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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 Part I.

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

5 "§231- Designation of period; payments; penalties. A  
6 taxpayer may designate the tax period for any tax payment made  
7 by, or any penalty assessed on, the taxpayer; provided that the  
8 payment or penalty is paid pursuant to applicable provisions of  
9 law.

10 §231- Equitable relief. (a) A taxpayer, including a  
11 taxpayer applying for spousal relief, shall be relieved of any  
12 tax liability, or a portion thereof under title 14, if:

13 (1) By taking into account all the facts and circumstances  
14 of the taxpayer's situation, the department of  
15 taxation finds that it is inequitable and unjust to  
16 hold the taxpayer liable for that liability; and

17 (2) No other relief is available to the taxpayer under  
18 title 14."



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

3 "§232-1 Appeals by persons under contractual  
4 obligations [-]; burden of proof. (a) Whenever any person is  
5 under a contractual obligation to pay a tax assessed against  
6 another, the person shall have the same rights of appeal to the  
7 board of review, the tax appeal court, and the intermediate  
8 appellate court, subject to chapter 602, in the person's own  
9 name, as if the tax were assessed against the person. The  
10 person against whom the tax is assessed shall also have a right  
11 to appear and be heard on any such application or appeal.

12 (b) In any proceeding before the board of review or the  
13 tax appeal court, if a taxpayer introduces credible evidence  
14 with respect to any factual issue relevant to ascertaining the  
15 liability of the taxpayer for any tax, interest, or penalty  
16 imposed under title 14, the department of taxation shall have  
17 the burden of proof to prove otherwise with respect to the  
18 issue; provided that:

19 (1) The taxpayer has complied with the requirements under  
20 title 14 to substantiate any disputed item or issue;  
21 and



1       (2) The taxpayer has maintained all records required under  
2           title 14 and has cooperated with reasonable requests  
3           by the department of taxation for witnesses,  
4           information, documents, meetings, and interviews.

5       (c) The department of taxation shall have the burden of  
6       proof in any proceeding with respect to any item of income that  
7       was reconstructed by the department solely through the use of  
8       statistical information on unrelated taxpayers.

9       (d) Notwithstanding any other law to the contrary, the  
10       department of taxation shall have the burden of production in  
11       any proceeding with respect to the liability of any taxpayer for  
12       any penalty, additional tax or amount imposed under title 14.

13                                   Part II.

14       SECTION 3.   **Purpose.**   The purpose of this part is to  
15       establish a state tax amnesty program to induce payments of  
16       delinquent taxes.   The program provides a waiver of penalties  
17       assessed for outstanding liabilities for taxable periods or  
18       transactions on or before December 31, 2008.   The tax amnesty  
19       program applies to all taxes collected and administered by the  
20       State and does not apply to any real property tax or vehicular  
21       tax.



1           The legislature finds that a public purpose is served by  
2 the waiver of tax penalties and criminal prosecution in return  
3 for the immediate reporting and payment of previously  
4 underreported, unreported, or unpaid tax liabilities. The  
5 legislature further finds that the benefits gained through this  
6 program include:

- 7           (1) Increased collection of certain currently owed taxes,  
8           and  
9           (2) Finding system taxpayers who have been evading the  
10           payment of taxes and providing an opportunity for them  
11           to satisfy their tax obligations before tax  
12           enforcement programs take effect.

13           It is the intent of the legislature that the tax amnesty  
14 program provided under this Act be a one-time occurrence that  
15 shall not be offered again because taxpayers' expectations of  
16 any future amnesty programs could have a counterproductive  
17 effect on compliance under this Act.

18           SECTION 4. **Title.** The Act under this part shall be known  
19 and may be cited as the "Tax Amnesty Program Act".

20           SECTION 5. **Definitions.** As used in this Act:

21           "Accounts receivable" means an amount of state tax,  
22 penalty, or interest that has been recorded as due and entered



1 in the account records or any ledger maintained in the  
2 department or that a taxpayer should reasonably expect to become  
3 due as a direct or indirect result of any pending or completed  
4 audit or investigation that a taxpayer knows is being conducted  
5 by the State.

6 "Department" means the department of taxation.

7 "Director" means the director of taxation.

8 "Final, due, and owing" means an assessment that has become  
9 final and is owed to the State, due to either the expiration of  
10 a taxpayer's appeal rights or the rendition of the final order  
11 by the director or by any court of this State. Assessments that  
12 have been appealed shall be final, due, and owing fifteen days  
13 after the last unappealed or unappealable order sustaining the  
14 assessment or any part thereof that has become final.

15 Assessments that have not been appealed shall be final, due, and  
16 owing thirty days after service of notice of assessment.

17 "Taxpayer" means any individual, partnership, joint  
18 venture, association, corporation, receiver, trustee, guardian,  
19 executor, administrator, fiduciary, or any other entity of any  
20 kind subject to any tax in title 14, Hawaii Revised Statutes, or  
21 any person required to collect any tax under title 14, Hawaii  
22 Revised Statutes.



1 SECTION 6. Tax amnesty program; applicable time period.

2 (a) The director shall develop and administer a one-time tax  
3 amnesty program as provided in this Act. The director, upon the  
4 voluntary return and remission of taxes and interest owed by any  
5 taxpayer, shall waive all penalties that are assessed or subject  
6 to being assessed for outstanding liabilities for taxable  
7 periods ending or transactions occurring on or before December  
8 31, 2008. The director shall provide by rule, pursuant to  
9 chapter 91, Hawaii Revised Statutes, as necessary, for the  
10 administration of this amnesty program and shall further provide  
11 for necessary forms for the filing of amnesty applications and  
12 returns.

13 (b) Notwithstanding any other law to the contrary, the tax  
14 amnesty program shall begin by October 31, 2009, and shall be  
15 completed no later than December 31, 2009, and shall apply to  
16 all taxpayers owing taxes, penalties, or interest administered  
17 by the director under title 14, Hawaii Revised Statutes, except  
18 that the tax amnesty shall not apply to any real property tax or  
19 any tax levied pursuant to chapter 249, Hawaii Revised Statutes.

20 The program shall apply to tax liabilities for taxable  
21 periods ending or transactions occurring on or before December



1 31, 2008. Amnesty tax return forms shall be in a form  
2 prescribed by the director.

3 SECTION 7. **Eligibility requirements.** (a) This Act shall  
4 apply to any taxpayer who files an application for amnesty  
5 within the time prescribed by the director and does the  
6 following:

7 (1) Files all returns as may be required by the director  
8 for all years or tax reporting periods as stated on  
9 the application for which returns have not previously  
10 been filed and files all returns as may be required by  
11 the director for all years or tax reporting periods  
12 for which returns were filed but the tax liability was  
13 underreported; and

14 (2) Pays in full the taxes due for the periods and taxes  
15 applied for at the time the application or amnesty tax  
16 returns are filed within the designated amnesty  
17 program period.

18 In addition to the requirements set forth in paragraphs (1) and  
19 (2), the director, may impose, by rule, the further condition  
20 that any eligible taxpayer pay in full, within the amnesty  
21 period, all taxes previously assessed by the director that are



1 final, due, and owing at the time the application or amnesty tax  
2 returns are filed.

3 (b) An eligible taxpayer may participate in the amnesty  
4 program regardless of whether the taxpayer is under audit,  
5 notwithstanding the fact that the amount due is included in a  
6 proposed assessment or an assessment, bill, notice, or demand  
7 for payment issued by the director and without regard to whether  
8 the amount due is subject to a pending administrative or  
9 judicial proceeding. An eligible taxpayer may participate in  
10 the amnesty program to the extent of the uncontested portion of  
11 any assessed liability. However, participation in the program  
12 shall be conditioned upon the taxpayer's agreement that the  
13 right to protest or initiate an administrative or judicial  
14 proceeding or to claim any refund of moneys paid under the  
15 program is barred with respect to the amounts paid with the  
16 application or amnesty return.

17 (c) The director shall allow installment payment  
18 agreements in cases of severe hardship in lieu of the complete  
19 payment required under subsection (a). In those cases, twenty-  
20 five per cent of the amount due shall be paid with the  
21 application or amnesty return, with the balance to be paid in  
22 monthly installments determined by the taxpayer and the





1 director. Failure of the taxpayer to make timely payments shall  
2 void the terms of the amnesty. All agreements and payments  
3 shall not include interest due and accruing during the  
4 installment agreement.

5 SECTION 8. **Amnesty provisions.** (a) Amnesty shall be  
6 granted for any taxpayer who meets the requirements of section 7  
7 of this Act in accordance with the following:

8 (1) For taxes that are owed as a result of the  
9 nonreporting or underreporting of tax liabilities or  
10 the nonpayment of any accounts receivable owed by an  
11 eligible taxpayer, the State shall waive criminal  
12 prosecution and all civil penalties that may be  
13 assessed under title 14, Hawaii Revised Statutes, for  
14 the taxable years or periods for which the tax amnesty  
15 is requested; and

16 (2) With the exception of instances in which the taxpayer  
17 and director enter into an installment payment  
18 agreement authorized under section 7(c) of this Act,  
19 the failure to pay all taxes as shown on the  
20 taxpayer's amnesty tax return shall invalidate any  
21 amnesty granted pursuant to this Act.



1           (b) This Act shall not apply to any taxpayer who is on  
2 notice, written or otherwise, of a criminal investigation being  
3 conducted by an agency of the State or any county or the United  
4 States, nor shall this Act apply to any taxpayer who is the  
5 subject of any criminal litigation that is pending on the date  
6 of the taxpayer's application in any court of this State or the  
7 United States for nonpayment, delinquency, evasion, or fraud in  
8 relation to any federal taxes or to any of the taxes to which  
9 this amnesty program is applicable.

10           (c) No refund or credit shall be granted for any interest  
11 or penalty paid prior to the time the taxpayer requests amnesty  
12 pursuant to section 7 of this Act.

13           (d) Unless the director, in the director's discretion,  
14 redetermines the amount of taxes and interest due, no refund or  
15 credit shall be granted for any taxes or interest paid under the  
16 amnesty program.

17           SECTION 9. **Public awareness.** The director shall adopt  
18 rules under chapter 91, Hawaii Revised Statutes, as necessary,  
19 issue forms and instructions, and take all actions necessary to  
20 implement this Act. The director shall publicize the tax  
21 amnesty program in order to maximize the public awareness of,  
22 and participation in the program. The director, for the purpose



1 of publicizing the tax amnesty program, may contract with any  
2 advertising agency within or outside this State.

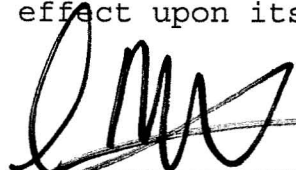
3 SECTION 10. **Separate accounting.** For purposes of  
4 accounting for the revenues received pursuant to this Act, the  
5 director shall maintain an accounting and reporting of funds  
6 collected under the amnesty program. All funds collected shall  
7 be remitted to the general fund.

8 Part III.

9 SECTION 11. This Act shall take effect upon its approval.

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INTRODUCED BY:

  
\_\_\_\_\_  
Calvin K. King



**Report Title:**

Taxation; Amnesty; Burden of Proof; Equitable Relief

**Description:**

Establishes an amnesty for delinquent income tax obligations, provides equitable relief in certain tax situations, and places the burden of proof on the department of taxation in certain circumstances.

