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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 or criminal inquiry, investigation, or  
10 hearing, relating to any assessment, or the amount of any tax,  
11 or the collection of any delinquent tax, including any inquiry  
12 or investigation into the financial resources of any delinquent  
13 taxpayer or the collectability of any delinquent tax.

14           (b) The director of taxation or other person conducting  
15 hearings may administer oaths and take testimony under oath  
16 relating to the matter of inquiry [~~or~~], investigation, [~~and~~] or  
17 hearing.



1           (c) The director of taxation or other person conducting  
2 civil inquiries, investigations, or hearings may subpoena  
3 witnesses and require the production of books, papers,  
4 documents, [~~and records pertinent~~] or other objects designated  
5 therein or any other record however maintained, including those  
6 electronically stored, that are relevant or material to [such]  
7 the civil inquiry[-], investigation, or hearing; provided that  
8 the director of taxation or deputy director of taxation gives  
9 written approval for the issuance of a subpoena, after review  
10 for the appropriateness of the issuance. A subpoena issued  
11 under this subsection:

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

19           (2) May be served at any place within the State by an  
20 investigator appointed pursuant to section 231-4.3 or  
21 any other representative of the director duly  
22 authorized by the director;



1       (3) Shall require attendance of the witness only in the  
2       county wherein the witness is served with the subpoena  
3       or at any other place as is agreed upon by the witness  
4       and the department; provided that if the subpoena is  
5       served in a county other than that in which the  
6       witness resides, is employed, or transacts the  
7       witness's business in person, the department shall  
8       bear the witness's expenses for travel to and  
9       attendance at the place named in the subpoena to the  
10       same extent as provided by the rules of court, other  
11       than expenses for the taxpayer or the taxpayer's  
12       witness or its officers, directors, agents, or  
13       employees; and

14       (4) Shall contain a short, plain statement of the  
15       recipient's rights and the procedure for enforcing and  
16       contesting the subpoena.

17       [~~e~~] If any person disobeys any process or, having  
18       appeared in obedience thereto, refuses to answer pertinent  
19       questions put to the person by the director or other person  
20       conducting the civil inquiry, investigation, or hearing, or to  
21       produce any books, papers, documents, objects, or records  
22       pursuant thereto, the director [~~or other person conducting the~~



1 hearing] may apply to the circuit court of the circuit wherein  
2 the civil inquiry [øæ], investigation, or hearing is being  
3 conducted, or to any judge of the court, setting forth the  
4 disobedience to process or refusal to answer, and the court or  
5 judge shall cite the person to appear before the court or judge  
6 to answer the questions or to produce the books, papers,  
7 documents, objects, or records[, ~~and upon the person's refusal~~  
8 ~~se to de~~]; provided that the court, upon a motion promptly made  
9 by the subpoena recipient, may quash or modify the subpoena if  
10 compliance would be unreasonable or oppressive or violate any  
11 privilege the subpoena recipient would be entitled to exercise  
12 in a court proceeding. If the subpoena recipient fails or  
13 refuses to produce the subpoenaed books, papers, documents,  
14 objects, or record pursuant thereto, the court shall institute a  
15 contempt proceeding against the subpoena recipient, at which the  
16 court shall determine if there is good cause shown for the  
17 failure to obey the subpoena or refusal to testify. If no good  
18 cause is shown, the court does not quash or modify the subpoena,  
19 and the recipient fails or refuses to comply with the subpoena,  
20 then the court shall commit the person to jail until the person  
21 testifies, but not for a longer period than sixty days.

22 Notwithstanding the serving of the term of commitment by any



1 person, the director may proceed in all respects as if the  
2 witness had not previously been called upon to testify.  
3 Witnesses (other than the taxpayer or the taxpayer's [~~or its~~]  
4 officers, directors, agents, and employees) shall be allowed  
5 their fees and mileage as authorized in cases in the circuit  
6 courts, to be paid on vouchers of the department of taxation,  
7 from any moneys available for the expenses of the department.

8 (d) The director of taxation or any representative of the  
9 director duly authorized by the director, when conducting a  
10 criminal investigation, subject to the privileges enjoyed by all  
11 witnesses in this State, may subpoena witnesses, examine them  
12 under oath, and require the production of any books, papers,  
13 documents, or other objects designated therein or any other  
14 record however maintained, including those electronically  
15 stored, that are relevant or material to the investigation;  
16 provided that the director of taxation or deputy director of  
17 taxation gives written approval for the issuance of a subpoena,  
18 after review for the appropriateness of the issuance. A  
19 subpoena issued under this subsection:

20 (1) Shall state that the subpoena is issued by the  
21 department and shall command each person to whom it is  
22 directed to attend and give testimony at the time and



1 place specified therein, and may also command the  
2 person to whom it is directed to produce books,  
3 papers, documents, or other objects specifically  
4 designated therein;

5 (2) May be served at any place within the State by an  
6 investigator appointed pursuant to section 231-4.3 or  
7 any other law enforcement official with powers of a  
8 police officer;

9 (3) Shall require attendance of the witness only in the  
10 county wherein the witness is served with the subpoena  
11 or at any other place as is agreed upon by the witness  
12 and the department; provided that if the subpoena is  
13 served in a county other than that in which the  
14 witness resides, is employed, or transacts the  
15 witness's business in person, the department shall  
16 bear the witness's expenses for travel to and  
17 attendance at the place named in the subpoena to the  
18 same extent as provided by the rules of court; and

19 (4) Shall contain a short, plain statement of the  
20 recipient's rights and the procedure for enforcing and  
21 contesting the subpoena.



1 Upon application by the director, a circuit court of the county  
2 wherein the witness resides or is found may compel obedience to  
3 the subpoena; provided that the court, on a motion promptly  
4 made, may quash or modify the subpoena if compliance would be  
5 unreasonable or oppressive or violate any privilege the witness  
6 may be entitled to exercise in a court proceeding.

7       ~~[(d)]~~ (e) Any subpoena issued under this section that does  
8 not identify the person with respect to whose liability,  
9 inquiry, or investigation the subpoena is issued may be served  
10 on ~~[any person]~~ the intended recipient only after a court  
11 proceeding in which the director or another person establishes  
12 that:

13       (1) The subpoena relates to the liability, inquiry, or  
14       investigation of a particular person or ascertainable  
15       group or class of persons;

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

20       (3) The information sought to be obtained from the  
21       examination of records or testimony and the identity  
22       of the person or persons with respect to whose



1 liability the subpoena is issued is not readily  
2 available from other sources.

3 (f) The department shall pay to a financial institution  
4 that is served a subpoena issued under this section a fee for  
5 reimbursement of the institution's costs as are necessary and  
6 that have been directly incurred by or on behalf of the  
7 institution in searching for, reproducing, or transporting  
8 books, papers, documents, or other objects designated by the  
9 subpoena. Reimbursement shall be paid at the rate of \$15 per  
10 hour for research time and 50 cents per page for reproduction.

11 (g) A person or entity that is compelled to testify or  
12 produce documents, information, or other items by a subpoena  
13 issued pursuant to the investigation, hearing, or inquiry  
14 pertaining to another person or entity shall not be liable to  
15 the other person or entity for damages arising from the  
16 compliance with the subpoena.

17 [~~e~~] (h) The provisions of this section are in addition  
18 to all other provisions of law, and apply to any tax within the  
19 jurisdiction of the department."

20 SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.





1           SECTION 4. This Act shall take effect upon approval and  
2 shall apply to subpoenas issued on or after the effective date  
3 of this Act.



**Report Title:**

Department of Taxation; Subpoena Authority

**Description:**

Clarifies the department of taxation's subpoena authority for civil and criminal tax investigations. (SD2)

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

