						
<b>Certified Public Accountant (CPA)</b>	Exempt as long as preparer holds current credential	Exempt from AFTR Course & Exam	3	10	2	15
<b>Attorney</b>						
<b>Enrolled Retirement Plan Agent (ERPA)</b>						
<b>Enrolled Agent (EA)</b>		Exempt from AFTR Course & Exam  Note: If an Enrolled Agent opts to take an AFTR course, they will not receive credit toward their Enrolled Agent CE requirements	3	10	2	15
<b>Non-Exempt Return Preparers – AFTR Course is REQUIRED</b>						
<b>Non-exempt or non-credentialed preparer</b>	All other non-credentialed return preparers who do not meet one of the exempt categories listed above	6-hour AFTR course and test is required annually	N/A	10	2	18

3/9/2020