

**ACT 96**

S.B. NO. 320

A Bill for an Act Relating to Tax Return Preparers.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

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

The purpose of this Act is to protect the State's taxpayers by requiring tax return preparers to provide a valid preparer tax identification number for claims and returns prepared for compensation submitted to the State.

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

**“§231- Tax return preparers; preparer tax identification number required.** (a) A tax return preparer shall have a valid preparer tax identification number.

(b) A tax return preparer shall not:

- (1) For compensation, prepare any return or claim for refund without having a valid preparer tax identification number; or
- (2) Omit its preparer tax identification number from any return or claim for refund prepared for compensation where the department requires the preparer tax identification number to be disclosed.

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

- (1) \$100 per violation for the first one hundred violations;
- (2) \$500 per violation for the one hundred first violation to the five hundredth violation; and
- (3) \$1,000 per violation for all subsequent violations.

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

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

- (1) Pays an amount that is no less than fifteen per cent of the penalty amount; and
- (2) Files a claim for refund of the amount so paid,

no action to levy or file a proceeding in court to collect the remainder of the penalty shall be commenced except in accordance with subsection (e).

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

- (1) The tax return preparer fails to file an appeal to the tax appeal court within thirty days after the day on which the claim for refund of any partial payment of any penalty under subsection (c) is denied; or
- (2) The tax return preparer fails to file an appeal to the tax appeal court for the determination of the tax return preparer's liability for the penalty assessed under subsection (c) within six months after the day on which the claim for refund was filed.

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

(f) If there is a final administrative determination pursuant to section 231-7.5, or a final judicial decision that the penalty assessed under subsection (c) should not apply, then that portion of the penalty assessed shall be voided.

## ACT 96

Any portion of the penalty that has been paid shall be refunded to the tax return preparer as an overpayment of tax without regard to any period of limitations that, but for this subsection, would apply to the making of the refund.

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

- (1) Any action under this subsection may be brought in the circuit court of the circuit in which the tax return preparer resides or has a principal place of business, or in which the taxpayer with respect to whose tax return the action is brought resides;
- (2) The court may exercise its jurisdiction over the action separate and apart from any other action brought by the State against the tax return preparer or taxpayer;
- (3) If the court finds that a tax return preparer has engaged in conduct subject to the penalty under subsection (c) and that injunctive relief is appropriate to prevent the recurrence of that conduct, the court may enjoin the preparer accordingly; and
- (4) If the court finds that a tax return preparer has continually or repeatedly engaged in conduct prohibited under subsection (b) and that an injunction prohibiting that conduct would not be sufficient to prevent the tax return preparer's interference with the proper administration of this chapter, the court may enjoin the preparer from acting as a tax return preparer.

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

(i) For purposes of this section:

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

“Tax return preparer” shall have the same meaning as that term is defined in section 231-36.5.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on January 1, 2022.

(Approved June 25, 2021.)

### Note

1. Edited pursuant to HRS §23G-16.5.