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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The purpose of this Act is to clarify the  
2 department of taxation's subpoena authority for civil and  
3 criminal tax investigations.

4           SECTION 2. Section 231-7, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "§231-7 ~~[Hearings]~~ Inquiries, investigations, hearings,  
7 and subpoenas. (a) The director of taxation, and any  
8 representative of the director duly authorized by the director,  
9 may conduct any civil inquiry, investigation, or hearing,  
10 relating to any assessment, or the amount of any tax, or the  
11 collection of any delinquent tax, including any inquiry ~~[or]~~,  
12 investigation, or hearing into the financial resources of any  
13 delinquent taxpayer or the collectability of any delinquent tax.

14           ~~[-(b)]~~ The director or other person conducting inquiries,  
15 investigations, or hearings may administer oaths and take  
16 testimony under oath relating to the matter of inquiry ~~[or]~~,  
17 investigation, or hearing, and subpoena witnesses and require  
18 the production of books, papers, documents, ~~[and records]~~



1 pertinent] or other objects designated therein or any other  
2 record however maintained, including those electronically  
3 stored, that are relevant or material to [such] the inquiry[-],  
4 investigation, or hearing.

5 [~~e~~] If any person disobeys any process or, having  
6 appeared in obedience thereto, refuses to answer pertinent  
7 questions put to the person by the director or other person  
8 conducting the inquiry, investigation, or hearing, or to produce  
9 any books, papers, documents, objects, or records pursuant  
10 thereto, the director or other person conducting the inquiry,  
11 investigation, or hearing may apply to the circuit court of the  
12 circuit wherein the inquiry [~~e~~], investigation, or hearing is  
13 being conducted, or to any judge of the court, setting forth the  
14 disobedience to process or refusal to answer, and the court or  
15 judge shall cite the person to appear before the court or judge  
16 to answer the questions or to produce the books, papers,  
17 documents, objects, or records, and upon the person's refusal so  
18 to do commit the person to jail until the person testifies but  
19 not for a longer period than sixty days. Notwithstanding the  
20 serving of the term of commitment by any person, the director  
21 may proceed in all respects as if the witness had not previously  
22 been called upon to testify. Witnesses (other than the taxpayer



1 or the taxpayer's or its officers, directors, agents, and  
2 employees) shall be allowed their fees and mileage as in cases  
3 in the circuit courts, to be paid on vouchers of the department  
4 of taxation, from any moneys available for expenses of the  
5 department.

6 (b) The director of taxation, and any representative of  
7 the director duly authorized by the director, when conducting a  
8 criminal investigation, subject to the privileges enjoyed by all  
9 witnesses in this State, may subpoena witnesses, examine them  
10 under oath, and require the production of any books, papers,  
11 documents, or other objects designated therein or any other  
12 record however maintained, including those electronically  
13 stored, that are relevant or material to the investigation. A  
14 subpoena issued under this subsection:

15 (1) Shall state that the subpoena is issued by the  
16 department and shall command each person to whom it is  
17 directed to attend and give testimony at the time and  
18 place specified therein, and may also command the  
19 person to whom it is directed to produce books,  
20 papers, documents, or other objects specifically  
21 designated therein;



- 1       (2) May be served at any place within the State by an  
2       investigator appointed pursuant to section 231-4.3 or  
3       any other law enforcement official with powers of a  
4       police officer;
- 5       (3) Shall require attendance of the witness only in the  
6       county wherein the witness is served with the subpoena  
7       or at any other place as is agreed upon by the witness  
8       and the department; provided that if the subpoena is  
9       served in a county other than that in which the  
10       witness resides or is employed or transacts the  
11       witness' business in person, the department shall bear  
12       the witness' expenses for travel to and attendance at  
13       the place named in the subpoena to the same extent as  
14       provided by the rules of court; and
- 15       (4) Shall contain a short, plain statement of the  
16       recipient's rights and the procedure for enforcing and  
17       contesting the subpoena.
- 18 Upon application by the director, a circuit court of the county  
19 wherein the witness resides or is found may compel obedience to  
20 the subpoena; provided that the court, on motion promptly made,  
21 may quash or modify the subpoena if compliance would be



1 unreasonable or oppressive or violate any privilege the witness  
2 may be entitled to exercise in a court proceeding.

3       ~~[(d)]~~ (c) Any subpoena issued under this section that does  
4 not identify the person with respect to whose liability,  
5 inquiry, or investigation the subpoena is issued may be served  
6 on any person only after a court proceeding in which the  
7 director or another person establishes that:

8       (1) The subpoena relates to the liability, inquiry, or  
9       investigation of a particular person or ascertainable  
10       group or class of persons;

11       (2) There is a reasonable basis for believing that the  
12       person or group or class of persons may fail or may  
13       have failed to comply with any provision of title 14;  
14       and

15       (3) The information sought to be obtained from the  
16       examination of records or testimony and the identity  
17       of the person or persons with respect to whose  
18       liability the subpoena is issued is not readily  
19       available from other sources.

20       (d) The department shall pay to a financial institution  
21 that is served a subpoena issued under this section a fee for  
22 reimbursement of costs as are necessary and that have been



1 directly incurred in searching for, reproducing, or transporting  
2 books, papers, documents, or other objects designated by the  
3 subpoena. Reimbursement shall be paid at the rate of \$15 per  
4 hour for research time and 50 cents per page for reproduction.

5 (e) Compliance with a subpoena issued pursuant to this  
6 section shall not give rise to a civil action for damages by an  
7 individual or entity as to whom testimony has been given or  
8 documents or other things provided in compliance with the  
9 subpoena.

10 [~~e~~] (f) The provisions of this section are in addition  
11 to all other provisions of law, and apply to any tax within the  
12 jurisdiction of the department."

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval,  
16 and shall apply to subpoenas issued on or after the effective  
17 date of this Act.



**Report Title:**

Department of Taxation; Subpoena Authority

**Description:**

Clarifies the Department of Taxation's subpoena authority for civil and criminal investigations. (HB801 HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

