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# A BILL FOR AN ACT

RELATING TO TAX ADMINISTRATION.

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

1           SECTION 1. In all tax systems, government administrators  
2 are continually working to reduce tax noncompliance known as the  
3 "tax gap." In the United States, the tax gap, which is the  
4 difference between the amount of tax that is required to be  
5 reported and timely paid and the amount of tax that is actually  
6 reported and paid, is estimated to be almost \$400,000,000,000  
7 per year. Of this tax gap, it is further estimated that about  
8 \$200,000,000,000, or half of the tax gap, is composed of what is  
9 known as the "cash economy." Hawaii's annual tax gap is  
10 estimated to be about \$2,000,000,000 in unreported and unpaid  
11 taxes with approximately \$1,000,000,000 attributed to the cash  
12 economy. Focusing resources on shoring up compliance in this  
13 area should be a priority.

14           Cash-based transactions are a fundamental part of any  
15 economy. As the oldest form of payment, cash continues to  
16 dominate many facets of the local economy. Cash is inherently  
17 private, efficient, and predictable for both purchaser and



1 seller. However, cash transactions are also the simplest means  
2 of underreporting or non-reporting for tax purposes, because no  
3 bank, no means of electronic oversight, and no intermediary  
4 maintains records of the movement of funds from one pocket to  
5 another.

6 As stated by former Internal Revenue Service Commissioner  
7 Mark Everson, "[t]he vast majority of Americans pay their taxes  
8 accurately and are shortchanged by those who don't pay their  
9 fair share. The magnitude of the tax gap highlights the  
10 critical role of enforcement in keeping our system of tax  
11 administration healthy." By focusing resources on the cash  
12 economy, the department of taxation can ensure fairness in the  
13 tax system for those that comply without raising taxes or  
14 otherwise substantially burdening Hawaii's economy as a whole.

15 The purpose of this Act is to provide the department of  
16 taxation with the necessary resources and tools to target high-  
17 risk, cash-based transactions to shore up confidence in Hawaii's  
18 tax system for those that do comply. Importantly, the  
19 legislature intends that the enforcement resources provided  
20 focus on the civil collection and enforcement nature of Hawaii's  
21 tax laws. In an effort to demonstrate the targets of this  
22 undertaking, this Act defines "cash-based business" for



1 enforcement purposes, and the department of taxation is directed  
2 to focus on such businesses. At the same time, education is  
3 equally important as enforcement. Therefore, this Act requires  
4 the department of taxation to reach out to industry groups,  
5 specific demographics in the economy, and practitioners to  
6 educate taxpayers on their tax responsibilities.

7 This Act shall be known as the "Cash Economy Enforcement  
8 Act of 2009."

9 SECTION 2. Chapter 231, Hawaii Revised Statutes, is  
10 amended by adding sixteen new sections to be appropriately  
11 designated and to read as follows:

12 "CIVIL COMPLIANCE; SPECIAL ENFORCEMENT SECTION

13 §231-A Special enforcement section; created. There is  
14 created within the department of taxation the special  
15 enforcement section to carry out civil enforcement efforts as  
16 directed by the director. The director may staff the section as  
17 the exigencies of the public service may require.

18 §231-B Special enforcement section; functions, powers, and  
19 duties. The special enforcement section shall have the  
20 following functions, powers, and duties:

21 (1) Investigate reported or suspected violations of tax  
22 laws for civil enforcement purposes, including through



- 1           covert means, with a stated priority of investigating  
2           cash-based businesses as defined in section 231-I;
- 3           (2) Enforce the tax laws by issuing, enforcing, or  
4           executing citations, fines, infractions, assessments,  
5           liens, levies, writs, warrants, injunctions, or other  
6           process;
- 7           (3) Serve as fraud referral specialists to assist in the  
8           development and review of fraud cases for appropriate  
9           disposition of potentially fraudulent activities,  
10           including referral to criminal investigators and  
11           assessment of civil fraud penalties;
- 12           (4) Organize and hold public informational meetings on  
13           issues of tax laws, including compliance deficiencies  
14           in segments of the economy, and undertake any other  
15           activities to encourage taxpayers, practitioners, or  
16           others to maintain responsibility and compliance with  
17           their tax obligations;
- 18           (5) Coordinate with other sections or divisions within the  
19           department of taxation, other departments or branches  
20           of the state government, any branches of the county  
21           government, or the federal government on matters  
22           relating to civil enforcement of the tax laws,



- 1 including joint investigations, information-sharing  
2 arrangements, or concurrent collection efforts;
- 3 (6) Compile information received by third parties,  
4 including taxpayers, competitors, government agencies,  
5 confidential sources, or public sources and delegating  
6 this information within the department for proper  
7 handling. Proper handling may include referral  
8 internally to other civil or criminal enforcement  
9 sections;
- 10 (7) Conduct investigations, research, and studies of  
11 matters relevant to the complex or sensitive civil  
12 enforcement of the tax laws; and
- 13 (8) Perform such other acts as may be incidental to the  
14 exercise of the functions, powers, and duties set  
15 forth in this section or as otherwise directed by the  
16 director.

17 **§231-C Investigators and personnel, appointment and**  
18 **power.** (a) The director may appoint, commission, or detail to  
19 the special enforcement section one or more persons as  
20 investigators, investigator assistants, and other support staff  
21 as the exigencies of the public service may require.

22 Investigators may be legal or accounting professionals; provided



1 that their primary duty is to conduct investigations pursuant to  
2 the authorities of the special enforcement section and shall not  
3 conduct criminal investigations of the tax laws. Investigators  
4 may serve process and apply for and execute search warrants or  
5 writs of entry pursuant to section 231-D but shall not otherwise  
6 have the powers of a police officer or deputy sheriff. The  
7 director may also select, retain, or appoint one or more  
8 licensed attorneys, including deputy attorneys general, to  
9 provide legal services to this section without regard to chapter  
10 28, 76, or 103D.

11 (b) Notwithstanding any other law to the contrary relating  
12 to employment, bargaining, labor, or compensation rights or  
13 duties, any person appointed, commissioned, or detailed to the  
14 special enforcement section:

15 (1) May be an employee of the department in any capacity,  
16 including exempt from or subject to chapters 76 and 89  
17 as an employee of the department;

18 (2) Shall be exempt from chapters 76 and 89 for purposes  
19 of their appointment, commission, or detail capacity  
20 as investigator, whether full-time, part-time, or  
21 temporary;



1       (3) May be appointed, commissioned, or detailed in any  
2       capacity, and whose appointment, commission, or detail  
3       may be dismissed at the pleasure of the director;

4       (4) If appointed, commissioned, or detailed on a temporary  
5       basis, shall have the right to return to the person's  
6       same position or to a related position in the same  
7       class or division within the department when the  
8       person's appointment expires. The return rights  
9       provided under this section shall apply to persons  
10       exempt from or subject to chapters 76 and 89; and

11       (5) May be paid overtime as prescribed by applicable  
12       collective bargaining agreement or existing policy for  
13       excluded employees. The compensation rights under  
14       this section shall apply to persons exempt from or  
15       subject to chapters 76 and 89.

16       §231-D Right to inspection of books, records, and premises;  
17       warrants and writs; levy and seizure. (a) Upon presenting  
18       credentials, the special enforcement section may examine any  
19       books, papers, records, and any article or item of business  
20       transacted of any person engaged in business in this state to  
21       verify the accuracy of the reporting and payment of the taxes  
22       imposed by law. Every person in possession of any books,



1 papers, records, or articles or items of business transacted,  
2 and the person's agents and employees, shall provide the special  
3 enforcement section the means, facilities, and opportunities for  
4 the examinations upon request.

5       (b) The special enforcement section may inspect the  
6 operations, premises, and storage areas of any person engaged in  
7 business in this state during regular business hours.

8       (c) The special enforcement section may inspect the  
9 operations, premises, and storage areas of any person engaged in  
10 business in this state at any time, without notice, upon the  
11 issuance of a warrant or writ of entry based upon probable cause  
12 of a violation under title 14. The determination of probable  
13 cause for purposes of this section shall be made based upon the  
14 standard of probable cause for an administrative or civil search  
15 or seizure. Application for a search warrant or writ of entry  
16 under this section shall be made by making a declaration, under  
17 oath, which includes the following:

18       (1) The taxpayer's form of business;

19       (2) The taxpayer's interest in and address of the premises  
20 sought to be searched;





1       (3) Whether permission to search the premises has been  
2       requested in advance of requesting the warrant or  
3       writ;

4       (4) The particular books, records, items, articles,  
5       assets, or contraband reasonably believed to be on the  
6       premises; and

7       (5) The alleged violation reasonably believed to have  
8       occurred, including nonpayment of taxes; and, if  
9       searching or seizing in furtherance of collection,  
10       identification of the assets reasonably believed to be  
11       on the premises.

12       The special enforcement section may apply to the circuit  
13       court where the person is located for issuance of such warrant  
14       or writ. The special enforcement section may execute warrants  
15       or writs of entry. Any police officer, criminal investigator,  
16       or deputy sheriff of this State or any county shall be required  
17       to render assistance and aid to the special enforcement section  
18       in executing warrants and writs, upon request. Criminal law  
19       enforcement agencies that assist the special enforcement section  
20       may be compensated a portion of the proceeds ultimately  
21       collected by the special enforcement section, as determined by  
22       the director.



1        (d) The special enforcement section's ability to inspect  
2 shall include inspection of all statements, books, papers, and  
3 records in whatever format, including electronic format,  
4 articles or items of business transacted, including inventory,  
5 supplies, stock, and cash on hand, pertaining to the sales or  
6 other business activities of any person to verify the accuracy  
7 of the reporting and payment of taxes imposed by law.

8        (e) The special enforcement section may seize and levy any  
9 assets in the custody or control of any person pursuant to  
10 chapter 231.

11        **§231-E Identification of cash-economy cases; retention of**  
12 **funds.** Notwithstanding any law to the contrary, each fiscal  
13 year, the special enforcement section may identify any taxpayer,  
14 assessment, investigation, or collection matter as a matter of  
15 the special enforcement section. All revenues collected from  
16 the special enforcement section matters shall be deposited into  
17 the tax administration special fund.

18        **§231-F Violent interference with a tax official.** Any  
19 person who interferes, hinders, obstructs, prevents, or impedes  
20 any investigator or employee of the department with violence or  
21 threat of violence, shall be guilty of a class C felony and,



1 upon conviction, shall be subject to one or any combination of  
2 the following:

- 3 (1) A fine of not more than \$4,000;  
4 (2) Imprisonment for not more than three years; or  
5 (3) Probation;

6 provided that a corporation shall be fined not less than  
7 \$10,000.

8 This section shall be construed in accordance with  
9 regulations and judicial interpretations given to similar  
10 provisions of the Internal Revenue Code.

11 CASH ECONOMY ENFORCEMENT; CITATIONS

12 §231-G Citations for violations; deposits. (a) The  
13 special enforcement section may issue cease and desist citations  
14 to any person if the special enforcement section has cause to  
15 believe any person has violated, is violating, or is about to  
16 violate any provision of title 14 or administrative rule adopted  
17 thereunder. Every cease and desist citation shall include a  
18 monetary fine for any unlawful act.

19 (b) The department may prescribe by rule the circumstances  
20 and the civil monetary fines citable for unlawful actions under  
21 title 14. Any monetary fine adopted by rule under this section  
22 shall not exceed \$500; provided that the monetary fine shall not



1 exceed \$1,000 for a cash-based business. Notwithstanding any  
2 law to the contrary, the department may prescribe rules under  
3 this section without regard to chapters 91 and 201M; provided  
4 that:

- 5 (1) The rules are approved by the governor;  
6 (2) Thirty days statewide public notice is provided; and  
7 (3) The public is given an opportunity to comment, as  
8 determined by the director.

9 (c) Any fine assessed under this section shall be a matter  
10 of the special enforcement section under section 231-E and shall  
11 be retained and deposited into the tax administration special  
12 fund.

13 (d) Any fine assessed shall be due and payable thirty days  
14 after issuance, subject to appeal rights provided under  
15 subsection (e); provided that if payment of the fine is  
16 determined to be in jeopardy, such fine shall be payable  
17 immediately and shall be immediately collected. Any amount of  
18 fine collected under jeopardy shall only be returned upon a  
19 finding by the director that there was no violation of title 14  
20 pursuant to appeal rights provided under subsection (e).

21 (e) Cease and desist citations may be appealed to the  
22 director or the director's designee pursuant to chapter 91.



1        §231-H Cash-based businesses; injunction. The special  
2 enforcement section, with the director's approval, may bring  
3 civil actions in the circuit court where the cash-based business  
4 is located to enjoin any unlawful act under title 14, including  
5 any administrative rule adopted thereunder, by a cash-based  
6 business. The special enforcement section shall have the  
7 discretion to include in any action an assessment of a monetary  
8 fine.

9        §231-I Cash-based business; defined. For purposes of  
10 sections 231-G to 231-P, "cash-based business" means any person  
11 who operates a business, including for-profit or not-for-profit,  
12 where transactions in goods or services are exchanged  
13 substantially for cash and where the business is found, based  
14 upon reasonable cause including observation or evidence, to have  
15 met one of the following factors:

16        (1) Is found to have substantially underreported or  
17 misrepresented the proper amount of tax liability on  
18 any return or other submission to the department. For  
19 purposes of this paragraph, an amount has been  
20 substantially underreported if the amount properly  
21 includible on the return or submission is in excess of



- 1           twenty-five per cent of the amount stated on the  
2           return or submission;
- 3           (2) Is required to be licensed, registered, or permitted  
4           under title 14 and is in fact not so licensed,  
5           registered, or permitted;
- 6           (3) Has a past pattern of noncompliance of obligations  
7           under title 14;
- 8           (4) Does not have a fixed and permanent principal place of  
9           business;
- 10          (5) Has not obtained any required tax clearance;
- 11          (6) Has failed to maintain adequate books and records, or  
12          those records required to be maintained by law or  
13          administrative rule;
- 14          (7) Does not accept checks or electronic payment devices  
15          for business transactions;
- 16          (8) Does not issue receipts for business transactions;
- 17          (9) Offers price differentials or otherwise deviates from  
18          usual business practices when the business transaction  
19          substantially involves payment of cash; or
- 20          (10) Any other factor relevant to describing a cash-based  
21          business capable of noncompliance as determined by the



1           director and issued pursuant to a tax information  
2           release or tax announcement.

3           §231-J Failure to produce license upon demand. Every  
4 person required to be licensed or permitted under title 14,  
5 whether or not so licensed or permitted, shall be required to  
6 produce the license or permit upon demand by the special  
7 enforcement section. Failure to produce the license or permit  
8 upon demand shall be unlawful. Any person who violates this  
9 section shall be subject to a fine not to exceed \$500; provided  
10 that if the person is a cash-based business, the fine shall not  
11 exceed \$1,000. It shall be an absolute defense to this section  
12 if the person can produce a license or permit number on file  
13 with the department and the department confirms that the person  
14 associated with the number is true and accurate.

15           §231-K Failure to keep adequate books and records. It  
16 shall be unlawful for any person required under title 14 to keep  
17 books or records to fail to produce the books or records upon  
18 demand by the special enforcement section. Any person who  
19 violates this section shall be subject to a fine not to exceed  
20 \$1,000; provided that if the person is a cash-based business,  
21 the fine shall not exceed \$2,000.



1        §231-L Failure to record transaction by receipt. It shall  
2 be unlawful to conduct more than ten business transactions per  
3 day in cash and fail to provide a receipt or other record of the  
4 transaction when the means for issuing a receipt or recording  
5 the transaction are available. Each day a person is in  
6 violation of this section shall be treated as a separate  
7 violation. Any person who violates this section shall be  
8 subject to a fine not to exceed \$1,000; provided that if the  
9 person is a cash-based business, the fine shall not exceed  
10 \$2,000.

11        §231-M Failure to record transaction by register. It  
12 shall be unlawful to conduct more than ten business transactions  
13 per day in cash and fail to record the transaction in a cash  
14 register when the means for recording the transaction in a cash  
15 register are available. Each day a person is in violation of  
16 this section shall be treated as a separate violation. Any  
17 person who violates this section shall be subject to a fine not  
18 to exceed \$1,000; provided that if the person is a cash-based  
19 business, the fine shall not exceed \$2,000.

20        §231-N Tax avoidance price fixing. It shall be unlawful  
21 for any person to sell, offer to sell, or otherwise convey more  
22 than one price for any business to be transacted when the lower





1 price is offered if the transaction is paid for in cash. It  
2 shall not be a penalty under this section if a business charges  
3 a higher price for legitimate business purposes, as determined  
4 by the director, such as for the purpose of recovering any  
5 charges assessed the business, including for facilitating  
6 electronic payment. Any person who violates this section shall  
7 be subject to a fine not to exceed \$2,000; provided that if the  
8 person is a cash-based business, the fine shall not exceed  
9 \$3,000.

10 §231-0 Possession of currency for tax avoidance purposes.  
11 It shall be unlawful for any person engaged in business in this  
12 state to possess currency in the form of coin or note, where the  
13 possession is for tax avoidance purposes. There shall be a  
14 presumption that a person is in possession of currency for tax  
15 avoidance purposes, where the person has in the person's  
16 possession, currency with value exceeding \$5,000, which does not  
17 have a readily available legitimate business purpose. The  
18 department may establish other presumptions by rule. It shall  
19 be the department's burden to establish that currency is  
20 possessed for tax avoidance purposes; provided that  
21 circumstantial evidence may be used by the department in any  
22 proceeding. Any person who violates this section shall be



1 subject to a fine not to exceed \$2,000; provided that if the  
2 person is a cash-based business, the fine shall not exceed  
3 \$3,000.

4 §231-P Interference with a tax official. It is unlawful  
5 for any person to interfere with, hinder, obstruct, prevent, or  
6 impede any investigator, auditor, collector, or other employee  
7 of the department from obtaining license information, books,  
8 records, articles, or items of business transacted, or other  
9 information or property rightfully entitled the department. Any  
10 person who violates this section shall be subject to a fine of  
11 not more than \$2,000. It shall be an absolute defense to the  
12 fine under this section that the person acted with good cause."

13 SECTION 3. Section 231-1, Hawaii Revised Statutes, is  
14 amended by amending the definition of "person" to read as  
15 follows:

16 "Person" [as used in sections 231-34, 231-35, and 231-36]  
17 includes one or more individuals, a company, corporation, a  
18 partnership, an association, or any other type of legal entity,  
19 and also includes an officer or employee of a corporation, a  
20 partner or employee of a partnership, a trustee of a trust, a  
21 fiduciary of an estate, or a member, employee, or principal of  
22 any other entity, who as such officer, employee, partner,



1 trustee, fiduciary, member, or principal is under a duty to  
2 perform and is principally responsible for performing the act  
3 [~~in respect of which the violation occurs~~]."

4 SECTION 4. Section 235-20.5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§235-20.5 Tax administration special fund; established.**

7 (a) There is established a tax administration special fund,  
8 into which shall be deposited [~~fees~~]:

9 (1) Fees collected under sections 235-20, 235-110.9, and  
10 235-110.91 [~~, and penalties~~];

11 (2) Penalties collected under section 2 of Act 206,  
12 [~~+~~]Session Laws of Hawaii 2007 [~~+~~]; and

13 (3) Revenues collected by the special enforcement section  
14 pursuant to section 231-E; provided that in each  
15 fiscal year, of the total revenues collected by the  
16 special enforcement section, all revenues in excess of  
17 \$500,000 shall be deposited into the general fund.

18 (b) The moneys in the fund shall be [~~expended by the~~  
19 ~~department to offset the costs associated with~~] used for the  
20 following purposes:

21 (1) Issuing comfort letters;



- 1 (2) Administering the tax [~~credit~~] credits under [~~section~~]  
2 sections 235-110.9 [~~, including issuing certificates,~~  
3 ~~and~~  
4 ~~(3) Issuing certificates under section] and 235-110.91 [~~-~~];  
5 and  
6 (3) Administering the operations of the special  
7 enforcement section."~~

8 SECTION 5. Section 237-9, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§237-9 Licenses; penalty.** (a) Except as provided in  
11 this section, any person who has a gross income or gross  
12 proceeds of sales or value of products upon which a privilege  
13 tax is imposed by this chapter, as a condition precedent to  
14 engaging or continuing in such business, shall in writing apply  
15 for and obtain from the department of taxation, upon a one-time  
16 payment of the sum of \$20, a license to engage in and to conduct  
17 such business, upon condition that the person shall pay the  
18 taxes accruing to the State under this chapter, and the person  
19 shall thereby be duly licensed to engage in and conduct the  
20 business. [~~Any person licensed or holding a license under this~~  
21 ~~chapter before January 1, 1990, shall pay a one time license~~  
22 ~~renewal fee of \$20 on or before January 31, 1990, as a condition~~



1 ~~precedent to engaging or continuing in business.]~~ The license  
2 shall not be transferable and shall be valid only for the person  
3 in whose name it is issued and for the transaction of business  
4 at the place designated therein. The license may be inspected  
5 and examined, and shall at all times be conspicuously displayed  
6 at the place for which it is issued.

7 (b) Licenses and applications therefor shall be in such  
8 form as the department shall prescribe, except that where the  
9 licensee is engaged in two or more forms of business of  
10 different classification, the license shall so state on its  
11 face. The license provided for by this section shall be  
12 effective until canceled in writing. Any application for the  
13 reissuance of a previously canceled license identification  
14 number after December 31, 1989, shall be regarded as a new  
15 license application and subject to the payment of the one-time  
16 license fee of \$20. The director may revoke or cancel any  
17 license issued under this chapter for cause as provided by rules  
18 adopted pursuant to chapter 91.

19 (c) Any person who receives gross income or gross proceeds  
20 of sales or value of products from engaging in business in the  
21 state and who fails to obtain a license or receives gross income  
22 or gross proceeds of sales or value of products from engaging in



1 business in the state without a license required under this  
2 section shall be fined not more than \$500; provided that a cash-  
3 based business shall be fined not less than \$500 and not more  
4 than \$2,000, as determined by the director or the director's  
5 designee. The penalty under this subsection shall be in  
6 addition to any other penalty provided under law.

7       ~~[(e)]~~ (d) If the license fee is paid, the department shall  
8 not refuse to issue a license or revoke or cancel a license for  
9 the exercise of a privilege protected by the First Amendment of  
10 the Constitution of the United States, or for the carrying on of  
11 interstate or foreign commerce, or for any privilege the  
12 exercise of which, under the Constitution and laws of the United  
13 States, cannot be restrained on account of nonpayment of taxes,  
14 nor shall section 237-46 be invoked to restrain the exercise of  
15 such a privilege, or the carrying on of such commerce.

16       ~~[(d)]~~ (e) The director may permit a person engaged in  
17 network marketing, multi-level marketing, or other similar  
18 business to obtain the license required under this section for  
19 purposes of becoming a tax collection agent on behalf of its  
20 direct sellers. The tax collection agent shall report, collect,  
21 and pay over the taxes due under this chapter and chapter 238 on  
22 behalf of its direct sellers who are covered by the tax



1 collection agreement. The tax collection agent's direct sellers  
2 shall be deemed to be licensed under this chapter; provided that  
3 the licensure shall apply solely to the business activity  
4 conducted directly through the marketing arrangement. Under  
5 this section, a tax collection agent shall:

- 6 (1) Notify all of its direct sellers making sales in the  
7 [~~State~~] state that it has been designated to collect,  
8 report, and pay over the tax imposed by this chapter  
9 and chapter 238 on their behalf on the business  
10 activity conducted through the marketing arrangement;
- 11 (2) If required by the director as a condition of  
12 obtaining the license, furnish with the annual return,  
13 a list (including identification numbers) of all  
14 direct sellers for the taxable year who have been  
15 provided (by the tax collection agent) information  
16 returns required under [~~section~~] Section 6041A of the  
17 Internal Revenue Code of 1986, as amended, and any  
18 other information that is relevant to ensure proper  
19 payment of taxes due under this section; and
- 20 (3) Be personally liable for the taxes due and collected  
21 under the tax collection agreement if taxes are



1 collected, but not reported or paid, together with  
2 penalties and interest as provided by law.

3 [~~(e)~~] (f) For the purposes of this section:

4 "Cash-based business" has the same meaning as in section  
5 231-I.

6 "Consumer product" shall include tangible consumer products  
7 and intangible consumer services.

8 "Direct seller" means any person who is engaged in the  
9 trade or business of selling (or soliciting the sale of)  
10 consumer products:

11 (1) To any buyer on a buy-sell basis, a deposit-commission  
12 basis, or any similar basis, that the director  
13 prescribes by rule adopted pursuant to chapter 91, for  
14 resale other than in a permanent retail establishment;

15 (2) Other than in a permanent retail establishment;  
16 provided that:

17 (A) Substantially all the remuneration (whether or not  
18 paid in cash) for the sale of consumer products  
19 is directly related to sales or other output  
20 rather than to the number of hours worked; and

21 (B) The sales of consumer products by the person are  
22 performed pursuant to a written contract that





1 provides that the person will not be treated as  
2 an employee with respect to those sales for  
3 federal or state tax purposes.

4 "Direct seller" includes individuals who realize  
5 remuneration dependent on the productivity of other individuals  
6 in the marketing arrangement.

7 "Network marketing" or "multi-level marketing" means a  
8 marketing arrangement in which consumer products are distributed  
9 and sold to or through direct sellers."

10 SECTION 6. Section 237-12, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12 "(b) In the case of any person entitled to the protection  
13 of section [~~237-9(e)~~], 237-9(d), the tax shall be collected only  
14 through ordinary means."

15 SECTION 7. The department of taxation may establish six  
16 new full-time equivalent (6.0 FTE) positions to serve as  
17 investigators, investigator assistants, licensed attorneys, or  
18 other support staff, in addition to using current and existing  
19 employees of the department of taxation, to staff the special  
20 enforcement section established in section 2 of this Act as the  
21 exigencies of the public service may require.



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

4 SECTION 9. In codifying the new sections added to chapter  
5 231, Hawaii Revised Statutes, by section 2 of this Act, the  
6 revisor of statutes shall substitute appropriate section numbers  
7 for the letters used in designating and referring to the new  
8 sections in this Act.

9 SECTION 10. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 11. This Act shall take effect upon its approval;  
12 provided that:

13 (1) The amendments made to section 235-20.5, Hawaii  
14 Revised Statutes, by this Act shall not be repealed  
15 when section 235-20.5, Hawaii Revised Statutes, is  
16 reenacted on January 1, 2011, pursuant to section 8 of  
17 Act 206, Session Laws of Hawaii 2007; and

18 (2) Sections 231-F, 231-J, 231-K, 231-L, 231-M, 231-N,  
19 231-O, and 231-P, Hawaii Revised Statutes, in section  
20 2 of this Act shall take effect on July 1, 2009.



**Report Title:**

Tax Administration; Cash Economy Enforcement Act

**Description:**

Ensures Hawaii businesses and residents are paying their fair share of taxes by providing the Department of Taxation with resources to seek enforcement against non-compliant cash-based businesses. (SB972 HD1)

