
A BILL FOR AN ACT

RELATING TO TAXATION.

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

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PART I

TAX RETURN PREPARERS

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§231-A Understatement of taxpayer's liability by tax return preparer. (a) A tax return preparer who understates a person's tax liability based upon unreasonable positions on a tax return or claim for tax refund shall pay a penalty of \$500 with respect to each such tax return or claim for tax refund.

(b) A tax return preparer who:

(1) Wilfully understates a person's tax liability; or

(2) Recklessly disregards any tax law or rule in

understating a person's tax liability,

based upon unreasonable positions on a tax return or claim for tax refund shall pay a penalty of \$1,000, with respect to each such tax return or claim for tax refund.



1 (c) For purposes of subsections (a) and (b),
2 understatements of liability using unreasonable positions occur
3 when:

4 (1) Any part of a tax return or claim for tax refund is
5 based on a position that does not have substantial
6 authority;

7 (2) The tax return preparer who prepared the tax return or
8 claim for tax refund knew or reasonably should have
9 known of the unreasonable position; and

10 (3) The unreasonable position was not a disclosed item as
11 defined in subsection (h) or was frivolous.

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

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

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



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

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

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

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

15 (f) If there is a final administrative determination
16 pursuant to section 231-F, or a final judicial decision that the
17 penalty assessed under subsection (a) or (b) should not apply,
18 then that portion of the penalty assessed shall be voided. Any
19 portion of the penalty that has been paid shall be refunded to
20 the tax return preparer as an overpayment of tax without regard
21 to any period of limitations that, but for this subsection,
22 would apply to the making of the refund.



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

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

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

14 (3) If the court finds that a tax return preparer has
15 engaged in conduct subject to penalty under subsection
16 (a) or (b) and that injunctive relief is appropriate
17 to prevent the recurrence of that conduct, the court
18 may enjoin the preparer accordingly; and

19 (4) If the court finds that a tax return preparer has
20 continually or repeatedly engaged in conduct
21 prohibited under subsection (a) or (b) and that an
22 injunction prohibiting that conduct would not be



1 sufficient to prevent the preparer's interference with
2 the proper administration of this chapter, the court
3 may enjoin the preparer from acting as a tax return
4 preparer.

5 (h) For purposes of this section:

6 "Disclosed item" means any item where:

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

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

12 "Substantial authority" means, in addition to any
13 definition of substantial authority incorporated by subsection
14 (j), that the following authority supports the tax treatment of
15 an item:

16 (1) Statutory provisions;

17 (2) Proposed or final administrative rules;

18 (3) Tax information releases or procedures;

19 (4) Department of taxation announcements or official
20 explanations;

21 (5) Court cases;

1 (6) Legislative intent reflected in committee reports and
2 floor statements;

3 (7) Private letter rulings, comfort letters, technical or
4 advice letters, and written determinations to the
5 extent they are valid and not overruled by other
6 authority; or

7 (8) Notices or other official pronouncements of the
8 department of taxation.

9 "Tax return preparer" means any person who prepares for
10 compensation, or who employs one or more persons to prepare for
11 compensation, any return of tax imposed under title 14 or any
12 claim for refund of tax imposed under title 14. For purposes of
13 this definition, the preparation of a substantial portion of a
14 return or claim for refund shall be treated as if it were the
15 preparation of the return or claim for refund.

16 A person shall not be a tax return preparer merely because
17 the person:

18 (1) Furnishes typing, reproducing, or other mechanical
19 assistance;

20 (2) Prepares a return or claim for refund of the employer
21 (or of an officer or employee of the employer) by whom
22 the person is regularly and continuously employed;



1 (3) Prepares as a fiduciary a return or claim for refund
2 for any other person; or

3 (4) Prepares a claim for refund for a taxpayer in response
4 to any notice of deficiency issued to the taxpayer or
5 in response to any waiver of restriction after the
6 commencement of an audit of the taxpayer, or of
7 another taxpayer if a determination in the audit of
8 the other taxpayer directly or indirectly affects the
9 tax liability of the taxpayer.

10 "Understatement of liability" shall have the same meaning
11 as stated in section 231-D (b). The determination of whether
12 there is an understatement of liability may be made without
13 regard to any administrative or judicial action involving the
14 taxpayer.

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

17 (j) This section shall be construed in accordance with
18 regulations and judicial interpretations for Section 6694 of the
19 Internal Revenue Code."

20 PART II

21 FRAUDULENT TAX PRACTICES



1 SECTION 2. Chapter 231, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§231-B Promoting abusive tax shelters. (a) A person
5 promotes an abusive tax shelter by:

6 (1) Organizing or assisting in the organization of, or
7 participating directly or indirectly in the sale of,
8 an interest in:

9 (A) A partnership or other entity;

10 (B) Any investment plan or arrangement; or

11 (C) Any other plan or arrangement; and

12 (2) In connection with any activity described under
13 paragraph (1), making, furnishing, or causing another
14 person to make or furnish a statement with respect to:

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

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

17 (C) The securing of any other tax benefit by reason
18 of holding an interest in the entity or

19 participating in the plan or arrangement,

20 which the person knows or has reason to know is false

21 or fraudulent or is a gross valuation overstatement as

22 to any material matter.



1 (b) A person found promoting an abusive tax shelter shall
2 pay, with respect to each activity described in subsection (a),
3 a penalty of \$1,000 or, if the person establishes that the
4 abusive tax shelter generated less than \$1,000 of gross income,
5 then one hundred per cent of the gross income derived or to be
6 derived by the person from the activity. For purposes of this
7 section, any activity described in subsection (a)(1) shall be
8 treated as a separate activity for each entity or arrangement.
9 Participation in each sale described in subsection (a)(1) shall
10 be treated as a separate activity for each entity or
11 arrangement.

12 (c) At the request of the director of taxation, a civil
13 action may be brought to enjoin any person described in
14 subsection (a) from engaging in any conduct described in
15 subsection (a). Any action under this section shall be brought
16 in the circuit court of the circuit where the person in
17 subsection (a) resides or where the person's principal place of
18 business is located. The court may exercise its jurisdiction
19 over the action separate and apart from any other action brought
20 by the State against those persons described in subsection (a).
21 If the court finds that a person described in subsection (a) has
22 engaged in any conduct subject to penalty under subsection (b)



1 and that injunctive relief is appropriate to prevent the
2 recurrence of that conduct, the court may enjoin the person
3 accordingly.

4 (d) The director may waive all or any part of the penalty
5 provided by subsection (b) with respect to any gross valuation
6 overstatement on a showing that there was a reasonable basis for
7 the valuation and that the valuation was made in good faith.

8 (e) For purposes of this section, "gross valuation
9 overstatement" means any statement of value for any property or
10 services if:

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

13 (2) The value of the property or services is directly
14 related to the amount of any deduction or credit
15 allowable to any participant.

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

18 (g) This section shall be construed in accordance with
19 regulations and judicial interpretations given to Section 6700
20 of the Internal Revenue Code."



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

4 "§231-C Erroneous claim for refund or credit. (a) If a
5 claim for refund or credit with respect to tax is made for an
6 excessive amount, the person making the claim shall be liable
7 for a penalty in an amount equal to twenty per cent of the
8 excessive amount; provided that there shall be no penalty
9 assessed where the penalty calculation under this section
10 results in an amount of less than \$400.

11 (b) It shall be a defense to the penalty under this
12 section that the claim for refund or credit had a reasonable
13 basis. A person claiming the reasonable basis defense shall
14 have the burden of proof to demonstrate the reasonableness of
15 the claim.

16 (c) This section shall be construed in accordance with
17 regulations and judicial interpretations given to Section 6676
18 of the Internal Revenue Code.

19 (d) For purposes of this section:

20 "Excessive amount" means the amount by which the amount of
21 the claim for refund or credit for any taxable year exceeds the
22 amount of the claim allowable for such taxable year.



1 "Reasonable basis" means a standard of care used in tax
2 reporting that is significantly higher than not frivolous or not
3 patently improper. A reasonable basis position will be more
4 than arguable and based on at least one or more authorities of
5 either state or federal tax administration. A position is
6 considered to have a reasonable basis if a reasonable and well-
7 informed analysis by a person knowledgeable in tax law would
8 lead that person to conclude that the position has approximately
9 a one-in-four, or greater, likelihood of being sustained on the
10 merits. A reasonable basis includes innocent mistakes where the
11 excessive amount is the result of inadvertence, mathematical
12 error, or where otherwise defined as innocent by the director
13 pursuant to a formal pronouncement issued without regard to
14 chapter 91."

15 SECTION 4. Chapter 231, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§231-D Substantial understatements or misstatements of
19 amounts; penalty. (a) There shall be added to the tax an
20 amount equal to twenty per cent of the portion of any
21 underpayment that is attributable to any substantial
22 understatement of any tax in a taxable year. The penalty under



1 this section shall be in addition to any other penalty

2 assessable by law.

3 (b) Except as provided under subsection (c), there is a

4 substantial understatement of tax for any taxable year if the

5 amount of the understatement for the taxable year exceeds the

6 greater of:

7 (1) Ten per cent of the tax required to be shown on the

8 return for the taxable year; or

9 (2) \$1,500.

10 (c) In the case of a corporation other than a corporation

11 taxable under subchapter S of the Internal Revenue Code, there

12 is a substantial understatement of tax for any taxable year if

13 the amount of the understatement for the taxable year exceeds

14 the greater of:

15 (1) Ten per cent of the tax required to be shown on the

16 return for the taxable year; or

17 (2) \$30,000.

18 (d) The amount of any understatement shall be reduced by

19 that portion of the understatement that is attributable to:

20 (1) The tax treatment of any item by the taxpayer if there

21 is or was substantial authority for such treatment; or



1 (2) Any item if the relevant facts affecting the item's
2 tax treatment are adequately disclosed in the return
3 or in a statement attached to the return and there is
4 a reasonable basis, as defined under section 231-C,
5 for the tax treatment by the taxpayer.

6 The reduction in this subsection shall not apply to any item
7 attributable to a tax shelter as described in section 231-B.

8 (e) This section shall be construed in accordance with
9 regulations and judicial interpretations given to Section 6662
10 of the Internal Revenue Code.

11 (f) For purposes of this section, "understatement" means
12 the excess of:

13 (1) The amount of tax required to be shown on the return
14 for the taxable year; over

15 (2) The amount of tax imposed that is shown on the return,
16 reduced by any rebate as that term is defined by
17 Section 6211(b) (2) of the Internal Revenue Code."

18 SECTION 5. Chapter 231, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 "§231-E Statute of limitations; extension for substantial
22 omissions. (a) Notwithstanding any other law to the contrary

1 limiting the time for assessment of any tax, if a taxpayer omits
2 an amount of:

3 (1) Gross income or gross proceeds of sale;

4 (2) Gross rental or gross rental proceeds;

5 (3) Price, value, or consideration paid or received for
6 any property;

7 (4) Gross receipts; or

8 (5) Gallonage, tonnage, cigarette count, day, or other
9 weight or measure applicable to any tax,

10 properly includable therein that is in excess of twenty-five per
11 cent of the amount stated in the return, the tax may be assessed
12 or a proceeding in court with respect to the tax without
13 assessment may be begun without assessment, at any time within
14 six years after the return was filed.

15 (b) In determining any amount omitted, there shall not be
16 taken into account any amount that is stated in the return if
17 such amount is disclosed in the return or in a statement
18 attached to the return in a manner adequate to apprise the
19 department of taxation of the nature and amount of such item.

20 (c) This section shall be construed in accordance with
21 regulations and judicial interpretations given to Section 6501
22 of the Internal Revenue Code."



1 SECTION 6. Section 235-111, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) General rule. The amount of income taxes imposed by
5 this chapter (also the amount of income taxes imposed by any
6 preceding law of the State) and the liability of any employer in
7 respect of wages, shall be assessed or levied and the
8 overpayment, if any, shall be credited within three years after
9 filing of the return for the taxable year, or within three years
10 of the due date prescribed for the filing of the return,
11 whichever is later. No proceeding in court without assessment
12 for the collection of the taxes or the enforcement of the
13 liability shall be begun after the expiration of the period.
14 Where the assessment of the tax imposed by this chapter has been
15 made within the period of limitation applicable thereto, the tax
16 may be collected by levy or by a proceeding in court under
17 chapter 231; provided that the levy is made or the proceeding
18 was begun within fifteen years after the assessment of the tax.
19 For any tax that has been assessed prior to July 1, 2009, the
20 levy or proceeding shall be barred after June 30, 2024.



1 Notwithstanding any other provision to the contrary in this
2 section, the limitation on collection after assessment in this
3 section shall be suspended for the period:

- 4 (1) The taxpayer agrees to suspend the period;
- 5 (2) The assets of the taxpayer are in control or custody
6 of a court in any proceeding before any court of the
7 United States or any state, and for six months
8 thereafter;
- 9 (3) An offer in compromise under section 231-3(10) is
10 pending; and
- 11 (4) During which the taxpayer is outside the state for a
12 continuous period of at least six months; provided
13 that if at the time of the taxpayer's return to the
14 state the period of limitations on collection after
15 assessment would expire before the expiration of six
16 months from the date of the taxpayer's return, the
17 period shall not expire before the expiration of the
18 six months."

19 2. By amending subsection (c) to read:

20 "(c) Exceptions; fraudulent return or no return. In the
21 case of a false or fraudulent return with intent to evade tax or
22 liability, or of a failure to file return, the tax or liability

1 may be assessed or levied at any time; provided that [~~in the~~
2 ~~case of a return claimed to be false or fraudulent with intent~~
3 ~~to evade tax or liability, the determination as to the claim~~
4 ~~shall first be made by a judge of the circuit court for or in~~
5 ~~the circuit within which the taxpayer or employer has the~~
6 ~~taxpayer's or employer's residence or principal place of~~
7 ~~business, or if none in the State then in the first circuit,~~
8 ~~upon petition filed by the department of taxation. The petition~~
9 ~~and other pleadings and proceedings in the matter shall be~~
10 ~~governed and conducted in accordance with statutory and other~~
11 ~~requirements relating to proceedings in equity, including all~~
12 ~~rights to appeal allowed in the proceedings. No assessment or~~
13 ~~levy of the tax or liability after the expiration of the three-~~
14 ~~year period shall be made unless so provided in the final decree~~
15 ~~entered in the proceedings.] the burden of proof with respect to
16 the issues of falsity or fraud and intent to evade tax shall be
17 upon the state."~~

18 SECTION 7. Section 237-40, Hawaii Revised Statutes, is
19 amended by amending subsections (a) and (b) to read as follows:

20 "(a) General rule. The amount of excise taxes imposed by
21 this chapter shall be assessed or levied within three years
22 after the annual return was filed, or within three years of the



1 due date prescribed for the filing of the return, whichever is
2 later, and no proceeding in court without assessment for the
3 collection of any [~~such~~] of the taxes shall be begun after the
4 expiration of the period. Where the assessment of the tax
5 imposed by this chapter has been made within the period of
6 limitation applicable thereto, the tax may be collected by levy
7 or by a proceeding in court under chapter 231; provided that the
8 levy is made or the proceeding was begun within fifteen years
9 after the assessment of the tax. For any tax that has been
10 assessed prior to July 1, 2009, the levy or proceeding shall be
11 barred after June 30, 2024.

12 Notwithstanding any other provision to the contrary in this
13 section, the limitation on collection after assessment in this
14 section shall be suspended for the period:

- 15 (1) The taxpayer agrees to suspend the period;
16 (2) The assets of the taxpayer are in control or custody
17 of a court in any proceeding before any court of the
18 United States or any state, and for six months
19 thereafter;
20 (3) An offer in compromise under section 231-3(10) is
21 pending; and



1 (4) During which the taxpayer is outside the state if the
2 period of absence is for a continuous period of at
3 least six months; provided that if at the time of the
4 taxpayer's return to the state the period of
5 limitations on collection after assessment would
6 expire before the expiration of six months from the
7 date of the taxpayer's return, the period shall not
8 expire before the expiration of the six months.

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

19 SECTION 8. Section 237D-9, Hawaii Revised Statutes, is
20 amended by amending subsections (c) and (d) to read as follows:

21 "(c) Except as otherwise provided by this section, the
22 amount of taxes imposed by this chapter shall be assessed or



1 levied within three years after the annual return was filed, or
2 within three years of the due date prescribed for the filing of
3 the return, whichever is later, and no proceeding in court
4 without assessment for the collection of any ~~[such]~~ of the taxes
5 shall be begun after the expiration of the period. Where the
6 assessment of the tax imposed by this chapter has been made
7 within the period of limitation applicable thereto, the tax may
8 be collected by levy or by a proceeding in court under chapter
9 231; provided that the levy is made or the proceeding was begun
10 within fifteen years after the assessment of the tax. For any
11 tax that has been assessed prior to July 1, 2009, the levy or
12 proceeding shall be barred after June 30, 2024.

13 Notwithstanding any other provision to the contrary in this
14 section, the limitation on collection after assessment in this
15 section shall be suspended for the period:

- 16 (1) The taxpayer agrees to suspend the period;
17 (2) The assets of the taxpayer are in control or custody
18 of a court in any proceeding before any court of the
19 United States or any state, and for six months
20 thereafter;
21 (3) An offer in compromise under section 231-3(10) is
22 pending; and



1 (4) During which the taxpayer is outside the state if the
 2 period of absence is for a continuous period of at
 3 least six months; provided that if at the time of the
 4 taxpayer's return to the state the period of
 5 limitations on collection after assessment would
 6 expire before the expiration of six months from the
 7 date of the taxpayer's return, the period shall not
 8 expire before the expiration of the six months.

9 (d) In the case of a false or fraudulent return with
 10 intent to evade tax, or of a failure to file the annual return,
 11 the tax may be assessed or levied at any time; [~~however, in the~~
 12 ~~case of a return claimed to be false or fraudulent with intent~~
 13 ~~to evade tax, the determination as to the claim shall first be~~
 14 ~~made by a judge of the circuit court as provided in section 235-~~
 15 ~~111(c) which shall apply to the tax imposed by this chapter.]
 16 provided that the burden of proof with respect to the issues of
 17 falsity or fraud and intent to evade tax shall be upon the
 18 state."~~

19 SECTION 9. Section 238-7, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "**§238-7 Audits; additional assessments; refunds.** (a)
 22 Sections 237-36 to 237-40 of the general excise tax law are

1 hereby made applicable to the taxes imposed by this chapter, to
2 the refunding of overpayments thereof, and to assessments,
3 investigations, and audits in connection therewith, for which
4 purpose any references therein to "gross income" or "gross
5 proceeds of sale" shall be deemed to refer to the purchase price
6 or value, as the case may be, subject to tax under this chapter,
7 and any references to the "annual return" shall, if the taxpayer
8 is not required to file an annual return under this chapter, be
9 deemed to refer to the monthly return mentioned in the first
10 paragraph of section 238-5.

11 (b) Where the assessment of the tax imposed by this
12 chapter has been made within the period of limitation applicable
13 thereto, the tax may be collected by levy or by a proceeding in
14 court under chapter 231; provided that the levy is made or the
15 proceeding was begun within fifteen years after the assessment
16 of the tax. For any tax that has been assessed prior to July 1,
17 2009, the levy or proceeding shall be barred after June 30,
18 2024.

19 Notwithstanding any other provision to the contrary in this
20 section, the limitation on collection after assessment in this
21 section shall be suspended for the period:

22 (1) The taxpayer agrees to suspend the period;



1 (2) The assets of the taxpayer are in control or custody
2 of a court in any proceeding before any court of the
3 United States or any state, and for six months
4 thereafter;

5 (3) An offer in compromise under section 231-3(10) is
6 pending; and

7 (4) During which the taxpayer is outside the state if the
8 period of absence is for a continuous period of at
9 least six months; provided that if at the time of the
10 taxpayer's return to the state the period of
11 limitations on collection after assessment would
12 expire before the expiration of six months from the
13 date of the taxpayer's return, the period shall not
14 expire before the expiration of the six months."

15 SECTION 10. Section 243-14, Hawaii Revised Statutes, is
16 amended by amending subsections (b) and (c) to read as follows:

17 "(b) The amount of license taxes imposed by this chapter
18 shall be assessed or levied, or the overpayment, if any, shall
19 be credited within three years after filing of the monthly
20 statement, or within three years of the due date prescribed for
21 the filing of the statement, whichever is later. No proceeding
22 in court without assessment for the collection of the taxes or



1 the enforcement of the liability shall begin after the
2 expiration of the [~~three-year~~] three-year period. Where the
3 assessment of the tax imposed by this chapter has been made
4 within the period of limitation applicable thereto, the tax may
5 be collected by levy or by a proceeding in court under chapter
6 231; provided that the levy is made or the proceeding was begun
7 within fifteen years after the assessment of the tax. For any
8 tax that has been assessed prior to July 1, 2009, the levy or
9 proceeding shall be barred after June 30, 2024.

10 Notwithstanding any other provision to the contrary in this
11 section, the limitation on collection after assessment in this
12 section shall be suspended for the period:

- 13 (1) The taxpayer agrees to suspend the period;
14 (2) The assets of the taxpayer are in control or custody
15 of a court in any proceeding before any court of the
16 United States or any state, and for six months
17 thereafter;
18 (3) An offer in compromise under section 231-3(10) is
19 pending; and
20 (4) During which the taxpayer is outside the state if the
21 period of absence is for a continuous period of at
22 least six months; provided that if at the time of the



1 taxpayer's return to the state the period of
2 limitations on collection after assessment would
3 expire before the expiration of six months from the
4 date of the taxpayer's return, the period shall not
5 expire before the expiration of the six months.

6 As to all tax payments for which a refund or credit is not
7 authorized by this section (including, without prejudice to the
8 generality of the foregoing, cases of unconstitutionality), the
9 remedies provided by appeal or by section 40-35 are exclusive.

10 (c) In the case of a false or fraudulent statement with
11 intent to evade tax or liability, or of a failure to file a
12 statement, the tax or liability may be assessed or levied at any
13 time; provided that [~~in the case of a statement claimed to be~~
14 ~~false or fraudulent with intent to evade tax or liability, the~~
15 ~~determination as to the claim shall first be made by a judge of~~
16 ~~the circuit court as provided in section 235-111(c) which shall~~
17 ~~apply to the tax imposed by this chapter.] the burden of proof
18 with respect to the issues of falsity or fraud and intent to
19 evade tax shall be upon the state."~~

20 SECTION 11. Section 247-6.5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "[f]§247-6.5[+] **Limitation period for assessment, levy,**
2 **collection, or credit.** The amount of conveyance taxes imposed
3 by this chapter shall be assessed or levied, and the
4 overpayment, if any, shall be credited within three years after
5 filing of the certificate prescribed by section 247-6. No
6 proceeding in court without assessment for the collection of the
7 taxes shall be begun after the expiration of the [~~three year~~]
8 three-year period. Where the assessment of the tax imposed by
9 this chapter has been made within the period of limitation
10 applicable thereto, the tax may be collected by levy or by a
11 proceeding in court under chapter 231; provided that the levy is
12 made or the proceeding was begun within fifteen years after the
13 assessment of the tax. For any tax that has been assessed prior
14 to July 1, 2009, the levy or proceeding shall be barred after
15 June 30, 2024.

16 Notwithstanding any other provision to the contrary in this
17 section, the limitation on collection after assessment in this
18 section shall be suspended for the period:

- 19 (1) The taxpayer agrees to suspend the period;
20 (2) The assets of the taxpayer are in control or custody
21 of a court in any proceeding before any court of the



- 1 United States or any state, and for six months
2 thereafter;
- 3 (3) An offer in compromise under section 231-3(10) is
4 pending; and
- 5 (4) During which the taxpayer is outside the state if the
6 period of absence is for a continuous period of at
7 least six months; provided that if at the time of the
8 taxpayer's return to the state the period of
9 limitations on collection after assessment would
10 expire before the expiration of six months from the
11 date of the taxpayer's return, the period shall not
12 expire before the expiration of the six months.

13 In the case of a false or fraudulent certificate filed with
14 the intent to evade tax, or of a failure to file a certificate,
15 the tax may be assessed or levied at any time."

16 SECTION 12. Section 251-8, Hawaii Revised Statutes, is
17 amended by amending subsections (c) and (d) to read as follows:

18 "(c) Except as otherwise provided by this section, the
19 amount of surcharge taxes imposed by this chapter shall be
20 assessed or levied within three years after the annual return
21 was filed, or within three years of the due date prescribed for
22 the filing of the return, whichever is later, and no proceeding



1 in court without assessment for the collection of any such
2 surcharge taxes shall begin after the expiration of the period.
3 Where the assessment of the tax imposed by this chapter has been
4 made within the period of limitation applicable thereto, the tax
5 may be collected by levy or by a proceeding in court under
6 chapter 231; provided that the levy is made or the proceeding
7 was begun within fifteen years after the assessment of the tax.
8 For any tax that has been assessed prior to July 1, 2009, the
9 levy or proceeding shall be barred after June 30, 2024.

10 Notwithstanding any other provision to the contrary in this
11 section, the limitation on collection after assessment in this
12 section shall be suspended for the period:

- 13 (1) The taxpayer agrees to suspend the period;
14 (2) The assets of the taxpayer are in control or custody
15 of a court in any proceeding before any court of the
16 United States or any state, and for six months
17 thereafter;
18 (3) An offer in compromise under section 231-3(10) is
19 pending; and
20 (4) During which the taxpayer is outside the state if the
21 period of absence is for a continuous period of at
22 least six months; provided that if at the time of the



1 taxpayer's return to the state the period of
2 limitations on collection after assessment would
3 expire before the expiration of six months from the
4 date of the taxpayer's return, the period shall not
5 expire before the expiration of the six months.

6 (d) In the case of a false or fraudulent return with
7 intent to evade the surcharge tax, or of a failure to file the
8 annual return, the surcharge tax may be assessed or levied at
9 any time; [~~however, in the case of a return claimed to be false~~
10 ~~or fraudulent with intent to evade the surcharge tax, the~~
11 ~~determination as to the claim shall first be made by a judge of~~
12 ~~the circuit court as provided in section 235-111(c) which shall~~
13 ~~apply to the surcharge tax imposed by this chapter.] provided
14 that the burden of proof with respect to the issues of falsity
15 or fraud and intent to evade tax shall be upon the state."~~

16 SECTION 13. Section 346E-6, Hawaii Revised Statutes, is
17 amended by amending subsections (c) and (d) to read as follows:

18 "(c) Except as otherwise provided by this section, the
19 amount of taxes imposed by this chapter shall be assessed or
20 levied within three years after the annual return was filed, or
21 within three years of the due date prescribed for the filing of
22 the return, whichever is later. No proceeding in court without



1 assessment for the collection of any such taxes shall be begun
2 after the expiration of the period. Where the assessment of the
3 tax imposed by this chapter has been made within the period of
4 limitation applicable thereto, the tax may be collected by levy
5 or by a proceeding in court under chapter 231; provided that the
6 levy is made or the proceeding was begun within fifteen years
7 after the assessment of the tax. For any tax that has been
8 assessed prior to July 1, 2009, the levy or proceeding shall be
9 barred after June 30, 2024.

10 Notwithstanding any other provision to the contrary in this
11 section, the limitation on collection after assessment in this
12 section shall be suspended for the period:

- 13 (1) The taxpayer agrees to suspend the period;
14 (2) The assets of the taxpayer are in control or custody
15 of a court in any proceeding before any court of the
16 United States or any state, and for six months
17 thereafter;
18 (3) An offer in compromise under section 231-3(10) is
19 pending; and
20 (4) During which the taxpayer is outside the state if the
21 period of absence is for a continuous period of at
22 least six months; provided that if at the time of the



1 taxpayer's return to the state the period of
2 limitations on collection after assessment would
3 expire before the expiration of six months from the
4 date of the taxpayer's return, the period shall not
5 expire before the expiration of the six months.

6 (d) In the case of a false or fraudulent return with
7 intent to evade tax, or a failure to file the annual return, the
8 tax may be assessed or levied at any time[-]; provided that the
9 burden of proof with respect to the issues of falsity or fraud
10 and intent to evade tax shall be upon the State."

11 SECTION 14. Section 431:7-204.6, Hawaii Revised Statutes,
12 is amended by amending subsection (a) to read as follows:

13 "(a) The amount of insurance taxes imposed by this chapter
14 shall be assessed or levied within three years after the annual
15 return was filed, or within three years of the due date
16 prescribed for the filing of the return, whichever is later, and
17 no proceeding in court without assessment for the collection of
18 any [~~such~~] taxes shall be begun after the expiration of the
19 period. Where the assessment of the tax imposed by this chapter
20 has been made within the period of limitation applicable
21 thereto, the tax may be collected by levy or by a proceeding in
22 court under chapter 231; provided that the levy is made or the



1 proceeding was begun within fifteen years after the assessment
2 of the tax. For any tax that has been assessed prior to July 1,
3 2009, the levy or proceeding shall be barred after June 30,
4 2024.

5 Notwithstanding any other provision to the contrary in this
6 section, the limitation on collection after assessment in this
7 section shall be suspended for the period:

8 (1) The taxpayer agrees to suspend the period;

9 (2) The assets of the taxpayer are in control or custody
10 of a court in any proceeding before any court of the
11 United States or any state, and for six months
12 thereafter;

13 (3) An offer in compromise under section 231-3(10) is
14 pending; and

15 (4) During which the taxpayer is outside the state if the
16 period of absence is for a continuous period of at
17 least six months; provided that if at the time of the
18 taxpayer's return to the state the period of
19 limitations on collection after assessment would
20 expire before the expiration of six months from the
21 date of the taxpayer's return, the period shall not
22 expire before the expiration of the six months.



1 In the case of a false or fraudulent return with intent to
2 evade the insurance taxes, or of a failure to file the annual
3 return, the insurance taxes may be assessed or levied at any
4 time; provided that the burden of proof with respect to the
5 issues of falsity or fraud and intent to evade tax shall be upon
6 the State."

7 PART III

8 TAX ADMINISTRATION

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

12 "**§231-F Expedited appeals and dispute resolution program.**

13 (a) The department shall be authorized to implement an
14 administrative appeals and dispute resolution program that shall
15 expeditiously resolve all tax, penalty, interest, fine,
16 assessment, and other such disputes between the department and
17 the taxpayer or return preparer. The director or the director's
18 designee, who shall report directly and be answerable solely to
19 the director, shall serve as an independent appeals officer and
20 shall be authorized to compromise, settle, or otherwise resolve
21 any dispute on any basis, including hazards and costs of
22 litigation, considering equally the position of the taxpayer and



1 the department on an impartial basis. The independent appeals
2 officer shall not be influenced by any department tax compliance
3 initiatives and policies, or loss of revenue to the State.
4 Decisions of the independent appeals officer shall be in writing
5 stating the facts, analysis, and conclusions in support, which
6 shall be provided to the taxpayer and return preparer. Persons
7 who currently serve or have served in the previous five years as
8 an auditor, audit supervisor or manager, collector, collection
9 supervisor or manager, district manager or supervisor, or tax
10 compliance administrator, shall not be eligible to be the
11 director's designee.

12 (b) Notwithstanding any other law to the contrary,
13 including tax appeal procedures set forth under chapter 232, a
14 taxpayer shall be eligible to petition the department once for
15 participation in the administrative appeals and dispute
16 resolution program after issuance of a notice of proposed
17 assessment; provided that if a taxpayer has filed a tax appeal
18 with the tax appeal court or other court, the taxpayer shall
19 first be required to obtain the approval of the director and
20 permission from the respective court prior to petitioning the
21 department for participation. The director shall have the right
22 to deny a petition for cause.



1 (c) The department shall adopt procedures to carry out the
2 purposes of this section, including procedures relating to ex
3 parte communications between the director or the director's
4 designee and other department personnel to ensure that such
5 communications do not compromise or appear to compromise the
6 independence of the administrative appeals and dispute
7 resolution program."

8 SECTION 16. Chapter 231, Hawaii Revised Statutes, is
9 amended by adding five new sections to be appropriately
10 designated and to read as follows:

11 "§231-G Rules or administrative guidance. Rules,
12 including temporary rules, providing examples and safe harbors
13 shall be implemented to explain in clear and unambiguous terms
14 the penalties and fines provided under any provision of title 14
15 that may be imposed against a return preparer or taxpayer for
16 understatement of tax liabilities, promotion of abusive tax
17 shelters, erroneous claims for refund or credit, or substantial
18 understatements or misstatements of tax. Federal laws and
19 administrative guidance may be used to interpret this section.
20 Any such penalties or fines shall first be approved by the
21 director before assessment.



1 §231-H Disclosure of letter rulings, et al.

2 Notwithstanding any law to the contrary, any and all advice
3 given or communications made by the department, including but
4 not limited to letter rulings and determination letters,
5 containing tax advice, shall be disclosed to the public under
6 standards and procedures under Section 6110 of the federal
7 Internal Revenue Code of 1986, as amended, the regulations
8 thereunder, and federal court interpretations.

9 §231-I Closing audit letters. At the conclusion of a tax
10 audit, the department shall provide to the taxpayer a closing
11 audit letter that shall confirm in writing the department's
12 position on each issue considered in the audit, and which shall
13 provide guidance on how the taxpayer may report such issues for
14 post audit years.

15 §231-J Signature presumed authentic. The fact that an
16 individual's name is signed on a return, statement, or other
17 document shall be prima facie evidence for all purposes that the
18 return, statement, or other document was actually signed by the
19 individual.

20 §231-K Temporary rulemaking authority for regulation of
21 tax matters. (a) Notwithstanding any other law in title 14,
22 chapter 91, or chapter 201M to the contrary, the department is



1 authorized to adopt any temporary rules as the department may
2 deem proper as provided in this section. Temporary rules may
3 include the adoption, amendment, or repeal of any rules
4 concerning any matters which the department is authorized to
5 regulate.

6 (b) Temporary rules shall take effect seven days after
7 notice of the temporary rules is issued. Notice under this
8 subsection shall require:

- 9 (1) Making the temporary rules available on the
10 department's and the lieutenant governor's websites;
11 (2) Making copies of the temporary rules available to the
12 public for inspection at the department's offices or
13 copying if any required fee is paid; and
14 (3) Providing public notice of the substance of the
15 temporary rules at least once statewide.

16 (c) Temporary rules shall be approved by the governor.

17 (d) Any temporary rules issued by the department shall
18 also be issued as proposed administrative rules that shall be
19 subject to the procedural requirements of chapter 91.

20 (e) Temporary rules shall expire eighteen months from the
21 date the temporary rules take effect.



1 (f) Temporary rules Shall conspicuously provide the
2 following information at the beginning of the temporary rules'
3 text:

- 4 (1) Notice stating the temporary nature of the rules;
5 (2) The expiration date of the temporary rules; and
6 (3) A statement advising that proposed administrative
7 rules subject to chapter 91 are being simultaneously
8 proposed for formal adoption.

9 (g) Temporary rules shall have the same force and effect
10 as any other administrative rules."

11 SECTION 17. Section 231-7, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§231-7 Hearings and subpoenas.** (a) The director of
14 taxation, and any representative of the director duly authorized
15 by the director, may conduct any inquiry, investigation, or
16 hearing, relating to any assessment, or the amount of any tax,
17 or the collection of any delinquent tax, including any inquiry
18 or investigation into the financial resources of any delinquent
19 taxpayer or the [~~collectibility~~] collectability of any
20 delinquent tax.

21 (b) The director or other person conducting [~~such hearing~~]
22 hearings may administer oaths and take testimony under oath



1 relating to the matter of inquiry or investigation, and subpoena
2 witnesses and require the production of books, papers,
3 documents, and records pertinent to such inquiry.

4 (c) If any person disobeys [~~such process,~~] any process or,
5 having appeared in obedience thereto, refuses to answer
6 pertinent questions put to the person by the director or other
7 person conducting [~~such~~] the hearing, or to produce any books,
8 papers, documents, or records pursuant thereto, the director or
9 other person conducting [~~such~~] the hearing may apply to the
10 circuit court of the circuit wherein the inquiry or
11 investigation is being conducted, or to any judge of [~~such~~] the
12 court, setting forth [~~such~~] the disobedience to process or
13 refusal to answer, and [~~such~~] the court or judge shall cite
14 [~~such~~] the person to appear before [~~such~~] the court or judge to
15 answer [~~such~~] the questions or to produce [~~such~~] the books,
16 papers, documents, or records, and upon the person's refusal so
17 to do commit [~~such~~] the person to jail until the person
18 testifies but not for a longer period than sixty days.
19 Notwithstanding the serving of the term of commitment by any
20 person, the director may proceed in all respects as if the
21 witness had not previously been called upon to testify.
22 Witnesses (other than the taxpayer or the taxpayer's or its



1 officers, directors, agents, and employees) shall be allowed
2 their fees and mileage as in cases in the circuit courts, to be
3 paid on vouchers of the department of taxation, from any moneys
4 available for expenses of the department.

5 (d) Any subpoena issued under this section that does not
6 identify the person with respect to whose liability or
7 investigation the subpoena is issued may be served on any person
8 only after a court proceeding in which the director or another
9 person establishes that:

10 (1) The subpoena relates to the investigation of a
11 particular person or ascertainable group or class of
12 persons;

13 (2) There is a reasonable basis for believing that the
14 person or group or class of persons may fail or may
15 have failed to comply with any provision of title 14;
16 and

17 (3) The information sought to be obtained from the
18 examination of records or testimony and the identity
19 of the person or persons with respect to whose
20 liability the subpoena is issued is not readily
21 available from other sources.



1 (e) The provisions of this section are in addition to all
2 other provisions of law, and apply to any tax within the
3 jurisdiction of the department."

4 SECTION 18. Section 232-7, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Each board shall hold public meetings at some central
7 location in its taxation district, commencing not later than
8 April 9 of each year and shall hear, as speedily as possible,
9 all appeals presented for each year. A taxpayer's identity and
10 final documents submitted in support or opposition of an appeal
11 shall be public information; provided that an individual
12 taxpayer is authorized to redact all but the last four digits of
13 the taxpayer's social security number from any accompanying tax
14 return. Each board shall have the power and authority to decide
15 all questions of fact and all questions of law, excepting
16 questions involving the Constitution or laws of the United
17 States, necessary to the determination of the objections raised
18 by the taxpayer in the notice of appeal; provided that no board
19 shall have power to determine or declare an assessment illegal
20 or void. Without prejudice to the generality of the foregoing,
21 each board shall have power to allow or disallow exemptions



1 pursuant to law whether or not previously allowed or disallowed
2 by the assessor and to increase or lower any assessment."

3 SECTION 19. Section 232-16, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§232-16 Appeal to tax appeal court.** A taxpayer or
6 county, in all cases, may appeal directly to the tax appeal
7 court without appealing to a state board of review, or any
8 equivalent administrative body established by county ordinance.
9 An appeal to the tax appeal court is properly commenced by
10 filing, on or before the date fixed by law for the taking of the
11 appeal, a written notice of appeal in the office of the tax
12 appeal court and by service of the notice of appeal on the
13 director of taxation and, in the case of an appeal from a
14 decision involving the county as a party, the real property
15 assessment division of the county involved. An appealing
16 taxpayer shall also pay the costs in the amount fixed by section
17 232-22.

18 The notice of appeal to the tax appeal court shall be
19 sufficient if it meets the requirements prescribed for a notice
20 of appeal to the board of review and may be amended at any time;
21 provided that it sets forth the following additional
22 information, to wit:



1 A brief description of the property involved in sufficient
2 detail to identify the same and the valuation placed thereon by
3 the assessor.

4 The notice of appeal shall be accompanied by a copy of the
5 taxpayer's return, if any has been filed[-]; provided that an
6 individual taxpayer is authorized to redact all but the last
7 four digits of the taxpayer's social security number from any
8 accompanying tax return.

9 An appeal to the tax appeal court shall be deemed to have
10 been taken in time if the notice thereof and costs and the copy
11 of the notice shall have been deposited in the mail, postage
12 prepaid, properly addressed to the tax appeal court, the
13 director of taxation, or the real property assessment division
14 of the county involved, and to the taxpayer or taxpayers in the
15 case of an appeal taken by a county, respectively, on or before
16 the date fixed by law for the taking of the appeal.

17 An appeal to the tax appeal court shall bring up for review
18 all questions of fact and all questions of law, including
19 constitutional questions, necessary to the determination of the
20 objections raised by the taxpayer or county in the notice of
21 appeal."



1 SECTION 20. Section 232-18, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§232-18 Certificate of appeal to tax appeal court.** Upon
4 the perfecting of an appeal to the tax appeal court, the tax
5 assessor of the district from which the appeal is taken shall
6 immediately send up to the tax appeal court a certificate in
7 which there shall be set forth the information required by
8 section 232-16 to be set forth in the notice of appeal where an
9 appeal is taken direct from the assessment to the tax appeal
10 court.

11 The certificate shall be accompanied by the taxpayer's
12 return, if any has been filed[~~r~~]; provided that the department
13 of taxation is authorized to redact all but the last four digits
14 of an individual taxpayer's social security number from an
15 accompanying tax return, a copy of the notice of appeal to the
16 state board of review, or equivalent administrative body
17 established by county ordinance, and any amendments thereto, and
18 the decision or action, if any, of the state board of review or
19 equivalent administrative body. Failure of the assessor to
20 comply herewith shall not prejudice or affect the taxpayer's,
21 county's, or assessor's appeal and the certificate of appeal may



1 be amended at any time up to the final determination of the
2 appeal."

3 PART IV

4 CRIMINAL TAX ENFORCEMENT

5 SECTION 21. Chapter 231, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§231-L Wilful failure to collect and pay over tax. Any
9 person required to collect, account for, and pay over any tax
10 imposed by title 14, who wilfully fails to collect or truthfully
11 account for and pay over such tax shall be guilty of a class C
12 felony, in addition to other penalties provided by law and, upon
13 conviction, shall be subject to one or any combination of the
14 following:

- 15 (1) A fine of not more than \$100,000;
 - 16 (2) Imprisonment of not more than five years; or
 - 17 (3) Probation;
- 18 provided that a corporation shall be fined not more than
19 \$500,000."

20 SECTION 22. Section 231-40, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "[~~f~~]**\$231-40**[~~}]~~ **Interpretation.** Sections 231-34, 231-35,
 2 [~~and~~] 231-36, and 231-F shall be construed in accordance with
 3 judicial interpretations given to similar provisions of Title 26
 4 of the United States Code; consistent therewith, the term
 5 "wilfully" shall mean a voluntary, intentional violation of a
 6 known legal duty."

7 SECTION 23. Section 231-41, Hawaii Revised Statutes, is
 8 amended to read as follows:

9 "[~~f~~]**\$231-41**[~~}]~~ **Statute of limitation for criminal**
 10 **penalties.** Notwithstanding any laws to the contrary,
 11 prosecutions under sections 231-34, 231-35, [~~and~~] 231-36, and
 12 231-F shall be commenced within seven years after the commission
 13 of the offense."

PART V

MISCELLANEOUS

16 SECTION 24. Except as provided in section 27, this Act
 17 does not affect returns prepared and transactions promoted,
 18 rights and duties that matured, penalties that were incurred,
 19 and proceedings that were begun before its effective date.

20 SECTION 25. In codifying the new sections added by
 21 sections 1 through 5, section 15, section 16, and section 21, of
 22 this Act, the revisor of statutes shall insert appropriate



1 section numbers for the letters used in designating and
2 referring to the new sections in this Act.

3 SECTION 26. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 27. This Act shall take effect on July 1, 2009;
6 provided that section 1 (relating to penalties for preparing
7 returns with unreasonable positions), section 3 (relating to
8 erroneous refund or credit claims), section 4 (relating to
9 substantial understatements), section 5 (relating to the statute
10 of limitations on substantial omissions), section 6 (relating to
11 fraud assessments), section 7 (relating to fraud assessments),
12 section 8 (relating to fraud assessments), section 10 (relating
13 to fraud assessments), and section 11 (relating to fraud
14 assessments) shall apply to any return prepared, refund claim,
15 understatement, omission, or fraud contained in any return where
16 the statute of limitations on assessment has not expired;
17 provided that this Act shall not apply to any return prepared,
18 refund claim, understatement, omission, or fraud in any return
19 where an amended return is filed by October 1, 2009, to the
20 extent the amended return cures, corrects, or eliminates any
21 item constituting an unreasonable position, erroneous refund



- 1 claim, substantial understatement, substantial omission, or
- 2 fraud as provided in this Act.



H.B. NO. 1739
H.D. 1
S.D. 1
C.D. 1

Report Title:

Taxation; Tax Preparers; Tax Administration; Penalty and Enforcement; Conformity

Description:

Deters tax fraud and conforms Hawaii tax law to the Internal Revenue Code for tax preparers and tax return accuracy-related issues, promotes expedited tax appeals, authorizes the Department of Taxation to adopt temporary rules, and clarifies taxpayer rights with respect to tax appeals. (HB1739 CD1)

