
A BILL FOR AN ACT

RELATING TO TAX RETURN PREPARERS.

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

1 SECTION 1. This Act shall be known and may be cited as the
2 Hawaii Taxpayer Protection Act.

3 SECTION 2. The legislature finds that tax fraud and errors
4 harm the taxpayers of the State and the tax base. The annual
5 tax refund is the most significant financial transaction of the
6 year for most local families. Thus, the legislature finds it
7 necessary to establish minimum standards for professional tax
8 return preparers to protect local families and taxpayers from
9 unscrupulous and unqualified tax return preparers.

10 The purpose of this Act is to:

11 (1) Protect the State's taxpayers by requiring tax return
12 preparers to provide a valid preparer tax
13 identification number for claims and returns submitted
14 to the State; and

15 (2) Authorize the director of taxation to file a claim to
16 enjoin tax return preparers for certain prohibited
17 conduct.



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

4 "§231- Preparer tax identification number required.

5 (a) A tax return preparer shall have a valid preparer tax
6 identification number.

7 (b) A tax return preparer shall not:

8 (1) For compensation, prepare any return or claim for
9 refund without having a valid preparer tax
10 identification number; or

11 (2) Omit its preparer tax identification number from any
12 return or claim for refund prepared for compensation
13 where the department requires the preparer tax
14 identification number to be disclosed.

15 (c) A tax return preparer who violates subsection (b)
16 shall be liable for the following penalties:

17 (1) \$100 per violation for the first one hundred
18 violations;

19 (2) \$500 per violation for the one hundred first violation
20 to the five hundredth violation; and

21 (3) \$1,000 per violation for all subsequent violations.



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

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

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

14 (2) Files a claim for refund of the amount so paid,
15 no action to levy or file a proceeding in court to collect the
16 remainder of the penalty shall be commenced except in accordance
17 with subsection (e).

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



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

5 (2) The tax return preparer fails to file an appeal to the
6 tax appeal court for the determination of the tax
7 return preparer's liability for the penalty assessed
8 under subsection (c) within six months after the day
9 on which the claim for refund was filed.

10 Nothing in this subsection shall be construed to prohibit any
11 counterclaim for the remainder of the penalty in any proceeding.

12 (f) If there is a final administrative determination
13 pursuant to section 231-7.5, or a final judicial decision that
14 the penalty assessed under subsection (c) should not apply, then
15 that portion of the penalty assessed shall be voided. Any
16 portion of the penalty that has been paid shall be refunded to
17 the tax return preparer as an overpayment of tax without regard
18 to any period of limitations that, but for this subsection,
19 would apply to the making of the refund.

20 (g) At the request of the director of taxation, a civil
21 action may be brought to enjoin a tax return preparer from



1 further acting as a tax return preparer or from engaging in
2 conduct as follows:

- 3 (1) Any action under this subsection may be brought in the
4 circuit court of the circuit in which the tax return
5 preparer resides or has a principal place of business,
6 or in which the taxpayer with respect to whose tax
7 return the action is brought resides;
- 8 (2) The court may exercise its jurisdiction over the
9 action separate and apart from any other action
10 brought by the State against the tax return preparer
11 or taxpayer;
- 12 (3) If the court finds that a tax return preparer has
13 engaged in conduct subject to penalty under subsection
14 (c) and that injunctive relief is appropriate to
15 prevent the recurrence of that conduct, the court may
16 enjoin the preparer accordingly; and
- 17 (4) If the court finds that a tax return preparer has
18 continually or repeatedly engaged in conduct
19 prohibited under subsection (b) and that an injunction
20 prohibiting that conduct would not be sufficient to
21 prevent the preparer's interference with the proper



1 administration of this chapter, the court may enjoin
2 the preparer from acting as a tax return preparer.

3 (h) The department may adopt rules, pursuant to chapter
4 91, necessary to effectuate the implementation of this section.

5 (i) For purposes of this section:

6 "Preparer tax identification number" means an identifying
7 number issued by the Internal Revenue Service in accordance with
8 section 6109 of the Internal Revenue Code of 1986, as amended,
9 and title 26 Code of Federal Regulations section 1.6109-2.

10 "Tax return preparer" shall have the same meaning as that
11 term is defined in section 231-36.5.

12 §231- Additional categories of prohibited conduct. (a)

13 The director of taxation may file claim to enjoin a tax return
14 preparer from further acting as a tax return preparer or from
15 engaging in conduct prohibited under subsection (b) as follows:

16 (1) Any action under this subsection may be brought in the
17 circuit court of the circuit in which the tax return
18 preparer resides or has a principal place of business,
19 or in which the taxpayer, with respect to whose tax
20 return the action is brought, resides;



- 1 (2) The court may exercise its jurisdiction over the
2 action separate and apart from any other action
3 brought by the State against the tax return preparer
4 or taxpayer;
- 5 (3) If the court finds that a tax return preparer has
6 engaged in conduct prohibited under subsection (b) and
7 that injunctive relief is appropriate to prevent the
8 recurrence of that conduct, the court may enjoin the
9 preparer accordingly; and
- 10 (4) If the court finds that a tax return preparer has
11 continually or repeatedly engaged in conduct
12 prohibited under subsection (b) and that an injunction
13 prohibiting that conduct would not be sufficient to
14 prevent the preparer's interference with the proper
15 administration of this chapter, the court may enjoin
16 the preparer from acting as a tax return preparer.
- 17 (b) It shall be a prohibited practice for any tax return
18 preparer to engage in any of the following practices:
- 19 (1) Engaging in any conduct subject to any criminal
20 penalty provided in Title 14;



- 1 (2) Engaging in any other fraudulent or deceptive conduct
- 2 that substantially interferes with the proper
- 3 administration of the tax laws of the State;
- 4 (3) Where required, failing to furnish a copy of the
- 5 income tax return or claim for refund;
- 6 (4) Where required, failing to sign the income tax return
- 7 or claim for refund;
- 8 (5) Where required, failing to retain a copy of the income
- 9 tax return;
- 10 (6) Where required by due diligence requirements imposed
- 11 by department regulations, failing to be diligent in
- 12 determining eligibility for tax benefits;
- 13 (7) Negotiating a check issued to a taxpayer by the
- 14 department without the permission of the taxpayer;
- 15 (8) Misrepresenting the tax return preparer's eligibility
- 16 to practice before the department or otherwise
- 17 misrepresenting the tax return preparer's experience
- 18 or education; and
- 19 (9) Guaranteeing the payment of any income tax refund or
- 20 the allowance of any income tax credit.



1 (c) The department may adopt rules pursuant to chapter 91
2 necessary to effectuate the purposes of this section."

3 SECTION 4. New statutory material is underscored.

4 SECTION 5. This Act shall take effect on July 1, 2050;
5 provided that tax return preparers shall not be liable for
6 penalties incurred under this Act prior to January 1, 2021.



Report Title:

Tax Return Preparers; Preparer Tax Identification Number;
Penalties; Hawaii Taxpayer Protection Act

Description:

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. Authorizes Director of Taxation to file a claim to enjoin a tax return preparer for certain prohibited conduct. Provides that tax return preparers shall not be liable for penalties prior to January 1, 2021. Effective 7/1/2050. (HD1)

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