
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 finds that
15 it is inequitable and unjust to hold the taxpayer
16 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 shall have the burden to
17 prove otherwise with respect to the issue; provided that:

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

21 (2) The taxpayer has maintained all records required under
22 title 14 and has cooperated with reasonable requests



1 by the department for witnesses, information,
2 documents, meetings, and interviews.

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

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

11 PART II

12 SECTION 3. **Purpose.** The purpose of this part is to
13 establish a state tax amnesty program to induce payments of
14 delinquent taxes. The program provides a waiver of penalties
15 assessed for outstanding liabilities for taxable periods or
16 transactions on or before December 31, 2010. The tax amnesty
17 program applies to all taxes collected and administered by the
18 State and does not apply to any real property tax or vehicular
19 tax.

20 The legislature finds that a public purpose is served by
21 the waiver of tax penalties and criminal prosecution in return
22 for the immediate reporting and payment of previously



1 underreported, unreported, or unpaid tax liabilities. The
2 legislature further finds that the benefits gained through this
3 program include:

4 (1) Increased collection of certain currently owed taxes;
5 and

6 (2) Finding taxpayers who have been evading the payment of
7 taxes and providing an opportunity for them to satisfy
8 their tax obligations before tax enforcement efforts
9 are undertaken.

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

15 SECTION 4. **Title.** This part shall be known and may be
16 cited as the "Tax Amnesty Program Act".

17 SECTION 5. **Definitions.** As used in this part:

18 "Accounts receivable" means an amount of state tax,
19 penalty, or interest that has been recorded as due and entered
20 in the account records or any ledger maintained in the
21 department or that a taxpayer should reasonably expect to become
22 due as a direct or indirect result of any pending or completed



1 audit or investigation that a taxpayer knows is being conducted
2 by the State.

3 "Department" means the department of taxation.

4 "Director" means the director of taxation.

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

12 Assessments that have not been appealed shall be final, due, and
13 owing twenty days after service of the notice of assessment.

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

20 SECTION 6. **Tax amnesty program; applicable time period.**

21 (a) The director shall develop and administer a one-time tax
22 amnesty program as provided in this part. The director, upon



1 the voluntary return and remission of taxes and interest owed by
2 any taxpayer, shall waive all penalties that are assessed or
3 subject to being assessed for outstanding liabilities for
4 taxable periods ending or transactions occurring on or before
5 December 31, 2010. The director shall provide by rule, pursuant
6 to chapter 91, Hawaii Revised Statutes, as necessary, for the
7 administration of this amnesty program and shall further provide
8 for necessary forms for the filing of amnesty applications and
9 returns.

10 (b) Notwithstanding any other law to the contrary, the tax
11 amnesty program shall begin by October 31, 2011, and shall be
12 completed before January 1, 2012, and shall apply to all
13 taxpayers owing taxes, penalties, or interest administered by
14 the director under title 14, Hawaii Revised Statutes, except
15 that the tax amnesty shall not apply to any real property tax or
16 any tax levied pursuant to chapter 249, Hawaii Revised Statutes.

17 The program shall apply to tax liabilities for taxable
18 periods ending or transactions occurring on or before December
19 31, 2010. Amnesty tax return forms shall be in a form
20 prescribed by the director.

21 SECTION 7. **Eligibility requirements.** (a) This part shall
22 apply to any taxpayer who files an application for amnesty



1 within the time prescribed by the director and does the

2 following:

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

10 (2) Pays in full the taxes due for the periods and taxes
11 applied for at the time the application or amnesty tax
12 returns are filed within the designated amnesty
13 program period.

14 In addition to the requirements set forth in paragraphs (1) and
15 (2), the director may impose, by rule, the further condition
16 that any eligible taxpayer pay in full, within the amnesty
17 period, all taxes previously assessed by the director that are
18 final, due, and owing at the time the application or amnesty tax
19 returns are filed.

20 (b) An eligible taxpayer may participate in the amnesty
21 program regardless of whether the taxpayer is under audit,
22 notwithstanding the fact that the amount due is included in a



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

12 (c) The director shall allow installment payment
13 agreements in cases of severe hardship in lieu of the complete
14 payment required under subsection (a). In those cases, twenty-
15 five per cent of the amount due shall be paid with the
16 application or amnesty return, with the balance to be paid in
17 monthly installments determined by the taxpayer and the
18 director. Failure of the taxpayer to make timely payments shall
19 void the terms of the amnesty. All agreements and payments
20 shall not include interest due and accruing during the
21 installment agreement.



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

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

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

18 (b) This part shall not apply to any taxpayer who is on
19 notice, written or otherwise, of a criminal investigation being
20 conducted by an agency of the State or any county or the United
21 States, nor shall this Act apply to any taxpayer who is the
22 subject of any criminal litigation that is pending on the date



1 of the taxpayer's application in any court of this State or the
2 United States for nonpayment, delinquency, evasion, or fraud in
3 relation to any federal taxes or to any of the taxes to which
4 this amnesty program is applicable.

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

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

12 SECTION 9. **Public awareness.** The director shall adopt
13 rules under chapter 91, Hawaii Revised Statutes, as necessary,
14 issue forms and instructions, and take all actions necessary to
15 implement this part. The director shall publicize the tax
16 amnesty program to maximize the public awareness of, and
17 participation in the program. The director, for the purpose of
18 publicizing the tax amnesty program, may contract with any
19 advertising agency within or outside this State.

20 SECTION 10. **Separate accounting.** For purposes of
21 accounting for the revenues received pursuant to this part, the
22 director shall maintain an accounting and reporting of funds



1 collected under the amnesty program. All funds collected shall
2 be remitted to the general fund.

3 PART III

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

6 SECTION 12. This Act shall take effect on January 7, 2059.



Report Title:

Taxation; Amnesty; Burden of Proof; Equitable Relief

Description:

Establishes a one-time amnesty program 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. Effective January 7, 2059.
(HB119 HD1)

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