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

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



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

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

20        (2) May be served at any place within the State by an  
21 investigator appointed pursuant to section 231-4.3 or



- 1           any other representative of the director duly  
2           authorized by the director;
- 3       (3) Shall require attendance of the person only in the  
4           county wherein the person is served with the subpoena  
5           or at any other place as is agreed upon by the person  
6           and the department; provided that if the subpoena is  
7           served in a county other than that in which the person  
8           resides, is employed, or transacts the person's  
9           business in person, the department shall bear the  
10          person's expenses for travel to and attendance at the  
11          place named in the subpoena to the same extent as  
12          provided by the rules of court other than the expenses  
13          of the taxpayer or the taxpayer's witnesses, officers,  
14          directors, agents, or employees; and
- 15       (4) Shall contain a short, plain statement of the person's  
16          rights and the procedure for enforcing and contesting  
17          the subpoena.

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



1 pursuant thereto, the director [~~or other person conducting the~~  
2 ~~hearing~~] may apply to the circuit court of the circuit wherein  
3 the [~~inquiry or~~] civil audit, investigation, or hearing is being  
4 conducted, or to any judge of the court, setting forth the  
5 disobedience to process or refusal to answer, and the court or  
6 judge shall cite the person to appear before the court or judge  
7 to answer the questions or to produce the books, papers,  
8 documents, objects, or records [~~, and upon the person's refusal~~  
9 ~~so to do~~]; provided that the court, upon a motion promptly made  
10 by the person, may quash or modify the subpoena if compliance  
11 would be unreasonable or oppressive or would violate any  
12 privilege the person would be entitled to exercise in a court  
13 proceeding. If the person fails or refuses to produce the  
14 subpoenaed books, papers, documents, objects, or record, the  
15 court shall institute a contempt proceeding against the person,  
16 at which time the court shall determine whether good cause is  
17 shown for the failure to obey the subpoena or the refusal to  
18 testify; provided that the court, on a motion promptly made, may  
19 quash or modify the subpoena if compliance would be unreasonable  
20 or oppressive or would violate any privilege the person would be  
21 entitled to exercise in a court proceeding. In the event that  
22 no good cause is shown, the court does not quash or modify the



1 subpoena, and the person fails or refuses to comply with the  
2 subpoena, then the court shall commit the person to jail until  
3 the person testifies, but not for a longer period than sixty  
4 days. Notwithstanding the serving of the term of commitment by  
5 any person, the director may proceed in all respects as if the  
6 witness had not previously been called upon to testify.

7 Witnesses (other than the taxpayer or the taxpayer's [~~or its~~]  
8 officers, directors, agents, and employees) shall be allowed  
9 their fees and mileage as authorized in cases in the circuit  
10 courts, to be paid on vouchers of the department of taxation,  
11 from any moneys available for the expenses of the department.

12 (d) Subject to the privileges applicable to any witness in  
13 this State, the director of taxation or any representative of  
14 the director duly authorized by the director, when conducting a  
15 criminal investigation, may subpoena witnesses, examine  
16 witnesses under oath, and require the production of any books,  
17 papers, documents, other designated objects, or any other record  
18 however maintained, including those electronically stored, that  
19 are relevant or material to the investigation; provided that the  
20 director of taxation or deputy director of taxation shall give  
21 written approval for the issuance of a subpoena only after a



1 review of the appropriateness of the issuance. A subpoena  
2 issued under this subsection:

3 (1) Shall state that the subpoena is issued by the  
4 department and shall command each person to whom it is  
5 directed to attend and give testimony at the time and  
6 place specified, and may command the person to whom it  
7 is directed to produce books, papers, documents, or  
8 other objects specifically designated;

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

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



1       (4) Shall contain a short, plain statement of the person's  
2           rights and the procedure for enforcing and contesting  
3           the subpoena.

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

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

15       (1) The subpoena relates to the liability, audit, or  
16           investigation of a particular person or ascertainable  
17           group or class of persons;

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



1           (3) The information sought to be obtained from the  
2           examination of records or testimony and the identity  
3           of the person or persons with respect to whose  
4           liability the subpoena is issued is not readily  
5           available from other sources.

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

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

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





1           SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 4. This Act shall take effect on July 1, 2011, and  
4 shall apply to any subpoena issued on or after the effective  
5 date 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. Effective July 1, 2011. (HB801 CD1)

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

