
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 [eæ], 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 ~~so to do~~]; 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 refuse to testify; provided that
18 the court, on a motion promptly made, may quash or modify the
19 subpoena if compliance would be unreasonable or oppressive or
20 violate any privilege the subpoena recipient would be entitled
21 to exercise in a court proceeding. If no good cause is shown,
22 the court does not quash or modify the subpoena, and the



1 recipient fails or refuses to comply with the subpoena, then the
2 court shall commit the person to jail until the person
3 testifies, but not for a longer period than sixty days.

4 Notwithstanding the serving of the term of commitment by any
5 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) The director of taxation or any representative of the
13 director duly authorized by the director, when conducting a
14 criminal investigation, subject to the privileges enjoyed by all
15 witnesses in this State, may subpoena witnesses, examine them
16 under oath, and require the production of any books, papers,
17 documents, or other objects designated therein or any other
18 record however maintained, including those electronically
19 stored, that are relevant or material to the investigation;
20 provided that the director of taxation or deputy director of
21 taxation give written approval for the issuance of a subpoena,



1 after review for the appropriateness of the issuance. A
2 subpoena 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 therein, and may also command the
7 person to whom it is directed to produce books,
8 papers, documents, or other objects specifically
9 designated therein;
- 10 (2) May be served at any place within the State by an
11 investigator appointed pursuant to section 231-4.3 or
12 any other law enforcement official with powers of a
13 police officer;
- 14 (3) Shall require attendance of the witness only in the
15 county wherein the witness is served with the subpoena
16 or at any other place as is agreed upon by the witness
17 and the department; provided that if the subpoena is
18 served in a county other than that in which the
19 witness resides, is employed, or transacts the
20 witness's business in person, the department shall
21 bear the witness's expenses for travel to and



1 attendance at the place named in the subpoena to the
2 same extent as provided by the rules of court; and
3 (4) Shall contain a short, plain statement of the
4 recipient's rights and the procedure for enforcing and
5 contesting the subpoena.

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

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

18 (1) The subpoena relates to the liability, inquiry, or
19 investigation of a particular person or ascertainable
20 group or class of persons;

21 (2) There is a reasonable basis for believing that the
22 person or group or class of persons may fail or may



1 have failed to comply with any provision of title 14;
2 and

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

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

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



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

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2050, and
7 shall apply to subpoenas issued on or after the effective date
8 of this Act.

9



Report Title:

Department of Taxation; Subpoena Authority

Description:

Clarifies the department of taxation's subpoena authority for civil and criminal investigations. Effective 7/1/2050. (SD1)

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

