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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 comprised of what  
9 is known as the "cash economy." Hawaii's tax gap is estimated  
10 to be about \$2,000,000,000 in unreported and unpaid taxes every  
11 year 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  
18 seller. However, cash transactions are also the simplest means

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

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

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

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

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

8 SECTION 2. Chapter 231, Hawaii Revised Statutes, is  
9 amended to add two new parts to be appropriately designated and  
10 to read as follows:

11 **"CIVIL COMPLIANCE; SPECIAL ENFORCEMENT SECTION**

12 **§231-A Special enforcement section; created.** There is  
13 created within the department of taxation the special  
14 enforcement section to carry out civil enforcement efforts as  
15 directed by the director. The director may staff the section as  
16 the exigencies of the public service may require.

17 **§231-B Special enforcement section; functions, powers, and**  
18 **duties.** The special enforcement section shall have the  
19 following functions, powers, and duties:

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

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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.

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 power.**

18 (a) The director may appoint, commission, or detail to the  
19 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          (c) The department of taxation is authorized to establish  
17          six new full-time equivalent (6.0 FTE) positions to serve as  
18          investigators, investigator assistants, licensed attorneys,  
19          other support staff, in addition to utilizing current and  
20          existing employees of the department of taxation, to staff the  
21          special enforcement section as the exigencies of the public  
22          service may require.

1           §231-D Right to inspection of books, records, and premises;  
2 warrants and writs; levy and seizure. (a) Upon presenting  
3 credentials, the special enforcement section may examine any  
4 books, papers, records, and any article or item of business  
5 transacted of any person engaged in business in this State to  
6 verify the accuracy of the reporting and payment of the taxes  
7 imposed by law. Every person in possession of any books,  
8 papers, records, or articles or items of business transacted,  
9 and the person's agents and employees, are directed and required  
10 to provide the special enforcement section the means,  
11 facilities, and opportunities for the examinations upon request.

12           (b) The special enforcement section may inspect the  
13 operations, premises, and storage areas of any person engaged in  
14 business in this State during regular business hours.

15           (c) The special enforcement section may inspect the  
16 operations, premises, and storage areas of any person engaged in  
17 business in this State at any time, without notice, upon the  
18 issuance of a warrant or writ of entry based upon probable cause  
19 of a violation under title 14. The determination of probable  
20 cause for purposes of this section shall be made based upon the  
21 standard of probable cause for an administrative or civil search  
22 or seizure. Application for a search warrant or writ of entry

1 under this section shall be made by making a declaration, under  
2 oath, which includes the following:

- 3 (1) The taxpayer's form of business;
- 4 (2) The taxpayer's interest in and address of the premises  
5 sought to be searched;
- 6 (3) Whether permission to search the premises has been  
7 requested in advance of requesting the warrant or  
8 writ;
- 9 (4) The particular books, records, items, articles,  
10 assets, or contraband reasonably believed to be on the  
11 premises; and
- 12 (5) The alleged violation reasonably believed to have  
13 occurred, including nonpayment of taxes; and, if  
14 searching or seizing in furtherance of collection,  
15 identification of the assets reasonably believed to be  
16 on the premises.

17 The special enforcement section may apply to the circuit  
18 court where the person is located for issuance of such warrant  
19 or writ. The special enforcement section is authorized to  
20 execute warrants or writs of entry. Any police officer,  
21 criminal investigator, or deputy sheriff of this State or any  
22 county shall be required to render assistance and aid to the

1 special enforcement section in executing warrants and writs,  
2 upon request. Criminal law enforcement agencies that assist the  
3 special enforcement section may be compensated a portion of the  
4 proceeds ultimately collected by the special enforcement  
5 section, as determined by the director.

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

13 (e) The special enforcement section shall be authorized to  
14 seize and levy any assets in the custody or control of any  
15 person pursuant to chapter 231.

16 **§231-E Identification of cash-economy cases; retention of**  
17 **funds.** (a) Notwithstanding any law to the contrary, each  
18 fiscal year, the special enforcement section is authorized to  
19 identify any taxpayer, assessment, investigation, or collection  
20 matter as a matter of the special enforcement section. All  
21 revenues collected from the special enforcement section matters  
22 shall be deposited into the tax administration special fund.

1           **§231-F Violent interference with a tax official.** Any  
2 person who interferes, hinders, obstructs, prevents, or impedes  
3 any investigator or employee of the department with violence or  
4 threat of violence, shall be guilty of a class C felony and,  
5 upon conviction, shall be subject to one or any combination of  
6 the following:

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

10 provided that a corporation shall be fined not less than  
11 \$10,000.

12           This section shall be construed in accordance with  
13 regulations and judicial interpretations given to similar  
14 provisions of the Internal Revenue Code.

15                           **CASH ECONOMY ENFORCEMENT; CITATIONS**

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

1           (b) The department may prescribe by rule the circumstances  
2 and the civil monetary fines citable for unlawful actions under  
3 title 14. Any monetary fine adopted by rule under this section  
4 shall not exceed \$500; provided that the monetary fine shall not  
5 exceed \$1,000 for a cash-based business. Notwithstanding any  
6 law to the contrary, the department may prescribe rules under  
7 this section without regard to chapters 91 and 201M; provided  
8 that:

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

13           (c) Any fine assessed under this section shall be a matter  
14 of the special enforcement section under section 231-E and shall  
15 be retained and deposited into the tax administration special  
16 fund.

17           (d) Any fine assessed shall be due and payable thirty days  
18 after issuance, subject to appeal rights provided under  
19 subsection (e); provided that if payment of the fine is  
20 determined to be in jeopardy, such fine shall be payable  
21 immediately and shall be immediately collected. Any amount of  
22 fine collected under jeopardy shall only be returned upon a



1 finding by the director that there was no violation of title 14  
2 pursuant to appeal rights provided under subsection (e).

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

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

13 **§231-I Cash-based business; defined.** For purposes of this  
14 part, "cash-based business" means any person, that operates a  
15 business, including for-profit or not-for-profit, where  
16 transactions in goods or services are exchanged substantially  
17 for cash and where the business is found, based upon reasonable  
18 cause including observation or evidence, to have met one of the  
19 following factors:

20 (1) Is found to have substantially underreported or  
21 misrepresented the proper amount of tax liability on  
22 any return or other submission to the department. For

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

1           (10) Any other factor relevant to describing a cash-based  
2           business capable of noncompliance as determined by the  
3           director and issued pursuant to a tax information  
4           release or tax announcement.

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

17           **§231-K Failure to keep adequate books and records.** It  
18 shall be unlawful for any person required under title 14 to keep  
19 books or records to fail to produce the books or records upon  
20 demand by the special enforcement section. Any person who  
21 violates this section shall be subject to a fine not to exceed

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

3       **§231-L Failure to record transaction by receipt.** It shall  
4 be unlawful to conduct more than ten business transactions per  
5 day in cash and fail to provide a receipt or other record of the  
6 transaction when the means for issuing a receipt or recording  
7 the transaction are available. Each day a person is in  
8 violation of this section shall be treated as a separate  
9 violation. Any person who violates this section shall be  
10 subject to a fine not to exceed \$1,000; provided that if the  
11 person is a cash-based business the fine shall not exceed  
12 \$2,000.

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

1           **§231-N Tax avoidance price fixing.** It shall be unlawful  
2 for any person to sell, offer to sell, or otherwise convey more  
3 than one price for any business to be transacted when the lower  
4 price is offered if the transaction is paid for in cash. It  
5 shall not be a penalty under this section if a business charges  
6 a higher price for legitimate business purposes, as determined  
7 by the director, such as for the purpose of recovering any  
8 charges assessed the business, including for facilitating  
9 electronic payment. Any person who violates this section shall  
10 be subject to a fine not to exceed \$2,000; provided that if the  
11 person is a cash-based business, the fine shall not exceed  
12 \$3,000.

13           **§231-O Possession of currency for tax avoidance purposes.**  
14 It shall be unlawful for any person engaged in business in this  
15 State to possess currency in the form of coin or note, where  
16 such possession is for tax avoidance purposes. There shall be a  
17 presumption that a person is in possession of currency for tax  
18 avoidance purposes where the person has in their possession  
19 currency with value exceeding \$5,000, which does not have a  
20 readily available legitimate business purpose. The department  
21 is authorized to establish other presumptions by rule. It shall  
22 be the department's burden to establish that currency is

1 possessed for tax avoidance purposes; provided that  
2 circumstantial evidence may be utilized by the department in any  
3 proceeding. Any person who violates this section shall be  
4 subject to a fine not to exceed \$2,000; provided that if the  
5 person is a cash-based business the fine shall not exceed  
6 \$3,000.

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

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

19 "Person" [~~as used in sections 231-34, 231-35, and 231-36~~]  
20 includes one or more individuals, a company, corporation, a  
21 partnership, an association, or any other type of legal entity,  
22 and also includes an officer or employee of a corporation, a

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1 partner or employee of a partnership, a trustee of a trust, a  
2 fiduciary of an estate, or a member, employee, or principal of  
3 any other entity, who as such officer, employee, partner,  
4 trustee, fiduciary, member, or principal is under a duty to  
5 perform and is principally responsible for performing the act  
6 [~~in respect of which the violation occurs~~]."

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

9 "§235-20.5 Tax administration special fund; established.

10 (a) There is established a tax administration special fund, into  
11 which shall be deposited:

12 (1) [~~fees~~] Fees collected under sections 235-20, 235-110.9,  
13 and 235-110.91 [~~, and~~] ;

14 (2) [~~penalties~~] Penalties collected under section 2 of Act  
15 206, [~~+~~]Session Laws of Hawaii 2007[~~-~~] ; and

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

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

4        (1) Issuing comfort letters;

5        (2) Administering the tax [~~credit~~] credits under [~~section~~]  
6        sections 235-110.9 [~~, including issuing certificates; and~~

7        ~~(3) Issuing certificates under section]~~ and 235-110.91 [~~-~~] ;

8        and

9        (3) Administering the operations of the special enforcement  
10        section."

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

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



1 ~~[Any person licensed or holding a license under this chapter~~  
2 ~~before January 1, 1990, shall pay a one time license renewal fee~~  
3 ~~of \$20 on or before January 31, 1990, as a condition precedent to~~  
4 ~~engaging or continuing in business.]~~ The license shall not be  
5 transferable and shall be valid only for the person in whose name  
6 it is issued and for the transaction of business at the place  
7 designated therein. The license may be inspected and examined,  
8 and shall at all times be conspicuously displayed at the place  
9 for which it is issued.

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

1        (c) Any person who receives gross income or gross proceeds  
2 of sales or value of products from engaging in business in the  
3 State and who fails to obtain a license or receives gross income  
4 or gross proceeds of sales or value of products from engaging in  
5 business in the State without a license required under this  
6 section shall be fined not more than \$500; provided that a cash-  
7 based business shall be fined not less than \$500 and not more  
8 than \$2,000, as determined by the director or the director's  
9 designee. The penalty under this subsection shall be in addition  
10 to any other penalty provided under law.

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

20        [~~(d)~~] (e) The director may permit a person engaged in  
21 network marketing, multi-level marketing, or other similar  
22 business to obtain the license required under this section for

1 purposes of becoming a tax collection agent on behalf of its  
2 direct sellers. The tax collection agent shall report, collect,  
3 and pay over the taxes due under this chapter and chapter 238 on  
4 behalf of its direct sellers who are covered by the tax  
5 collection agreement. The tax collection agent's direct sellers  
6 shall be deemed to be licensed under this chapter; provided that  
7 the licensure shall apply solely to the business activity  
8 conducted directly through the marketing arrangement. Under this  
9 section, a tax collection agent shall:

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

1 relevant to ensure proper payment of taxes due under  
2 this section; and

3 (3) Be personally liable for the taxes due and collected  
4 under the tax collection agreement if taxes are  
5 collected, but not reported or paid, together with  
6 penalties and interest as provided by law.

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

8 "Cash-based business" has the same meaning as in section  
9 231-I.

10 "Consumer product" shall include tangible consumer products  
11 and intangible consumer services.

12 "Direct seller" means any person who is engaged in the trade  
13 or business of selling (or soliciting the sale of) consumer  
14 products:

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

19 (2) Other than in a permanent retail establishment;  
20 provided that:

21 (A) Substantially all the remuneration (whether or not  
22 paid in cash) for the sale of consumer products is

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1 directly related to sales or other output rather  
2 than to the number of hours worked; and

3 (B) The sales of consumer products by the person are  
4 performed pursuant to a written contract that  
5 provides that the person will not be treated as an  
6 employee with respect to those sales for federal  
7 or state tax purposes.

8 "Direct seller" includes individuals who realize  
9 remuneration dependent on the productivity of other individuals  
10 in the marketing arrangement.

11 "Network marketing" or "multi-level marketing" means a  
12 marketing arrangement in which consumer products are distributed  
13 and sold to or through direct sellers."

14 SECTION 6. There is appropriated out of the tax  
15 administration special fund the sum of \$500,000, or so much  
16 thereof as may be necessary for fiscal year 2009-2010, and the  
17 sum of \$500,000, or so much thereof as may be necessary for  
18 fiscal year 2010-2011, to carry out the purposes of this Act,  
19 including the hiring of necessary staff, and other expenditures  
20 relating to the operations of the special enforcement section.

21 The sums appropriated shall be expended by the department of  
22 taxation.

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

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

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

11          SECTION 10. This Act shall take effect upon its approval;  
12 provided that:

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



**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.



JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TAX ADMINISTRATION.

PURPOSE: To increase tax compliance of cash-based businesses by forming a section within the Department of Taxation dedicated to pursuing sensitive tax compliance projects and providing this section with enforcement tools to accomplish its purpose.

MEANS: Add two new parts to chapter 231, Hawaii Revised Statutes (HRS); and amend sections 235-20.5 and 237-9, HRS.

JUSTIFICATION: In all tax systems, the government is continually working to reduce tax noncompliance known as the "tax gap." Hawaii's tax gap is estimated to be about \$2,000,000,000 in unreported and unpaid taxes every year with approximately \$1,000,000,000 attributed to the cash economy. Focusing resources on shoring up compliance in this area should be a priority.

Cash-based transactions are a fundamental part of any economy. Cash is inherently private, efficient, and predictable for both purchaser and seller. However, cash transactions are also the simplest means of underreporting or non-reporting for tax purposes because no bank, no means of electronic oversight, and no intermediary maintains records of the movement of funds from one pocket to another. By focusing resources on the cash economy, the Department of Taxation can ensure fairness in the tax system for those that comply without raising taxes or otherwise substantially burdening Hawaii's economy as a whole.

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The purpose of this legislation is to provide the Department of Taxation with the necessary resources and tools to target high-risk, cash-based transactions to shore up confidence in Hawaii's tax system. In this regard, this measure ensures that all sectors of Hawaii's economy, including those prone to substantial underreporting, are paying their fair share of taxes.

Importantly, this legislation is intended to focus on the civil collection and enforcement nature of Hawaii's tax laws--not criminal. This measure accomplishes its purpose by forming the Special Enforcement Section, a group of tax officials charged with handling sensitive and high-risk civil tax cases. This measure also provides various enforcement tools, including the authority to issue monetary fines, adopt fines by rule, and issue injunctions.

Impact on the public: The public is impacted only to the extent that this bill enforces tax compliance against non-compliant cash-based businesses.

Impact on the department and other agencies: The Department of Taxation civil enforcement functions, the Department of the Attorney General, and the county prosecuting attorney offices will be equipped with additional tax enforcement tools.

GENERAL FUND: \$11,900,000 revenue gain in fiscal year 2009-2010; \$35,600,000 revenue gain in fiscal year 2010-2011; \$47,400,000 revenue gain in fiscal year 2011-2012.

OTHER FUNDS: \$500,000 revenue loss to the Tax Administration Special Fund in fiscal year 2009-2010.

PPBS PROGRAM DESIGNATION: TAX-100.

OTHER AFFECTED

AGENCIES:

Department of the Attorney General, County Prosecuting Attorney Offices, and Department of Human Resources Development.

EFFECTIVE DATE:

Upon its approval; provided that amendments creating citable offenses shall take effect on July 1, 2009.