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To: The Honorable Sylvia Luke, Chair;
The Honorable Ty J.K. Cullen, Vice Chair;
and Members of the House Committee on Finance

From: Isaac W. Choy, Director
Department of Taxation

Date: March 31, 2021
Time: 2:30 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 320, H.D. 1, Relating to Tax Return Preparers

The Department of Taxation (Department) supports S.B. 320, H.D. 1. The measure has a defective effective date of July 1, 2050, but the imposition of penalties for violations begin on January 1, 2022.

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 (IRS) 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 establishes administrative penalties for violations and authorizes the Department to bring a civil action against violators in certain circumstances.

First, the Department notes that any person (attorney, certified public accountant, enrolled agent, enrolled actuary, and enrolled retirement plan agent) who prepares federal tax returns for compensation must have a valid PTIN before preparing tax returns. PTINs must be renewed annually. Under current law, no such requirement exists for preparing Hawaii tax returns.

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. In addition, 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. Therefore, the Department strongly believes that the public will greatly benefit from this improved accountability.

Second, the Department notes that it has concerns with the continuing education requirements inserted into the measure. H.D. 1 adds a new section requiring tax return preparers

to complete four hours of continuing education courses annually beginning with calendar year 2022. The continuing education courses must be approved by the Board of Public Accountancy. The Department may adopt rule to establish procedure for a tax return preparer to prove or attest compliance with the continuing education requirements and to establish civil penalties for violations of the continuing education requirements. All tax return preparers are not certified public accountants and as such it is not appropriate to require the Board of Public Accountancy to oversee the continuing education for all tax return preparers. The Department suggests deleting the continuing education provisions from this measure.

Finally, the Department believes that requiring tax return preparers to have a valid PTIN issued by the IRS to prepare any return or claim for refund for compensation is sufficient to enable the Department to better monitor tax return preparers and detect noncompliance. If the Department is able to identify paid preparers, it will be better equipped to protect taxpayers and State tax revenue.

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

TAX FOUNDATION OF HAWAII

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SUBJECT: ADMINISTRATION, Require PTIN Use by Paid Preparers

BILL NUMBER: SB 320, HD1

INTRODUCED BY: House Committee on Consumer Protection and Commerce

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, providing 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.

Adds a new section to chapter 231, HRS, prescribing continuing education requirements for tax return preparers, and granting the Department of Taxation power to prescribe by rule civil penalties for violation.

Amends section 466-4, HRS, to allow the Board of Public Accountancy to prescribe courses for tax return preparers.

EFFECTIVE DATE: 1/1/2050.

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.

We are concerned that the continuing education requirements prescribed by proposed section 231-B in this bill would amount to new regulation of a previously unregulated profession. Under Section 26H-6, HRS, new regulatory measures being considered for enactment that, if enacted, would subject unregulated professions to licensing or other regulatory controls shall be referred to the auditor for a “sunrise analysis.” This analysis “shall set forth the probable effects of the proposed regulatory measure and assess whether its enactment is consistent with the policies set forth in Section 26H-2.” Those policies are:

- (1) The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation;
- (2) Regulation in the form of full licensure or other restrictions on certain professions or vocations shall be retained or adopted when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider;
- (3) Evidence of abuses by providers of the service shall be accorded great weight in determining whether regulation is desirable;
- (4) Professional and vocational regulations which artificially increase the costs of goods and services to the consumer shall be avoided except in those cases where the legislature determines that this cost is exceeded by the potential danger to the consumer;
- (5) Professional and vocational regulations shall be eliminated when the legislature determines that they have no further benefits to consumers;
- (6) Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons; and

(7) Fees for regulation and licensure shall be imposed for all vocations and professions subject to regulation; provided that the aggregate of the fees for any given regulatory program shall not be less than the full cost of administering that program.

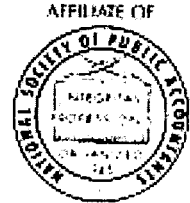
Section 26H-2, HRS.

Digested 3/30/2021



HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS

Organized August 7, 1943
P.O. BOX 61043
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Committee on Finance
Wednesday, March 31, 2021 at 2:30 p.m.
Conference Room 308
State Capitol

Re: Support for SB 320, HD1 Relating to Tax Return Preparers, with Amendments

Chair Sylvia Luke, Vice Chair Ty J.K. Cullen, 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, enrolled agents, and unlicensed tax practitioners. 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, HD 1 as a measure to improve Hawaii state 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.

Many professional organizations provide continuing education credits on Hawaii tax issues. These 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 4 hours annually of continuing professional education on Hawaii State tax topics, including Hawaii State tax laws which may include the following topics: Hawaii state income taxes, Hawaii General Excise and Use taxes, Hawaii Transient Accommodations Tax, Hawaii Estate taxes, Hawaii payroll taxes and any other Hawaii taxes.

Regarding the proposed Section 231-B, we recommend the following changes:

Section 231-B (a) – implementation for continuing education should be extended to January 1, 2024 to allow the board additional time to provide further guidance on implementing the provisions of this bill.

Section 231-B (b) – currently, the Board of Public Accountancy does not approve each continuing education course (CPE). Instead, it regulates approved vendors of continuing education and defines qualifying continuing education. Continuing education certificates are also currently given to unlicensed tax practitioners, and the Hawaii State Tax Department also provides CPE certificates to anyone attending the Hawaii State Tax Update seminars.

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,

A handwritten signature in black ink that reads "Brian M. Iwata". The signature is written in a cursive style with a horizontal line at the end.

Brian M. Iwata, CPA
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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.