
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. Act 166, Session Laws of Hawaii 2009, imposed
3 new tax penalties that are similar to penalties imposed under
4 federal law. However, unlike the federal law that prohibits the
5 stacking of penalties, Act 166 did not prohibit the stacking of
6 tax underpayment penalties. In Hawaii, a taxpayer could be
7 subject to penalties of sixty per cent or more.

8 Under federal law, a twenty per cent penalty generally
9 applies to the portion of any tax underpayment attributable to
10 any of the following:

- 11 (1) Negligence or disregard of Internal Revenue Code rules
12 and regulations;
- 13 (2) Substantial understatement of tax liability;
- 14 (3) Overvaluation of property; and
- 15 (4) Undervaluation of property on a gift tax or estate tax
16 return.

17 Federal law, however, provides that only one twenty per cent
18 penalty can be imposed on a portion of an underpayment, even if



1 that portion is attributable to more than one of the types of
2 prohibited conduct listed above. The legislature finds that
3 Hawaii should have fairness provisions that are similar to those
4 under federal law.

5 The purpose of this part is to incorporate the fairness
6 provisions provided in the Internal Revenue Code of 1986, as
7 amended, when imposing penalties.

8 SECTION 2. Section 231-36.6, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) There shall be added to the tax an amount equal to
11 twenty per cent of the portion of any underpayment that is
12 attributable to any substantial understatement of any tax in a
13 taxable year. [~~The penalty under this section shall be in
14 addition to any other penalty assessable by law.~~] This section
15 shall not apply to any portion of an underpayment on which a
16 penalty is imposed under section 231-36, 231-36.4, or 231-36.8."

17 SECTION 3. Section 231-36.8, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) If a claim for refund or credit with respect to tax
20 is made for an excessive amount, the person making the claim
21 shall be liable for a penalty in an amount equal to twenty per
22 cent of the excessive amount; provided that there shall be no



1 penalty assessed where the penalty calculation under this
2 section results in an amount of less than \$400. This section
3 shall not apply to any portion of an underpayment on which a
4 penalty is imposed under section 231-36, 231-36.4, or 231-36.6."

PART II

6 SECTION 4. The purpose of this part is to reestablish the
7 end of the month as the deadline for the filing and payment of
8 various taxes.

9 SECTION 5. Section 237-30, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

11 "(a) The taxes levied hereunder shall be payable in
12 monthly installments on or before the [~~twentieth~~] last day of
13 the calendar month following the month in which they accrue.
14 The taxpayer, on or before the [~~twentieth~~] last day of the
15 calendar month following the month in which the taxes accrue,
16 shall make out and sign a return of the installment of tax for
17 which the taxpayer is liable for the preceding month and
18 transmit the same, together with a remittance, in the form
19 required by section 237-31, for the amount of the tax, to the
20 office of the department of taxation in the appropriate district
21 hereinafter designated.



1 (b) Notwithstanding subsection (a), the director of
2 taxation, for good cause, may permit a taxpayer to file the
3 taxpayer's return required under this section and make payments
4 thereon:

5 (1) On a quarterly basis during the calendar or fiscal
6 year, the return and payment to be made on or before
7 the [~~twentieth~~] last day of the calendar month after
8 the close of each quarter, to wit: for calendar year
9 taxpayers, on or before April [~~20~~] 30, July [~~20~~] 31,
10 October [~~20~~] 31, and January [~~20~~] 31 or, for fiscal
11 year taxpayers, on or before the [~~twentieth~~] last day
12 of the fourth month, seventh month, and tenth month
13 following the beginning of the fiscal year and on or
14 before the [~~twentieth~~] last day of the month following
15 the close of the fiscal year; provided that the
16 director is satisfied that the grant of the permit
17 will not unduly jeopardize the collection of the taxes
18 due thereon and the taxpayer's total tax liability for
19 the calendar or fiscal year under this chapter will
20 not exceed \$4,000; or

21 (2) On a semiannual basis during the calendar or fiscal
22 year, the return and payment to be made on or before



1 the [~~twentieth~~] last day of the calendar month after
 2 the close of each six-month period, to wit: for
 3 calendar year taxpayers, on July [~~20~~] 31 and January
 4 [~~20~~] 31 or, for fiscal year taxpayers, on or before
 5 the [~~twentieth~~] last day of the seventh month
 6 following the beginning of the fiscal year and on or
 7 before the last day of the month following the close
 8 of the fiscal year; provided that the director is
 9 satisfied that the grant of the permit will not unduly
 10 jeopardize the collection of the taxes due thereon and
 11 the taxpayer's total tax liability for the calendar or
 12 fiscal year under this chapter will not exceed \$2,000.

13 The director, for good cause, may permit a taxpayer to make
 14 monthly payments based on the taxpayer's estimated quarterly or
 15 semiannual liability, provided the taxpayer files a
 16 reconciliation return at the end of each quarter or at the end
 17 of each six-month period during the calendar or fiscal year, as
 18 provided in this section."

19 SECTION 6. Section 237D-6, Hawaii Revised Statutes, is
 20 amended by amending subsections (a) and (b) to read as follows:

21 "(a) On or before the [~~twentieth~~] last day of each
 22 calendar month, every operator taxable, or plan manager liable



1 under this chapter during the preceding calendar month shall
2 file a sworn return with the director in such form as the
3 director shall prescribe together with a remittance for the
4 amount of the tax in the form required by section 237D-6.5.
5 Sections 237-30 and 237-32 shall apply to returns and penalties
6 made under this chapter to the same extent as if the sections
7 were set forth specifically in this section.

8 (b) Notwithstanding subsection (a), the director of
9 taxation, for good cause, may permit a taxpayer to file the
10 taxpayer's return required under this section and make payments
11 thereon:

12 (1) On a quarterly basis during the calendar or fiscal
13 year, the return and payment to be made on or before
14 the [~~twentieth~~] last day of the calendar month after
15 the close of each quarter, to wit: for calendar year
16 taxpayers, on or before April [~~20~~] 30, July [~~20~~] 31,
17 October [~~20~~] 31, and January [~~20~~] 31 or, for fiscal
18 year taxpayers, on or before the [~~twentieth~~] last day
19 of the fourth month, seventh month, and tenth month
20 following the beginning of the fiscal year and on or
21 before the [~~twentieth~~] last day of the month following
22 the close of the fiscal year; provided that the



1 director is satisfied that the grant of the permit
2 will not unduly jeopardize the collection of the taxes
3 due thereon and the taxpayer's total tax liability for
4 the calendar or fiscal year under this chapter will
5 not exceed \$4,000; or

6 (2) On a semiannual basis during the calendar or fiscal
7 year, the return and payment to be made by or before
8 the [~~twentieth~~] last day of the calendar month after
9 the close of each six-month period, to wit: for
10 calendar year taxpayers, on July [~~20~~] 31 and January
11 [~~20~~] 31 or, for fiscal year taxpayers, on or before
12 the [~~twentieth~~] last day of the seventh month
13 following the beginning of the fiscal year and on or
14 before the [~~twentieth~~] last day of the month following
15 the close of the fiscal year; provided that the
16 director is satisfied that the grant of the permit
17 will not unduly jeopardize the collection of the taxes
18 due thereon and the taxpayer's total tax liability for
19 the calendar or fiscal year under this chapter will
20 not exceed \$2,000.

21 The director, for good cause, may permit a taxpayer to make
22 monthly payments based on the taxpayer's estimated quarterly or



1 semiannual liability; provided that the taxpayer files a
2 reconciliation return at the end of each quarter or at the end
3 of each six-month period during the calendar or fiscal year, as
4 provided in this section."

5 SECTION 7. Section 238-5, Hawaii Revised Statutes, is
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) On or before the [~~twentieth~~] last day of each
8 calendar month, any person who has become liable for the payment
9 of a tax under this chapter during the preceding calendar month
10 in respect of any property, services, or contracting, or the use
11 thereof, shall file a return with the assessor of the taxation
12 district in which the property was held or the services or
13 contracting were received when the tax first became payable, or
14 with the director of taxation at Honolulu, setting forth a
15 description of the property, services, or contracting and the
16 character and quantity thereof in sufficient detail to identify
17 the same or otherwise in such reasonable detail as the director
18 by rule shall require, and the purchase price or value thereof
19 as the case may be. The return shall be accompanied by a
20 remittance in full of the tax, computed at the rate specified in
21 section 238-2 or 238-2.3 upon the price or value so returned.
22 Any tax remaining unpaid after the [~~twentieth~~] last day



1 following the end of the calendar month during which the tax
2 first became payable shall become delinquent; provided that a
3 receipt from a seller required or authorized to collect the tax,
4 given to a taxpayer in accordance with section 238-6, shall be
5 sufficient to relieve the taxpayer from further liability for
6 the tax to which the receipt may refer, or for the return
7 thereof.

8 (b) Notwithstanding subsection (a), a taxpayer may be
9 eligible to file the taxpayer's return required under this
10 section and make payments thereon on a quarterly or semiannual
11 basis during the calendar or fiscal year, the return and payment
12 to be made on or before the [~~twentieth~~] last day of the calendar
13 month after the close of each quarter or semiannual period, to
14 wit:

15 (1) For calendar year taxpayers filing on a quarterly
16 basis, on or before April [~~20~~] 30, July [~~20~~] 31,
17 October [~~20~~] 31, and January [~~20~~] 31;

18 (2) For calendar year taxpayers filing on a semiannual
19 basis, on or before July [~~20~~] 31, and January [~~20~~]
20 31;

21 (3) For fiscal year taxpayers filing on a quarterly basis,
22 on or before the [~~twentieth~~] last day of the fourth



1 month, seventh month, and tenth month following the
2 beginning of the fiscal year and on or before the
3 [~~twentieth~~] last day of the month following the close
4 of the fiscal year; or

5 (4) For fiscal year taxpayers filing on a semiannual
6 basis, on or before the [~~twentieth~~] last day of the
7 seventh month following the beginning of the fiscal
8 year and on or before the [~~twentieth~~] last day of the
9 month following the close of the fiscal year;

10 if the taxpayer possesses a valid and current permit to file the
11 taxpayer's general excise tax return and to make payments
12 thereon on a quarterly or semiannual basis issued by the
13 director pursuant to section 237-30. A taxpayer may also be
14 eligible to make monthly payments based on the taxpayer's
15 estimated quarterly or semiannual liability with a
16 reconciliation return at the end of each quarter or semiannual
17 period during the calendar or fiscal year, as heretofore
18 provided, if the taxpayer possesses a valid and current permit
19 to file quarterly or semiannual reconciliation general excise
20 tax returns and to make monthly payments, issued by the director
21 pursuant to section 237-30."



1 SECTION 8. Section 243-10, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§243-10 Statements and payments. Each distributor and
4 each person subject to section 243-4(b), on or before the
5 [~~twentieth~~] last day of each calendar month, shall file with the
6 director of taxation, on forms prescribed, prepared, and
7 furnished by the director, a statement, authenticated as
8 provided in section 231-15, showing separately for each county
9 and for the island of Lanai and the island of Molokai within
10 which and whereon fuel is sold or used during each preceding
11 month of the calendar year, the following:

12 (1) The total number of gallons of fuel refined,
13 manufactured, or compounded by the distributor or
14 person within the State and sold or used by the
15 distributor or person, and if for ultimate use in
16 another county or on either island, the name of that
17 county or island;

18 (2) The total number of gallons of fuel acquired by the
19 distributor or person during the month from persons
20 not subject to the tax on the transaction or only
21 subject to tax thereon at the rate of 1 cent per
22 gallon, as the case may be, and sold or used by the



1 distributor or person, and if for ultimate use in
2 another county or on either island, the name of that
3 county or island;

4 (3) The total number of gallons of fuel sold by the
5 distributor or person to the United States or any
6 department or agency thereof, or to any other person
7 or entity, or used in any manner, the effect of which
8 sale or use is to exempt the fuel from the tax imposed
9 by this chapter; and

10 (4) Additional information relative to the acquisition,
11 purchase, manufacture, or importation into the State,
12 and the sale, use, or other disposition, of diesel oil
13 by the distributor or person during the month, as the
14 department of taxation by rule shall prescribe.

15 At the time of submitting the foregoing report to the
16 department, each distributor and person shall pay the tax on
17 each gallon of fuel (including diesel oil) sold or used by the
18 distributor or person in each county and on the island of Lanai
19 and the island of Molokai during the preceding month, as shown
20 by the statement and required by this chapter; provided that the
21 tax shall not apply to any fuel exempted and so long as the same
22 is exempted from the imposition of the tax by the Constitution



1 or laws of the United States; and the tax shall be paid only
2 once upon the same fuel; provided further that a licensed
3 distributor shall be entitled, in computing the tax the licensed
4 distributor is required to pay, to deduct from the gallons of
5 fuel reported for the month for each county or for the island of
6 Lanai or the island of Molokai, as the case may be, one gallon
7 for each ninety-nine gallons of like liquid fuel sold by retail
8 dealers in that county or on that island during the month, as
9 shown by certificates furnished by the retail dealers to the
10 distributor and attached to the distributor's report. All taxes
11 payable for any month shall be delinquent after the expiration
12 of the [~~twentieth~~] last day of the following month.

13 Statements filed under this section concerning the number
14 of gallons of fuel refined, manufactured, compounded, imported,
15 sold, or used by the distributor or person are public records."

16 SECTION 9. Section 244D-6, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§244D-6 Return, form, contents.** Every taxpayer shall, on
19 or before the [~~twentieth~~] last day of each month, file with the
20 department of taxation in the taxation district in which the
21 taxpayer's business premises are located, or with the department
22 in Honolulu, a return showing all sales of liquor by gallonage



1 and dollar volume in each liquor category defined in section
2 244D-1 and taxed under section 244D-4(a) made by the taxpayer
3 during the preceding month, showing separately the amount of the
4 nontaxable sales, and the amount of the taxable sales, and the
5 tax payable thereon. The return shall also show the amount of
6 liquor by gallonage and dollar volume in each liquor category
7 defined in section 244D-1 and taxed under section 244D-4(a) used
8 during the preceding month which is subject to tax, and the tax
9 payable thereon. The form of return shall be prescribed by the
10 department and shall contain such information as it may deem
11 necessary for the proper administration of this chapter."

12 SECTION 10. Section 245-5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§245-5 Returns.** Every wholesaler or dealer, on or before
15 the [~~twentieth~~] last day of each month, shall file with the
16 department a return showing the cigarettes and tobacco products
17 sold, possessed, or used by the wholesaler or dealer during the
18 preceding calendar month and of the taxes chargeable against the
19 taxpayer in accordance with this chapter. The form of the
20 return shall be prescribed by the department and shall include:

21 (1) A separate statement of the number and wholesale price
22 of cigarettes;



- 1 (2) The amount of stamps purchased and used;
- 2 (3) The wholesale price of tobacco products, sold,
- 3 possessed, or used; and
- 4 (4) Any other information that the department may deem
- 5 necessary, for the proper administration of this
- 6 chapter."

7 SECTION 11. Section 245-28, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§245-28 Time for payment of deferred-payment purchases;**
10 **manner of payment.** Amounts owing for stamps purchased on the
11 deferred-payment basis in any calendar month shall be due and
12 payable on or before the [~~twentieth~~] last day of the following
13 calendar month. Payment shall be made by a remittance payable
14 to the department."

15 SECTION 12. Section 245-31, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "(a) On or before the [~~twentieth~~] last day of each month,
18 every licensee shall file on forms prescribed by the department:

- 19 (1) A report of the licensee's distributions of cigarettes
- 20 and purchases of stamps during the preceding month;
- 21 and



1 (2) Any other information that the department may require
2 to carry out this part.

3 (b) On or before the [~~twentieth~~] last day of each month,
4 every licensee shall file on forms prescribed by the department:

5 (1) A report of the licensee's distributions of tobacco
6 products and the wholesale costs of tobacco products
7 during the preceding month; and

8 (2) Any other information that the department may require
9 to carry out this part."

10 SECTION 13. Section 251-4, Hawaii Revised Statutes, is
11 amended by amending subsections (a) and (b) to read as follows:

12 "(a) On or before the [~~twentieth~~] last day of each
13 calendar month, every person taxable under this chapter during
14 the preceding calendar month shall file a sworn return with the
15 director in such form as the director shall prescribe together
16 with a remittance for the amount of the surcharge tax in the
17 form required by section 251-5. Sections 237-30 and 237-32
18 shall apply to returns and penalties made under this chapter to
19 the same extent as if the sections were set forth specifically
20 in this section.



1 (b) Notwithstanding subsection (a), the director, for good
2 cause, may permit a person to file the person's return required
3 under this section and make payments thereon:

4 (1) On a quarterly basis during the calendar or fiscal
5 year, the return and payment to be made on or before
6 the [~~twentieth~~] last day of the calendar month after
7 the close of each quarter, to wit: for calendar year
8 taxpayers, on or before April [~~20,~~] 30, July [~~20,~~] 31,
9 October [~~20,~~] 31, and January [~~20~~] 31 or, for fiscal
10 year taxpayers, on or before the [~~twentieth~~] last day
11 of the fourth month, seventh month, and tenth month
12 following the beginning of the fiscal year and on or
13 before the [~~twentieth~~] last day of the month following
14 the close of the fiscal year; provided that the
15 director is satisfied that the grant of the permit
16 will not unduly jeopardize the collection of the
17 surcharge taxes due thereon and that the person's
18 total surcharge tax liability for the calendar or
19 fiscal year under this chapter will not exceed \$4,000;
20 or
21 (2) On a semiannual basis during the calendar or fiscal
22 year, the return and payment to be made by or before



1 the [~~twentieth~~] last day of the calendar month after
2 the close of each six-month period, to wit: for
3 calendar year taxpayers, on July [~~20~~] 31 and January
4 [~~20~~] 31 or, for fiscal year taxpayers, on or before
5 the [~~twentieth~~] last day of the seventh month
6 following the beginning of the fiscal year and on or
7 before the [~~twentieth~~] last day of the month following
8 the close of the fiscal year; provided that the
9 director is satisfied that the grant of the permit
10 will not unduly jeopardize the collection of the
11 surcharge taxes due thereon and that the person's
12 total surcharge tax liability for the calendar or
13 fiscal year under this chapter will not exceed \$2,000.

14 The director, for good cause, may permit a person to make
15 monthly payments based on the person's estimated quarterly or
16 semiannual liability; provided that the person files a
17 reconciliation return at the end of each quarter or at the end
18 of each six-month period during the calendar or fiscal year, as
19 provided in this section."

20 SECTION 14. Section 431:7-201, Hawaii Revised Statutes, is
21 amended by amending subsections (b) and (c) to read as follows:



1 "(b) Each authorized insurer shall file with the
2 commissioner monthly, on or before the [~~twentieth~~] last day of
3 the calendar month following the month in which the taxes
4 accrue, a statement signed by a duly authorized person on its
5 behalf, setting forth the total business transacted and the
6 amount of gross premiums reported by the insurer, pursuant to
7 section 431:7-202, during the month from all risks or property
8 resident, situated, or located within this State, together with
9 other information as may be required by the commissioner to
10 determine the taxability of premiums.

11 (c) Any insurer failing or refusing to file the annual tax
12 statement on or before March 1, or the monthly statement on or
13 before the [~~twentieth~~] last day of the calendar month following
14 the month in which the taxes accrue, shall be liable for a fine
15 in an amount not less than \$100 and not more than \$500 for each
16 day of delinquency."

17 SECTION 15. Section 431:7-202, Hawaii Revised Statutes, is
18 amended by amending subsection (f) to read as follows:

19 "(f) The taxes imposed by subsections (a), (b), (c), and
20 (d) shall be paid monthly. The monthly tax shall be due and
21 payable on or before the [~~twentieth~~] last day of the calendar



1 month following the month in which it accrues, coinciding with
2 the filing of the statement provided for in section 431:7-201.

3 In addition to the monthly tax and monthly tax statement,
4 the annual tax shall be due and payable on or before March 1
5 coinciding with the filing of the statement provided for in
6 section 431:7-201.

7 All amounts paid under this subsection, other than fines,
8 shall be allowed as a credit on the annual tax imposed by
9 subsections (a), (b), (c), and (d).

10 If the total amount of installment payments for any
11 calendar year exceeds the amount of annual tax for that year,
12 the excess shall be treated as an overpayment of the annual tax
13 and be allowed as a refund under section 431:7-203.

14 Any insurer failing or refusing to pay the required taxes
15 above stated when due and payable shall be liable for a fine of
16 \$500 or ten per cent of the tax due, whichever is greater; plus
17 interest at a rate of twelve per cent per annum on the
18 delinquent taxes. The taxes may be collected by distraint, or
19 the taxes, fine, and interest may be recovered by an action to
20 be instituted by the commissioner in the name of this State, in
21 any court of competent jurisdiction. The commissioner may
22 suspend the certificate of authority of the delinquent insurer



1 until the taxes, fine, and interest, should any be imposed, are
2 fully paid."

3 PART III

4 SECTION 16. This Act does not affect rights and duties
5 that matured, penalties that were incurred, and proceedings that
6 were begun before its effective date.

7 SECTION 17. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 18. This Act shall take effect on July 1, 2030;
10 provided that part II shall take effect on January 1, 2030;
11 provided further that this Act shall apply to taxable years
12 beginning after December 31, 2010.



Report Title:

Tax Underpayments; Penalties

Description:

Prohibits penalties for substantial understatements or misstatements, and erroneous claims for refund or credit from being added to tax underpayments on which certain other penalties are already imposed. Reestablishes the end of the month as the deadline for the filing and payment of various taxes. Effective July 1, 2030. (SB1356 HD1)

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

