
A BILL FOR AN ACT

RELATING TO TAX ADMINISTRATION.

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

1 SECTION 1. The purpose of this Act is to conform state tax
2 law to federal tax law and to provide the department of taxation
3 with the authority to impose civil penalties and seek court
4 injunctions on persons who promote abusive tax shelters and tax
5 return preparers who take unrealistic positions on tax returns.

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

9 "§231- Understatement of taxpayer's liability by tax
10 return preparer. (a) Any tax return preparer making
11 understatements of liability based upon unrealistic positions on
12 a tax return or claim for tax refund shall pay a penalty of
13 \$250, with respect to each tax return or claim, unless there is
14 reasonable cause for the understatement and the tax return
15 preparer acted in good faith.

16 (b) A tax return preparer wilfully or recklessly makes an
17 understatement of liability based upon unrealistic positions on
18 a tax return or claim for tax refund if the tax return preparer:



1 (1) Wilfully attempts to understate a person's tax
2 liability; or

3 (2) Recklessly disregards any tax law or rule.

4 Any tax return preparer who violates this subsection shall pay a
5 penalty of \$1,000, with respect to each tax return or claim.

6 (c) For purposes of subsections (a) and (b),
7 understatements of liability using unrealistic positions occur
8 when:

9 (1) Any part of a tax return or claim for tax refund is
10 based on a position that does not have a realistic
11 possibility of being sustained on its merits;

12 (2) Any tax return preparer who prepares a tax return or
13 claim for tax refund knew or reasonably should have
14 known of such an unrealistic position; and

15 (3) The unrealistic position was not a disclosed item as
16 provided in subsection (h) or was frivolous.

17 (d) If within thirty days after the notice and demand of
18 any penalty under subsection (a) or (b) is made, the tax return
19 preparer:

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

22 (2) Files a claim for refund of the amount so paid,



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

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

7 (1) The tax return preparer fails to file an appeal to the
8 tax appeal court within thirty days after the day on
9 which the claim for refund of any partial payment of
10 any penalty under subsection (a) or (b) is denied; or

11 (2) The tax return preparer fails to file an appeal to the
12 tax appeal court for the determination of the tax
13 return preparer's liability for the penalty assessed
14 under subsection (a) or (b) within six months after
15 the day on which the claim for refund was filed.

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

18 (f) If there is a final administrative determination or a
19 final judicial decision that the penalty assessed under
20 subsection (a) or (b) should not apply, then that portion of the
21 penalty assessed shall be voided. Any portion of the penalty
22 that has been paid shall be refunded to the tax return preparer



1 as an overpayment of tax without regard to any period of
2 limitations which, but for this subsection, would apply to the
3 making of the refund.

4 (g) At the request of the director of taxation, a civil
5 action may be brought to enjoin a tax return preparer from
6 further acting as a tax return preparer or from engaging in
7 conduct prohibited under subsection (a) or (b) as follows:

8 (1) Any action under this subsection may be brought in the
9 circuit court of the circuit in which the tax return
10 preparer resides or has a principal place of business,
11 or in which the taxpayer with respect to whose tax
12 return the action is brought resides;

13 (2) The court may exercise its jurisdiction over the
14 action separate and apart from any other action
15 brought by the State against the tax return preparer
16 or taxpayer;

17 (3) A tax return preparer who engages in any conduct
18 subject to penalty under subsection (a) or (b) may be
19 enjoined by the court from such conduct; and

20 (4) If the court finds that a tax return preparer has
21 continually or repeatedly engaged in conduct
22 prohibited under subsection (a) or (b) and that an



1 injunction prohibiting such conduct would be
2 insufficient to prevent the preparer's interference
3 with the proper administration of this chapter, the
4 court may enjoin the preparer from acting as a tax
5 return preparer.

6 (h) For purposes of this section:

7 "Disclosed item" means any item if:

8 (1) The relevant facts affecting the item's tax treatment
9 are adequately disclosed in a tax return or in a
10 statement attached to a tax return; and

11 (2) There is a reasonable basis for the tax treatment of
12 the item by the taxpayer.

13 "Tax return preparer" means any person who prepares,
14 employs, or supervises one or more persons who prepare a tax
15 return or a claim for tax refund. Preparation of a substantial
16 portion of a tax return or claim for tax refund shall be treated
17 as if it were the preparation of a tax return or claim for tax
18 refund.

19 "Understatement of liability" means any understatement of
20 the net amount payable for any tax imposed or any overstatement
21 of the net amount creditable or refundable for any tax. Except
22 as otherwise provided in subsection (f), the determination of



1 whether there is an understatement of liability shall be made
2 without regard to any administrative or judicial action
3 involving the taxpayer.

4 (i) The penalty imposed by this section shall be in
5 addition to any other penalty provided by law.

6 §231- Promoting abusive tax shelters. (a) A person
7 promotes an abusive tax shelter by:

8 (1) Organizing or assisting in the organization of, or
9 participating directly or indirectly in the sale of
10 any interest in:

11 (A) A partnership or other entity;

12 (B) Any investment plan or arrangement; or

13 (C) Any other plan or arrangement;

14 and

15 (2) In connection with any activity described under
16 paragraph (1), making, furnishing, or causing another
17 person to make or furnish, a statement with respect
18 to:

19 (A) Whether any deduction or credit is allowed;

20 (B) Whether any income may be excluded; or



1 (C) The securing of any other tax benefit by reason
2 of holding an interest in the entity or
3 participating in the plan or arrangement,
4 that the person knows or has reason to know is false
5 or fraudulent or is a gross valuation overstatement as
6 to any material matter.

7 (b) A person found promoting an abusive tax shelter as
8 described under subsection (a) shall pay a penalty of the lesser
9 of \$1,000 or one hundred per cent of the gross income derived or
10 to be derived by the person from the activity.

11 For the purposes of this section, activities described in
12 subsection (a)(1) shall be treated as a separate activity for
13 each entity or arrangement. Participation in each sale described
14 in subsection (a)(2) shall be treated as a separate activity for
15 each entity or arrangement.

16 (c) At the request of the director of taxation, a civil
17 action may be brought to enjoin any person from engaging in any
18 conduct described in subsection (a). Any action under this
19 section shall be brought in the circuit court of the circuit
20 where the person in subsection (a) resides or where the person's
21 principal place of business is located. The court may exercise
22 its jurisdiction over the action separate and apart from any



1 other action brought by the State against those persons
2 described in subsection (a). A person who engages in any
3 conduct subject to penalty under subsection (b) may be enjoined
4 by the court for such conduct.

5 (d) For the purposes of this section, "gross valuation
6 overstatement" means any statement of value for any property or
7 services if:

8 (1) The value so stated exceeds two hundred per cent of
9 the amount determined to be the correct valuation; and

10 (2) The value of the property or services is directly
11 related to the amount of any deduction or credit
12 allowable to any participant.

13 (e) The director may waive all or any part of the penalty
14 provided by subsection (b) with respect to any gross valuation
15 overstatement on a showing that there was a reasonable basis for
16 the valuation and that the valuation was made in good faith.

17 (f) The penalty imposed by this section shall be in
18 addition to any other penalty provided by law."

19 SECTION 3. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before its effective date.

22 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 2006.



H.B. NO. 2417

Report Title:

Taxes; preparation of returns

Description:

Provides DOTAX with the authority to impose civil penalties and seek court injunctions against persons who promote abusive tax shelters and tax preparers who support unrealistic positions on tax returns. (HB2417 HD1)

HB2417 HD1 HMS 2006-1775

