

**SB 1356**

# TAXBILLSERVICE

126 Queen Street, Suite 304

**TAX FOUNDATION OF HAWAII**

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, Penalty provisions

BILL NUMBER: SB 1356

INTRODUCED BY: Ige

BRIEF SUMMARY: Amends HRS sections 231-36.6 and 231-36.8 to prevent the multiple imposition of the penalty provision of 20% on any underpayment that is imposed under HRS section 231-36 (false and fraudulent statements) or HRS section 231-36.8 (erroneous claim for refund or credit).

EFFECTIVE DATE: Tax years beginning after December 31, 2010

STAFF **COMMENTS**: Act 166, SLH 2009, established penalties of 20% of the: (1) portion of any underpayment for an understatement of a taxpayer's tax liability; and (2) excessive amount of the filing of a claim for refund or credit, in the event of an erroneous claim for refund or credit. While it appears that multiple penalties for the more than one violation of the underpayment provisions may be imposed under the state laws, federal laws prohibit the imposition of more than one penalty even though they are attributable to more than one violation. Adoption of this provision would allow taxpayers to mitigate their burden of an underpayment penalty similar to the federal treatment of a like infraction.

Digested 2/8/11

**Peter L. Fritz**

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**THE SENATE  
THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2011**

**COMMITTEE ON WAYS AND MEANS**

**Hearing date: February 10, 2011  
Testimony on S.B. 1356  
(Relating to Taxation)**

Chair Ige, Vice-Chair Kidani, and members of the Committee, thank you for the opportunity to testify **in support** of Senate Bill 1356.

In 2009, the Lingle administration introduced a bill proposing changes to the Hawaii tax administrative law. This bill was signed into law and became Act 166 Session Laws Hawaii 2009. Among other things, Act 166 added §§ 231-36.4 through 231-36.8 to Hawaii's administrative statutes. These new sections were designed to "level the tax administration playing field between state and federal levels."<sup>1</sup>

In testimony in support of this bill, the Department of Taxation ("Department") said that "[f]undamentally, this measure is about fairness in the administration of taxes amongst the government, taxpayers and practitioners."<sup>2</sup> However, while advocating fairness, the Department's bill failed to incorporate the anti-stacking fairness provisions that are part of the Internal Revenue Code ("IRC"). This bill provides fairness to taxpayers.

Hawaii Revised Statute § 231-36.4 is similar to IRC § 6672 and imposes penalties for willful failure to pay over and tax. However, the IRC §6672 also provides that "[n]o penalty shall be imposed under section 6653 [stamp tax] or part II of subchapter A of chapter 68 for any offense to which this section is applicable." Part II of Subchapter A of chapter 68 covers § 6662 Imposition of accuracy-related penalty on underpayments; § 6663 Imposition of fraud penalty and § 6664 Definitions and special rules. Because the anti-stacking rule in IRC § 6662 was not incorporated into the present version of HRS § 231-36.4, a penalty could also be imposed on a taxpayer under HRS § 231-36.6 or § 231-36. To be fundamentally fair, HRS § 231-36.4 should incorporate the fairness provisions in the IRC. I respectfully suggest that a new Section 1 be inserted into this bill that reads as follows:

"Section 2. Section 231-36.4, Hawaii Revised Statutes be amended and read as follows:

§231-36.4 Wilful failure to collect and pay over tax. (a) Any person required to collect, account for, and pay over any tax imposed by title 14, who wilfully fails to collect or truthfully account for and pay over such tax shall be guilty of a class C felony, in addition to

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<sup>1</sup> Testimony of Kurt Kawafuchi, Director of Taxation, on February 5, 2009, in support of SB 973.

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other penalties provided by law and, upon conviction, shall be subject to one or any combination of the following:

- (1) A fine of not more than \$100,000;
- (2) Imprisonment of not more than five years; or
- (3) Probation;

provided that a corporation shall be fined not more than \$500,000.

(b) No penalty shall be imposed under section 231-36, section 231-36.8 or for any offense to which this section is applicable."

I support the other provisions in this bill.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter L. Fritz". The signature is stylized with a large initial "P" and a long, sweeping underline.

Peter L. Fritz