

JAN 25 2006

S.B. NO. 2379

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# A BILL FOR AN ACT

RELATING TO INCOME TAX WITHHOLDING.

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

1           SECTION 1. The purpose of this Act is to clarify existing  
2 department policies and to make the administrative process of  
3 withholding and remitting income taxes more business friendly.  
4 This Act requires employers to file a quarterly informational  
5 return for state income tax withholding and clarifies the time  
6 schedule for remitting the withheld taxes.

7           SECTION 2. Section 235-62, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "§235-62 Return and payment of withheld taxes; penalties.

10 (a) Every employer required by this chapter to withhold taxes  
11 on wages paid in any month shall make a return of such wages to  
12 the department of taxation on or before the fifteenth day of the  
13 calendar month following the ~~[month for which the taxes have~~  
14 ~~been withheld, except as provided in subsection(e)]~~ close of each  
15 of the first three quarters, to wit, on or before April 15, July  
16 15, and October 15.

17           (b) In addition to the three quarterly returns required by  
18 this section, every employer shall also make a combined fourth

1 quarter and annual return to be made on or before the last  
2 business day of the second month following the close of the  
3 calendar year. This annual return shall be an informational  
4 reconciliation return including the amount of taxes withheld at  
5 the close of the final quarter of the previous year in addition  
6 to the total amount of taxes withheld during all calendar  
7 quarters of the previous year, as required by the department.

8       ~~[(b)]~~ (c) The returns required under this section shall be  
9 in such form, including computer printouts or other electronic  
10 formats, and contain such information as may be prescribed by  
11 the director of taxation. The returns shall be filed with the  
12 director at the first taxation district in Honolulu. For  
13 employers remitting taxes withheld on a semi-weekly schedule or  
14 monthly schedule as provided for in subsection (d), the  
15 quarterly return shall be accompanied by a reconciliation  
16 schedule and contain such other information as may be prescribed  
17 by the director of taxation.

18       ~~[(e)]~~ (d) ~~[Every return required under this section shall~~  
19 ~~be accompanied by a remission of the complete amount of tax~~  
20 ~~withheld, as reported in the return; provided that each employer~~  
21 ~~whose liability for taxes withheld exceeds \$40,000 annually~~  
22 ~~shall remit the complete amount of tax withheld on a semi weekly~~

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1 ~~schedule.]~~ Each employer shall remit all payment of tax withheld,  
2 together with any voucher prescribed by the director, to the  
3 department based upon the following schedule:

4 (1) Employers whose annual tax liability exceeds \$40,000  
5 shall electronically remit the complete amount of tax  
6 withheld on a semi-weekly schedule, as prescribed by  
7 the director.

8 (2) Employers whose annual tax liability for taxes  
9 withheld is \$40,000 or less and is more than \$5,000  
10 shall remit the complete amount of tax withheld on a  
11 monthly schedule.

12 (3) Employers whose annual tax liability for taxes  
13 withheld is \$5,000 or less shall remit the complete  
14 amount of tax withheld on a quarterly schedule.

15 ~~[(d)]~~ (e) If the director believes collection of the tax  
16 may be in jeopardy, the director may require any person required  
17 to make a return under this section to make such return and pay  
18 such tax at any time.

19 ~~[(e)]~~ (f) ~~[The director may grant permission to employers,~~  
20 ~~whose liability to pay over the taxes withheld as provided in~~  
21 ~~this section shall not exceed \$5,000 a year, to make returns and~~  
22 ~~payments of the taxes due on a quarterly basis during the~~

1 ~~calendar year, the returns and payments to be made on or before~~  
2 ~~the fifteenth day of the calendar month after the close of each~~  
3 ~~quarter, to wit, on or before April 15, July 15, October 15, and~~  
4 ~~January 15. The director may grant permission to employers to~~  
5 ~~make monthly payments based on an estimated quarterly liability,~~  
6 ~~provided that the employer files a reconciliation return on or~~  
7 ~~before the fifteenth day of the calendar month after the close~~  
8 ~~of each quarter during the calendar year as provided by this~~  
9 ~~section.]~~ The director, for good cause, may extend the time for  
10 making returns and payments, but not beyond the fifteenth day of  
11 the second month following the regular due date of the return.  
12 With respect to wages paid out of public moneys, the director,  
13 in the director's discretion, may prescribe special forms for,  
14 and different procedures and times for the filing of, the  
15 returns by employers paying the wages, or may waive the filing  
16 of any returns upon the conditions and subject to rules the  
17 director may prescribe.

18 ~~[(f)]~~ (g) For purposes of this section~~[-]~~:

19 ~~["semi-weekly"]~~ "Semi-weekly schedule" means:

- 20 (1) On or before the following Wednesday if wages were  
21 paid on the immediately preceding Wednesday, Thursday,  
22 or Friday; or

1           (2) On or before the following Friday if wages were paid  
2                   on the immediately preceding Saturday, Sunday, Monday,  
3                   or Tuesday.

4           In addition to the allowances provided under section 231-  
5 21, each employer shall have at least three banking days  
6 following the close of the semi-weekly period by which to remit  
7 the taxes withheld as provided for in section 6302 of the  
8 Internal Revenue Code.

9           "Monthly schedule" means on or before the fifteenth day of  
10 the calendar month following the month for which the taxes have  
11 been withheld.

12           "Quarterly schedule" means on or before the fifteenth day  
13 of the calendar month following the close of each quarter, to  
14 wit, on or before April 15, July 15, October 15, and January 15.

15           (h) All returns and schedules required by this section  
16 shall be signed by the employer, if made by an individual, or by  
17 the president, vice-president, secretary, or treasurer of a  
18 corporation, if made on behalf of a corporation. If made on  
19 behalf of a partnership, firm, society, unincorporated  
20 association, group, hui, joint venture, joint stock company,  
21 corporation, trust estate, decedent's estate, trust or other  
22 entity, any individual delegated by the entity shall sign the

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1 same on behalf of the employer. If for any reason it is not  
2 practicable for the individual employer to sign the return, it  
3 may be done by any duly authorized agent.

4 (i) An employer that fails to pay or underpays the tax  
5 liability when due or that fails to file a return or schedule  
6 required by this section shall be subject to penalties and  
7 interest as set forth in section 231-39."

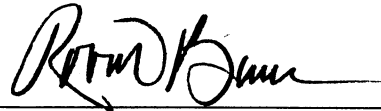
8 SECTION 3. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on January 1, 2007.

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INTRODUCED BY:



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BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO INCOME TAX WITHHOLDING

PURPOSE: To clarify existing department policies and to make the administrative process of withholding and remitting income taxes more business friendly.

MEANS: Amend section 235-62, Hawaii Revised Statutes.

JUSTIFICATION: Currently, the department has through administrative rules required employers to file the employer's return and reconciliation of Hawaii income tax withheld from wages on or before the last day of February following the close of the calendar year.

However, staff has determined that in conducting investigations of employers who have not paid their withholding taxes it is necessary to have a statutory basis to enforce this requirement fully. The proposed language codifies the existing annual reconciliation return filing requirement.

In addition, this legislation alleviates much of the administrative burden of filing returns for income tax withholding by requiring all employers to submit quarterly returns, rather than a more frequent basis.

Impact on the public: Clarifies and codifies employers' current obligation to file annual employer's return and reconciliation of Hawaii income tax withheld from wages. Eliminates the current frequency of withholding tax return filing and adopts a quarterly return. Allows for consistent enforcement of income tax laws.

Impact on the department and other agencies: Will make it clear that the department has

authority to enforce penalties against employers who have not paid their withholding taxes.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION:

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2007.