

JAN 22 2021

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# 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 protect the State's taxpayers  
11 by requiring tax return preparers to provide a valid preparer  
12 tax identification number for claims and returns submitted to  
13 the State.

14           SECTION 3. Chapter 231, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:



1           "§231-    Preparer tax identification number required.    (a)

2   A tax return preparer shall have a valid preparer tax  
3   identification number.

4           (b) A tax return preparer shall not:

5           (1) For compensation, prepare any return or claim for  
6           refund without having a valid preparer tax  
7           identification number; or

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

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

14           (1) \$100 per violation for the first one hundred  
15           violations;

16           (2) \$500 per violation for the one hundred first to the  
17           five hundredth violations; and

18           (3) \$1,000 per violation for all subsequent violations.

19           Each return or claim for refund prepared by a tax return  
20   preparer or submitted to the department in violation of  
21   subsection (b) shall be a separate violation; provided that



1 preparing and submitting the same return or claim for refund  
2 shall not constitute two separate violations. The director of  
3 taxation may waive these penalties in part or in full if the tax  
4 return preparer shows that the violation was due to reasonable  
5 cause.

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

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

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

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

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



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

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

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

16       (g) At the request of the director of taxation, a civil  
17       action may be brought to enjoin a tax return preparer from  
18       further acting as a tax return preparer or from engaging in  
19       conduct as follows:

20       (1) Any action under this subsection may be brought in the  
21       circuit court of the circuit in which the tax return



1 preparer resides or has a principal place of business,  
2 or in which the taxpayer with respect to whose tax  
3 return the action is brought resides;

4 (2) The court may exercise its jurisdiction over the  
5 action separate and apart from any other action  
6 brought by the State against the tax return preparer  
7 or taxpayer;

8 (3) If the court finds that a tax return preparer has  
9 engaged in conduct subject to penalty under subsection  
10 (c) and that injunctive relief is appropriate to  
11 prevent the recurrence of that conduct, the court may  
12 enjoin the preparer accordingly; and

13 (4) If the court finds that a tax return preparer has  
14 continually or repeatedly engaged in conduct  
15 prohibited under subsection (b) and that an injunction  
16 prohibiting that conduct would not be sufficient to  
17 prevent the preparer's interference with the proper  
18 administration of this chapter, the court may enjoin  
19 the preparer from acting as a tax return preparer.

20 (h) The department may adopt rules, pursuant to chapter  
21 91, necessary to effectuate the implementation of this section.



1        (i) For purposes of this section:

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

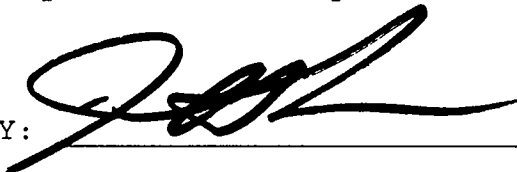
6        "Tax return preparer" shall have the same meaning as that  
7 term is defined in section 231-36.5."

8        SECTION 4. New statutory material is underscored.

9        SECTION 5. This Act shall take effect upon its approval;  
10 provided that tax return preparers shall not be liable for  
11 penalties incurred under this Act prior to January 1, 2022.

12

INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'J. Ash', is written over a horizontal line.

# S.B. NO. 320

**Report Title:**

Tax Return Preparers; Preparer Tax Identification Number;  
Penalties

**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. Provides that tax return preparers shall not be liable for penalties prior to January 1, 2022.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

