

JAN 26 2011

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Act 166, Session Laws of Hawaii 2009, imposed
2 new tax penalties that are similar to penalties imposed under
3 federal law. However, unlike the federal penalties, Act 166 did
4 not prohibit the stacking of penalties. In Hawaii, a taxpayer
5 could be subject to penalties of sixty per cent or more. Under
6 federal law, a twenty per cent penalty generally applies to the
7 portion of any tax underpayment attributable to any of the
8 following: (1) negligence or disregard of Internal Revenue Code
9 rules and regulations; (2) substantial understatement of tax
10 liability; (3) overvaluation of property; and (4) undervaluation
11 of property on a gift tax or estate tax return. Under federal
12 law, however, which prohibits the stacking of penalties, only
13 one twenty per cent penalty can be imposed on a portion of an
14 underpayment, even if that portion is attributable to more than
15 one of the types of prohibited conduct listed above. The
16 legislature finds that Hawaii should have fairness provisions
17 that are similar to those that exist under federal law.



1 The purpose of this Act is to incorporate the fairness
2 provisions as are provided in the Internal Revenue Code when
3 imposing penalties.

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

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

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

15 "(a) If a claim for refund or credit with respect to tax
16 is made for an excessive amount, the person making the claim
17 shall be liable for a penalty in an amount equal to twenty per
18 cent of the excessive amount; provided that there shall be no
19 penalty assessed where the penalty calculation under this
20 section results in an amount of less than \$400. This section
21 shall not apply to any portion of an underpayment on which a
22 penalty is imposed under section 231-36 or section 231-36.6."



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

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

6 SECTION 6. This Act shall take effect upon its approval;
7 provided that this Act shall apply to taxable years beginning
8 after December 31, 2010.

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INTRODUCED BY: Arvid Ylge



Report Title:

Income Taxation

Description:

Prohibits penalties for substantial understatements or misstatements and for erroneous claims for refund or credit from being added to tax underpayments on which certain other penalties are already imposed.

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