

# H.B. NO. 2418

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## 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 to  
2 federal tax law and facilitate the ability of the department of  
3 taxation to issue assessments for fraudulent tax returns.

4           SECTION 2. Section 235-111, Hawaii Revised Statutes, is  
5 amended by amending subsection (c) to read as follows:

6           "(c) Exceptions; fraudulent return or no return. In the  
7 case of a false or fraudulent return with intent to evade tax or  
8 liability, or of a failure to file return, the tax or liability  
9 may be assessed or levied at any time [~~; provided that in the~~  
10 ~~case of a return claimed to be false or fraudulent with intent~~  
11 ~~to evade tax or liability, the determination as to the claim~~  
12 ~~shall first be made by a judge of the circuit court for or in~~  
13 ~~the circuit within which the taxpayer or employer has the~~  
14 ~~taxpayer's or employer's residence or principal place of~~  
15 ~~business, or if none in the State then in the first circuit,~~  
16 ~~upon petition filed by the department of taxation. The petition~~  
17 ~~and other pleadings and proceedings in the matter shall be~~  
18 ~~governed and conducted in accordance with statutory and other~~

1 ~~requirements relating to proceedings in equity, including all~~  
2 ~~rights to appeal allowed in the proceedings. No assessment or~~  
3 ~~levy of the tax or liability after the expiration of the three-~~  
4 ~~year period shall be made unless so provided in the final decree~~  
5 ~~entered in the proceedings]."~~

6 SECTION 4. Section 237-40, Hawaii Revised Statutes, is  
7 amended by amending subsection (b) to read as follows:

8 "(b) Exceptions. In the case of a false or fraudulent  
9 return with intent to evade tax, or of a failure to file the  
10 annual return, the tax may be assessed or levied at any time[  
11 ~~however, in the case of a return claimed to be false or~~  
12 ~~fraudulent with intent to evade tax, the determination as to the~~  
13 ~~claim shall first be made by a judge of the circuit court as~~  
14 ~~provided in section 235-111(c) which shall apply to the tax~~  
15 ~~imposed by this chapter]."~~

16 SECTION 5. Section 237D-9, Hawaii Revised Statutes, is  
17 amended by amending subsection (d) to read as follows:

18 "(d) In the case of a false or fraudulent return with  
19 intent to evade tax, or of a failure to file the annual return,  
20 the tax may be assessed or levied at any time[  
21 ~~however, in the~~  
22 ~~case of a return claimed to be false or fraudulent with intent~~  
~~to evade tax, the determination as to the claim shall first be~~

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1 ~~made by a judge of the circuit court as provided in section 235-~~  
2 ~~111(e) which shall apply to the tax imposed by this chapter]."~~

3 SECTION 6. Section 243-14, Hawaii Revised Statutes, is  
4 amended by amending subsection (c) to read as follows:

5 "(c) In the case of a false or fraudulent statement with  
6 intent to evade tax or liability, or of a failure to file a  
7 statement, the tax or liability may be assessed or levied at any  
8 time [~~; provided that in the case of a statement claimed to be~~  
9 ~~false or fraudulent with intent to evade tax or liability, the~~  
10 ~~determination as to the claim shall first be made by a judge of~~  
11 ~~the circuit court as provided in section 235 111(e) which shall~~  
12 ~~apply to the tax imposed by this chapter]."~~

13 SECTION 8. Section 251-8, Hawaii Revised Statutes, is  
14 amended by amending subsection (d) to read as follows:

15 "(d) In the case of a false or fraudulent return with  
16 intent to evade the surcharge tax, or of a failure to file the  
17 annual return, the surcharge tax may be assessed or levied at  
18 any time [~~; however, in the case of a return claimed to be false~~  
19 ~~or fraudulent with intent to evade the surcharge tax, the~~  
20 ~~determination as to the claim shall first be made by a judge of~~  
21 ~~the circuit court as provided in section 235 111(e) which shall~~  
22 ~~apply to the surcharge tax imposed by this chapter]."~~

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1 SECTION 8. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

4 SECTION 9. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect on July 1, 2006.

7  
8 INTRODUCED BY: \_\_\_\_\_

*Calvin H. Day*

9 BY REQUEST

JAN 23 2006

## JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO TAX ADMINISTRATION.

PURPOSE: To conform to federal tax law and facilitate the ability of the Department of Taxation to issue assessments for fraudulent tax returns.

MEANS: Amend sections 235-111(c), 237-40(b), 237D-9(d), 243-14(c), and 251-8(d), Hawaii Revised Statutes.

JUSTIFICATION: Certain HRS sections are amended to conform to the federal assessment provision at section 6501, Internal Revenue Code (IRC). Conforming to such will allow the department to assess and levy at any time where taxpayers file a fraudulent return or do not file a return. Currently, section 235-111, HRS, requires a court determination that a taxpayer filed a false or fraudulent return before the department may assess or levy the associated tax or liability. This court determination is especially burdensome where a taxpayer enters a guilty plea that does not result in a court determination.

Impact on the public: Improved, more cost-effective enforcement of tax laws on taxpayers who false or fraudulent returns.

Impact on the department and other agencies: The revisions to certain assessment sections should enable the department to assess and levy more efficiently and effectively.

GENERAL FUND: Minimal.

OTHER FUNDS: None.

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PPBS PROGRAM  
DESIGNATION: TAX 102.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2006.