

# TAX FOUNDATION OF HAWAII

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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