
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 PART I. TAX RETURN PREPARERS

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

5 "§231-A Understatement of taxpayer's liability by tax
6 return preparer. (a) A tax return preparer who understates a
7 person's tax liability based upon unreasonable positions on a
8 tax return or claim for tax refund shall pay a penalty of \$500
9 with respect to each such tax return or claim for tax refund.

10 (b) A tax return preparer who:

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

12 (2) Recklessly disregards any tax law or rule in
13 understating a person's tax liability;

14 based upon unreasonable positions on a tax return or claim for
15 tax refund shall pay a penalty of \$1,000, with respect to each
16 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) Any tax return preparer who prepares a tax return or
8 claim for tax refund knew or reasonably should have
9 known of such an 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 or a
16 final judicial decision that the penalty assessed under
17 subsection (a) or (b) should not apply, then that portion of the
18 penalty assessed shall be voided. Any portion of the penalty
19 that has been paid shall be refunded to the tax return preparer
20 as an overpayment of tax without regard to any period of
21 limitations that, but for this subsection, would apply to the
22 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), only the following authority for purposes of determining
15 whether there is substantial authority for the tax treatment of
16 an item:

17 (1) Statutory provisions;

18 (2) Proposed or final administrative rules;

19 (3) Tax information releases or procedures;

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

22 (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 such are valid and not overruled by other
6 authority;

7 (8) Department of taxation press releases; or

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

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

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

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

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

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

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

13 "Understatement of liability" means any understatement of
14 the net amount payable for any tax imposed or any overstatement
15 of the net amount creditable or refundable for any tax. The
16 determination of whether there is an understatement of liability
17 shall be made without regard to any administrative or judicial
18 action involving the taxpayer.

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

1 (j) This section shall be construed in accordance with
2 regulations and judicial interpretations given to similar
3 provisions of the Internal Revenue Code."

4 **PART II. FRAUDULENT TAX PRACTICES**

5 SECTION 2. 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-B Promoting abusive tax shelters. (a) A person
9 promotes an abusive tax shelter by:

10 (1) Organizing or assisting in the organization of, or
11 participating directly or indirectly in the sale of,
12 an interest in:

13 (A) A partnership or other entity;

14 (B) Any investment plan or arrangement; or

15 (C) Any other plan or arrangement; and

16 (2) In connection with any activity described under
17 paragraph (1), making, furnishing, or causing another
18 person to make or furnish a statement with respect 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 which 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 shall
8 pay, with respect to each activity described in subsection (a),
9 a penalty of \$1,000 or, if the person establishes that the
10 abusive tax shelter generated less than \$1,000 of gross income,
11 then one hundred per cent of the gross income derived or to be
12 derived by the person from the activity. For purposes of this
13 section, any activity described in subsection (a)(1) shall be
14 treated as a separate activity for each entity or arrangement.
15 Participation in each sale described in subsection (a)(1) shall
16 be treated as a separate activity for each entity or
17 arrangement.

18 (c) At the request of the director of taxation, a civil
19 action may be brought to enjoin any person described in
20 subsection (a) from engaging in any conduct described in
21 subsection (a). Any action under this section shall be brought
22 in the circuit court of the circuit where the person in

1 subsection (a) resides or where the person's principal place of
2 business is located. The court may exercise its jurisdiction
3 over the action separate and apart from any other action brought
4 by the State against those persons described in subsection (a).
5 If the court finds that a person described in subsection (a) has
6 engaged in any conduct subject to penalty under subsection (b)
7 and that injunctive relief is appropriate to prevent the
8 recurrence of that conduct, the court may enjoin the person
9 accordingly.

10 (d) For purposes of this section, "gross valuation
11 overstatement" means any statement of value for any property or
12 services if:

13 (1) The value so stated exceeds two hundred per cent of
14 the amount determined to be the correct valuation; and
15 (2) The value of the property or services is directly
16 related to the amount of any deduction or credit
17 allowable to any participant.

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

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

3 (g) This section shall be construed in accordance with
4 regulations and judicial interpretations given to similar
5 provisions of the Internal Revenue Code."

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

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

16 (b) It shall be a defense to the penalty under this
17 section that the claim for refund or credit had a reasonable
18 basis. A person claiming the reasonable basis defense shall
19 have the burden of proof to demonstrate the reasonableness of
20 the claim.

21 (c) For purposes of this section:

1 "Excessive amount" means the amount by which the amount of
2 the claim for refund or credit for any taxable year exceeds the
3 amount of the claim allowable for such taxable year.

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

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

1 SECTION 4. 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-D Substantial understatements or misstatements of**
5 **amounts; penalty.** (a) There shall be added to the tax an
6 amount equal to twenty per cent of the portion of any
7 underpayment that is attributable to any substantial
8 understatement of any tax in a taxable year. The penalty under
9 this section shall be in addition to any other penalty
10 assessable by law.

11 (b) Except as provided under subsection (c), there is a
12 substantial understatement of tax for any taxable year if the
13 amount of the understatement for the taxable year exceeds the
14 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) \$1,500.

18 (c) In the case of a corporation other than a corporation
19 taxable under subchapter S of the Internal Revenue Code, there
20 is a substantial understatement of tax for any taxable year if
21 the amount of the understatement for the taxable year exceeds
22 the greater of:

1 (1) Ten per cent of the tax required to be shown on the
2 return for the taxable year; or

3 (2) \$30,000.

4 (d) For purposes of this section, "understatement" means
5 the excess of:

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

8 (2) The amount of tax imposed that is shown on the return,
9 reduced by any rebate as that term is defined by
10 section 6211(b) (2) of the Internal Revenue Code.

11 (e) The amount of any understatement shall be reduced by
12 that portion of the understatement that is attributable to:

13 (1) The tax treatment of any item by the taxpayer if there
14 is or was substantial authority for such treatment; or

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

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

1 (f) This section shall be construed in accordance with
2 regulations and judicial interpretations given to similar
3 provisions of the Internal Revenue Code."

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

7 "§231-E Statute of limitations; extension for substantial
8 omissions. (a) Notwithstanding any other law to the contrary
9 limiting the time for assessment of any tax, if a taxpayer omits
10 any amount of:

- 11 (1) Gross income or gross proceeds of sale;
12 (2) Gross rental or gross rental proceeds;
13 (3) Price, value, or consideration paid or received for
14 any property;
15 (4) Gross receipts;
16 (5) Gallonage, tonnage, cigarette count, day, or other
17 weight or measure applicable to any tax;
18 properly includable therein that is in excess of twenty-five per
19 cent of the amount stated in the return, the tax may be assessed
20 or a proceeding in court with respect to the tax without
21 assessment may be begun without assessment, at any time within
22 six years after the return was filed.

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

6 (c) This section shall be construed in accordance with
7 regulations and judicial interpretations given to similar
8 provisions of the Internal Revenue Code."

9 SECTION 6. Section 235-111, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

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

1 ~~governed and conducted in accordance with statutory and other~~
2 ~~requirements relating to proceedings in equity, including all~~
3 ~~rights to appeal allowed in the proceedings. No assessment or~~
4 ~~levy of the tax or liability after the expiration of the three-~~
5 ~~year period shall be made unless so provided in the final decree~~
6 ~~entered in the proceedings.] the burden of proof with respect to~~
7 ~~the issues of falsity or fraud and intent to evade tax shall be~~
8 ~~upon the government.~~"

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

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

21 SECTION 8. Section 237D-9, Hawaii Revised Statutes, is
22 amended by amending subsection (d) to read as follows:

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

11 SECTION 9. Section 243-14, Hawaii Revised Statutes, is
12 amended by amending subsection (c) to read as follows:

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

1 SECTION 10. Section 251-8, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

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

13 **PART III. TAX ADMINISTRATION**

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

17 **"§231-F Expedited appeals and dispute resolution program.**

18 (a) The department shall be authorized to implement an
19 administrative appeals and dispute resolution program that shall
20 expeditiously resolve, to the extent practicable, tax disputes
21 between the department and taxpayers. The director or the
22 director's designee shall serve as an independent appeals

1 officer and shall be authorized to compromise, settle, or
2 otherwise resolve any dispute on any basis, including hazards of
3 litigation.

4 (b) Notwithstanding any other law to the contrary,
5 including tax appeal procedures set forth under chapter 232, a
6 taxpayer shall be eligible to petition the department once for
7 participation in the administrative appeals and dispute
8 resolution program after issuance of a notice of proposed
9 assessment; provided that if a taxpayer has filed a tax appeal
10 with the tax appeal court or other court, the taxpayer shall
11 first be required to obtain the approval of the director and
12 permission from the respective court prior to petitioning the
13 department for participation.

14 (c) The department shall adopt procedures to carry out the
15 purposes of this section, including procedures relating to ex
16 parte communications between the director or the director's
17 designee and other department personnel to ensure that such
18 communications do not appear to compromise the independence of
19 the administrative appeals and dispute resolution program."

20 SECTION 12. Chapter 231, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:

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1 "§231-G Signature presumed authentic. The fact that an
2 individual's name is signed on a return, statement, or other
3 document shall be prima facie evidence for all purposes that the
4 return, statement, or other document was actually signed by the
5 individual."

6 SECTION 13. Chapter 231, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§231-H Temporary rulemaking authority for regulation of
10 tax matters. (a) Notwithstanding any other law in title 14,
11 chapter 91, or chapter 201M to the contrary, the department is
12 authorized to adopt any temporary rules as the department may
13 deem proper as provided in this section. Temporary rules may
14 include the adoption, amendment, or repeal of any rules
15 concerning any matters which the department is authorized to
16 regulate.

17 (b) Temporary rules shall take effect seven days after
18 notice of the temporary rules is issued. Notice under this
19 subsection requires:

20 (1) Making the temporary rules available on the
21 department's and the lieutenant governor's websites;

1 (2) Making copies of the temporary rules available to the
2 public for inspection at the department's offices or
3 copying if any required fee is paid; and

4 (3) Providing public notice of the substance of the
5 temporary rules at least once statewide.

6 (c) Temporary rules must be approved by the governor.

7 (d) Any temporary rules issued by the department shall
8 also be issued as proposed administrative rules that are subject
9 to the procedural requirements of chapter 91.

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

12 (f) Temporary rules must conspicuously provide the
13 following information at the beginning of the temporary rules'
14 text:

15 (1) Notice stating the temporary nature of the rules;

16 (2) The expiration date of the temporary rules; and

17 (3) A statement advising that proposed administrative
18 rules subject to chapter 91 are being simultaneously
19 proposed for formal adoption.

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

1 SECTION 14. Section 231-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§231-7 Hearings and subpoenas.** (a) The director of
4 taxation, and any representative of the director duly authorized
5 by the director, may conduct any inquiry, investigation, or
6 hearing, relating to any assessment, or the amount of any tax,
7 or the collection of any delinquent tax, including any inquiry
8 or investigation into the financial resources of any delinquent
9 taxpayer or the [~~collectibility~~] collectability of any
10 delinquent tax.

11 (b) The director or other person conducting [~~such hearing~~]
12 hearings may administer oaths and take testimony under oath
13 relating to the matter of inquiry or investigation, and subpoena
14 witnesses and require the production of books, papers,
15 documents, and records pertinent to such inquiry.

16 (c) If any person disobeys [~~such process,~~] any process or,
17 having appeared in obedience thereto, refuses to answer
18 pertinent questions put to the person by the director or other
19 person conducting such hearing, or to produce any books, papers,
20 documents, or records pursuant thereto, the director or other
21 person conducting such hearing may apply to the circuit court of
22 the circuit wherein the inquiry or investigation is being

1 conducted, or to any judge of such court, setting forth such
2 disobedience to process or refusal to answer, and such court or
3 judge shall cite such person to appear before such court or
4 judge to answer such questions or to produce such books, papers,
5 documents, or records, and upon the person's refusal so to do
6 commit such person to jail until the person testifies but not
7 for a longer period than sixty days. Notwithstanding the
8 serving of the term of commitment by any person, the director
9 may proceed in all respects as if the witness had not previously
10 been called upon to testify. Witnesses (other than the taxpayer
11 or the taxpayer's or its officers, directors, agents, and
12 employees) shall be allowed their fees and mileage as in cases
13 in the circuit courts, to be paid on vouchers of the department
14 of taxation, from any moneys available for expenses of the
15 department.

16 (d) Any subpoena issued under this section that does not
17 identify the person with respect to whose liability or
18 investigation the subpoena is issued may be served on any person
19 only after a court proceeding in which the director or other
20 person establishes that:

1 (1) The subpoena relates to the investigation of a
2 particular person or ascertainable group or class of
3 persons;

4 (2) There is a reasonable basis for believing that such
5 person or group or class of persons may fail or may
6 have failed to comply with any provision of title 14;
7 and

8 (3) The information sought to be obtained from the
9 examination of records or testimony and the identity
10 of the person or persons with respect to whose
11 liability the subpoena is issued is not readily
12 available from other sources.

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

16 SECTION 15. Section 232-7, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) Each board shall hold public meetings at some central
19 location in its taxation district, commencing not later than
20 April 9 of each year and shall hear, as speedily as possible,
21 all appeals presented for each year. A taxpayer's identity and
22 final documents submitted in support or opposition of an appeal

1 shall be public information; provided that an individual
2 taxpayer is authorized to redact all but the last four digits of
3 the taxpayer's social security number from any accompanying tax
4 return. Each board shall have the power and authority to decide
5 all questions of fact and all questions of law, excepting
6 questions involving the Constitution or laws of the United
7 States, necessary to the determination of the objections raised
8 by the taxpayer in the notice of appeal; provided that no board
9 shall have power to determine or declare an assessment illegal
10 or void. Without prejudice to the generality of the foregoing,
11 each board shall have power to allow or disallow exemptions
12 pursuant to law whether or not previously allowed or disallowed
13 by the assessor and to increase or lower any assessment."

14 SECTION 16. Section 232-16, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§232-16 Appeal to tax appeal court.** A taxpayer or
17 county, in all cases, may appeal directly to the tax appeal
18 court without appealing to a state board of review, or any
19 equivalent administrative body established by county ordinance.
20 An appeal to the tax appeal court is properly commenced by
21 filing, on or before the date fixed by law for the taking of the
22 appeal, a written notice of appeal in the office of the tax

1 appeal court and by service of the notice of appeal on the
2 director of taxation and, in the case of an appeal from a
3 decision involving the county as a party, the real property
4 assessment division of the county involved. An appealing
5 taxpayer shall also pay the costs in the amount fixed by section
6 232-22.

7 The notice of appeal to the tax appeal court shall be
8 sufficient if it meets the requirements prescribed for a notice
9 of appeal to the board of review and may be amended at any time;
10 provided that it sets forth the following additional
11 information, to wit:

12 A brief description of the property involved in sufficient
13 detail to identify the same and the valuation placed thereon by
14 the assessor.

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

20 An appeal to the tax appeal court shall be deemed to have
21 been taken in time if the notice thereof and costs and the copy
22 of the notice shall have been deposited in the mail, postage

1 prepaid, properly addressed to the tax appeal court, the
2 director of taxation, or the real property assessment division
3 of the county involved, and to the taxpayer or taxpayers in the
4 case of an appeal taken by a county, respectively, on or before
5 the date fixed by law for the taking of the appeal.

6 An appeal to the tax appeal court shall bring up for review
7 all questions of fact and all questions of law, including
8 constitutional questions, necessary to the determination of the
9 objections raised by the taxpayer or county in the notice of
10 appeal."

11 SECTION 17. Section 232-18, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§232-18 Certificate of appeal to tax appeal court.** Upon
14 the perfecting of an appeal to the tax appeal court, the tax
15 assessor of the district from which the appeal is taken shall
16 immediately send up to the tax appeal court a certificate in
17 which there shall be set forth the information required by
18 section 232-16 to be set forth in the notice of appeal where an
19 appeal is taken direct from the assessment to the tax appeal
20 court.

21 The certificate shall be accompanied by the taxpayer's
22 return, if any has been filed[7]; provided that the department

1 of taxation is authorized to redact all but the last four digits
2 of an individual taxpayer's social security number from an
3 accompanying tax return, a copy of the notice of appeal to the
4 state board of review, or equivalent administrative body
5 established by county ordinance, and any amendments thereto, and
6 the decision or action, if any, of the state board of review or
7 equivalent administrative body. Failure of the assessor to
8 comply herewith shall not prejudice or affect the taxpayer's,
9 county's, or assessor's appeal and the certificate of appeal may
10 be amended at any time up to the final determination of the
11 appeal."

12 **PART IV. CRIMINAL TAX ENFORCEMENT**

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

16 "§231-F Wilful failure to collect and pay over tax. Any
17 person required to collect, account for, and pay over any tax
18 imposed by title 14, who wilfully fails to collect or truthfully
19 account for and pay over such tax shall be guilty of a class C
20 felony, in addition to other penalties provided by law and, upon
21 conviction, shall be subject to one or any combination of the
22 following:

- 1 (1) A fine of not more than \$100,000;
2 (2) Imprisonment of not more than five years; or
3 (3) Probation;
4 provided that a corporation shall be fined not more than
5 \$500,000."

6 SECTION 19. Section 231-40, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~§~~]**§231-40**[~~§~~] **Interpretation.** Sections 231-34, 231-35,
9 [~~and~~] 231-36, and 231-F shall be construed in accordance with
10 judicial interpretations given to similar provisions of Title 26
11 of the United States Code; consistent therewith, the term
12 "wilfully" shall mean a voluntary, intentional violation of a
13 known legal duty."

14 SECTION 20. Section 231-41, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[~~§~~]**§231-41**[~~§~~] **Statute of limitation for criminal**
17 **penalties.** Notwithstanding any laws to the contrary,
18 prosecutions under sections 231-34, 231-35, [~~and~~] 231-36, and
19 231-F shall be commenced within seven years after the commission
20 of the offense."

1 **PART V. MISCELLANEOUS**

2 SECTION 21. Except as provided in section 20, this Act
3 does not affect returns prepared and transactions promoted,
4 rights and duties that matured, penalties that were incurred,
5 and proceedings that were begun before its effective date.

6 SECTION 22. In codifying the new sections added by
7 sections 1 through 5, sections 11 through 13, and section 18 of
8 this Act, the revisor of statutes shall insert appropriate
9 section numbers for the letters used in designating and
10 referring to the new sections in this Act.

11 SECTION 23. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 24. This Act shall take effect on July 1, 2090;
14 provided that:

15 (1) Section 1 (relating to penalties for preparing returns
16 with unreasonable positions), section 3 (relating to
17 erroneous refund or credit claims), section 4
18 (relating to substantial understatements), section 5
19 (relating to the statute of limitations on substantial
20 omissions), section 6 (relating to fraud assessments),
21 section 7 (relating to fraud assessments), section 8
22 (relating to fraud assessments), section 9 (relating

1 to fraud assessments), and section 10 (relating to
2 fraud assessments) shall apply to any return prepared,
3 refund claim, understatement, omission, or fraud
4 contained in any return where the statute of
5 limitations on assessment has not expired; provided
6 that this Act shall not apply to any return prepared,
7 refund claim, understatement, omission, or fraud in
8 any return where an amended return is filed by
9 October 1, 2009, to the extent the amended return
10 cures, corrects, or eliminates any item constituting
11 an unreasonable position, erroneous refund claim,
12 substantial understatement, substantial omission, or
13 fraud as provided in this Act; and
14 (2) Section 2 (relating to promoting abusive tax shelters)
15 and section 18 (relating to failure to collect and pay
16 tax) shall take effect on July 1, 2050.

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. (SD1)