

JAN 23 2009

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 235-111, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) General rule. The amount of income taxes imposed by
4 this chapter (also the amount of income taxes imposed by any
5 preceding law of the State) and the liability of any employer in
6 respect of wages, shall be assessed or levied and the
7 overpayment, if any, shall be credited within three years after
8 filing of the return for the taxable year, or within three years
9 of the due date prescribed for the filing of the return,
10 whichever is later. No proceeding in court without assessment
11 for the collection of the taxes or the enforcement of the
12 liability shall be begun after the expiration of the period.
13 Where the assessment of the tax imposed by this chapter has been
14 made within the period of limitation properly applicable
15 thereto, the tax may be collected by levy or by a proceeding in
16 court, but only if the levy is made or the proceeding was begun
17 within ten years after the assessment of the tax. For any tax



1 that has been assessed prior to July 1, 2009, the levy or
2 proceeding shall be barred after June 30, 2019."

3 SECTION 2. Section 237-40, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) General rule. The amount of excise taxes imposed by
6 this chapter shall be assessed or levied within three years
7 after the annual, semiannual, quarterly, or monthly return was
8 filed, whichever is earlier, or within three years of the due
9 date prescribed for the filing of [~~said~~] the return, whichever
10 is later, and no proceeding in court without assessment for the
11 collection of any [~~such~~] of the taxes shall be begun after the
12 expiration of the period. Where the assessment of the tax
13 imposed by this chapter has been made within the period of
14 limitation properly applicable thereto, the tax may be collected
15 by levy or by a proceeding in court, but only if the levy is
16 made or the proceeding was begun within ten years after the
17 assessment of the tax. For any tax that has been assessed prior
18 to July 1, 2009, the levy or proceeding shall be barred after
19 June 30, 2019.

20 (b) Exceptions. In the case of a false or fraudulent
21 return with intent to evade tax, or of a failure to file the
22 annual, semiannual, quarterly, or monthly return, as the case



1 may be, the tax may be assessed or levied at any time; however,
2 in the case of a return claimed to be false or fraudulent with
3 intent to evade tax, the determination as to the claim shall
4 first be made by a judge of the circuit court as provided in
5 section 235-111(c), which shall apply to the tax imposed by this
6 chapter."

7 SECTION 3. Section 237D-9, Hawaii Revised Statutes, is
8 amended by amending subsections (c) and (d) to read as follows:

9 "(c) Except as otherwise provided by this section, the
10 amount of taxes imposed by this chapter shall be assessed or
11 levied within three years after the annual, semiannual,
12 quarterly, or monthly return, whichever is earlier, was filed,
13 or within three years of the due date prescribed for the filing
14 of the return, whichever is later, and no proceeding in court
15 without assessment for the collection of any ~~[such]~~ of the
16 taxes shall be begun after the expiration of the period. Where
17 the assessment of the tax imposed by this chapter has been made
18 within the period of limitation properly applicable thereto, the
19 tax may be collected by levy or by a proceeding in court, but
20 only if the levy is made or the proceeding was begun within ten
21 years after the assessment of the tax. For any tax that has



1 been assessed prior to July 1, 2009, the levy or proceeding
2 shall be barred after June 30, 2019.

3 (d) In the case of a false or fraudulent return with
4 intent to evade tax, or of a failure to file the annual,
5 semiannual, quarterly, or monthly return, as the case may be,
6 the tax may be assessed or levied at any time; however, in the
7 case of a return claimed to be false or fraudulent with intent
8 to evade tax, the determination as to the claim shall first be
9 made by a judge of the circuit court as provided in section
10 235-111(c), which shall apply to the tax imposed by this
11 chapter."

12 SECTION 4. Section 238-7, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§238-7 Audits; additional assessments; refunds.** Sections
15 237-36 to 237-40 of the general excise tax law are hereby made
16 applicable to the taxes imposed by this chapter, to the
17 refunding of overpayments thereof, and to assessments,
18 investigations, and audits in connection therewith, for which
19 purpose any references therein to "gross income" or "gross
20 proceeds of sale" shall be deemed to refer to the purchase price
21 or value, as the case may be, subject to tax under this
22 chapter [~~and any references to the "annual return" shall, if~~



1 ~~the taxpayer is not required to file an annual return under this~~
2 ~~chapter, be deemed to refer to the monthly return mentioned in~~
3 ~~the first paragraph of section 238-5]."~~

4 SECTION 5. Section 243-14, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) The amount of license taxes imposed by this chapter
7 shall be assessed or levied, or the overpayment, if any, shall
8 be credited within three years after filing of the monthly
9 statement, or within three years of the due date prescribed for
10 the filing of the statement, whichever is later. No proceeding
11 in court without assessment for the collection of the taxes or
12 the enforcement of the liability shall begin after the
13 expiration of the three-year period. Where the assessment of
14 the tax imposed by this chapter has been made within the period
15 of limitation properly applicable thereto, the tax may be
16 collected by levy or by a proceeding in court, but only if the
17 levy is made or the proceeding was begun within ten years after
18 the assessment of the tax. For any tax that has been assessed
19 prior to July 1, 2009, the levy or proceeding shall be barred
20 after June 30, 2019. As to all tax payments for which a refund
21 or credit is not authorized by this section (including, without
22 prejudice to the generality of the foregoing, cases of



1 unconstitutional), the remedies provided by appeal or by
2 section 40-35 are exclusive."

3 SECTION 6. Section 247-6.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§247-6.5[+] Limitation period for assessment, levy,
6 collection, or credit. The amount of conveyance taxes imposed
7 by this chapter shall be assessed or levied, and the
8 overpayment, if any, shall be credited within three years after
9 filing of the certificate prescribed by section 247-6. No
10 proceeding in court without assessment for the collection of the
11 taxes shall be begun after the expiration of the three-year
12 period. Where the assessment of the tax imposed by this chapter
13 has been made within the period of limitation properly
14 applicable thereto, the tax may be collected by levy or by a
15 proceeding in court, but only if the levy is made or the
16 proceeding was begun within ten years after the assessment of
17 the tax. For any tax that has been assessed prior to July 1,
18 2009, the levy or proceeding shall be barred after June 30,
19 2019.

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



1 SECTION 7. Section 251-8, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Except as otherwise provided by this section, the
4 amount of surcharge taxes imposed by this chapter shall be
5 assessed or levied within three years after the annual return
6 was filed, or within three years of the due date prescribed for
7 the filing of the return, whichever is later, and no proceeding
8 in court without assessment for the collection of any such
9 surcharge taxes shall begin after the expiration of the period.
10 Where the assessment of the tax imposed by this chapter has been
11 made within the period of limitation properly applicable
12 thereto, the tax may be collected by levy or by a proceeding in
13 court, but only if the levy is made or the proceeding was begun
14 within ten years after the assessment of the tax. For any tax
15 that has been assessed prior to July 1, 2009, the levy or
16 proceeding shall be barred after June 30, 2019."

17 SECTION 8. Section 346E-6, Hawaii Revised Statutes, is
18 amended by amending subsections (c) and (d) to read as follows:

19 "(c) Except as otherwise provided by this section, the
20 amount of taxes imposed by this chapter shall be assessed or
21 levied within three years after the annual, quarterly, or
22 semiannual return, whichever is earlier, was filed, or within



1 three years of the due date prescribed for the filing of the
2 return, whichever is later. No proceeding in court without
3 assessment for the collection of any such taxes shall be begun
4 after the expiration of the period. Where the assessment of the
5 tax imposed by this chapter has been made within the period of
6 limitation properly applicable thereto, the tax may be collected
7 by levy or by a proceeding in court, but only if the levy is
8 made or the proceeding was begun within ten years after the
9 assessment of the tax. For any tax that has been assessed prior
10 to July 1, 2009, the levy or proceeding shall be barred after
11 June 30, 2019.

12 (d) In the case of a false or fraudulent return with
13 intent to evade tax, or a failure to file the annual, quarterly,
14 or semiannual return, as the case may be, the tax may be
15 assessed or levied at any time."

16 SECTION 9. Section 431:7-204.6, Hawaii Revised Statutes,
17 is amended by amending subsection (a) to read as follows:

18 "(a) The amount of insurance taxes imposed by this chapter
19 shall be assessed or levied within three years after the annual
20 return was filed, or within three years of the due date
21 prescribed for the filing of the return, whichever is later, and
22 no proceeding in court without assessment for the collection of



1 any [such] taxes shall be begun after the expiration of the
2 period. Where the assessment of the tax imposed by this chapter
3 has been made within the period of limitation properly
4 applicable thereto, the tax may be collected by levy or by a
5 proceeding in court, but only if the levy is made or the
6 proceeding was begun within ten years after the assessment of
7 the tax. For any tax that has been assessed prior to July 1,
8 2009, the levy or proceeding shall be barred after June 30,
9 2019."

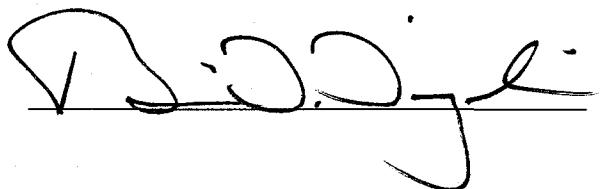
10 SECTION 10. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 11. This Act does not affect rights and duties
13 that matured, penalties that were incurred, and proceedings that
14 were begun, before its effective date.

15 SECTION 12. This Act shall take effect on July 1, 2009;
16 provided that sections 2, 3, and 8, relating to provisions
17 therein for statutes of limitations on assessments of tax for
18 periodic tax returns shall be effective for tax returns filed
19 after June 30, 2009.

20

INTRODUCED BY:



Report Title:

Taxation; Statutes of Limitations

Description:

Establishes a ten-year statute of limitations on tax collections. Clarifies that the three-year statute of limitations on tax assessments for the general excise tax, use tax, and other period taxes begins running from the filing of each periodic return

