
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. Chapter 231, Hawaii Revised Statutes, is
3 amended by adding two new sections to be appropriately
4 designated and to read as follows:

5 "§231- Designation of period; payments; penalties. A
6 taxpayer may designate the tax period for any tax payment made
7 by, or any penalty assessed on, the taxpayer; provided that the
8 payment or penalty is paid pursuant to applicable provisions of
9 law.

10 §231- Equitable relief. (a) A taxpayer, including a
11 taxpayer applying for spousal relief, shall be relieved of any
12 tax liability, or a portion thereof under title 14, if:

13 (1) By taking into account all the facts and circumstances
14 of the taxpayer's situation, the department of
15 taxation finds that it is inequitable and unjust to
16 hold the taxpayer liable for that liability; and

17 (2) No other relief is available to the taxpayer under
18 title 14."



1 SECTION 2. Section 232-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§232-1 Appeals by persons under contractual
4 obligations[-]; burden of proof. (a) Whenever any person is
5 under a contractual obligation to pay a tax assessed against
6 another, the person shall have the same rights of appeal to the
7 board of review, the tax appeal court, and the intermediate
8 appellate court, subject to chapter 602, in the person's own
9 name, as if the tax were assessed against the person. The
10 person against whom the tax is assessed shall also have a right
11 to appear and be heard on any such application or appeal.

12 (b) In any proceeding before the board of review or the
13 tax appeal court, if a taxpayer introduces credible evidence
14 with respect to any factual issue relevant to ascertaining the
15 liability of the taxpayer for any tax, interest, or penalty
16 imposed under title 14, the department of taxation shall have
17 the burden to prove otherwise with respect to the issue;
18 provided that:

19 (1) The taxpayer has complied with the requirements under
20 title 14 to substantiate any disputed item or issue;
21 and



1 The legislature finds that a public purpose is served by
2 the waiver of tax penalties and criminal prosecution in return
3 for the immediate reporting and payment of previously
4 underreported, unreported, or unpaid tax liabilities. The
5 legislature further finds that the benefits gained through this
6 program include:

- 7 (1) Increased collection of certain currently owed taxes,
8 and
9 (2) Finding taxpayers who have been evading the payment of
10 taxes and providing an opportunity for them to satisfy
11 their tax obligations before tax enforcement programs
12 take effect.

13 It is the intent of the legislature that the tax amnesty
14 program provided under this Act be a one-time occurrence that
15 shall not be offered again because taxpayers' expectations of
16 any future amnesty programs could have a counterproductive
17 effect on compliance under this Act.

18 SECTION 4. **Title.** The Act under this part shall be known
19 and may be cited as the "Tax Amnesty Program Act".

20 SECTION 5. **Definitions.** As used in this Act:

21 "Accounts receivable" means an amount of state tax,
22 penalty, or interest that has been recorded as due and entered



1 in the account records or any ledger maintained in the
2 department or that a taxpayer should reasonably expect to become
3 due as a direct or indirect result of any pending or completed
4 audit or investigation that a taxpayer knows is being conducted
5 by the State.

6 "Department" means the department of taxation.

7 "Director" means the director of taxation.

8 "Final, due, and owing" means an assessment that has become
9 final and is owed to the State, due to either the expiration of
10 a taxpayer's appeal rights or the rendition of the final order
11 by the director or by any court of this State. Assessments that
12 have been appealed shall be final, due, and owing fifteen days
13 after the last unappealed or unappealable order sustaining the
14 assessment or any part thereof that has become final.

15 Assessments that have not been appealed shall be final, due, and
16 owing thirty days after service of notice of assessment.

17 "Taxpayer" means any individual, partnership, joint
18 venture, association, corporation, receiver, trustee, guardian,
19 executor, administrator, fiduciary, or any other entity of any
20 kind subject to any tax in title 14, Hawaii Revised Statutes, or
21 any person required to collect any tax under title 14, Hawaii
22 Revised Statutes.



1 SECTION 6. Tax amnesty program; applicable time period.

2 (a) The director shall develop and administer a one-time tax
3 amnesty program as provided in this Act. The director, upon the
4 voluntary return and remission of taxes and interest owed by any
5 taxpayer, shall waive all penalties that are assessed or subject
6 to being assessed for outstanding liabilities for taxable
7 periods ending or transactions occurring on or before December
8 31, 2010. The director shall provide by rule, pursuant to
9 chapter 91, Hawaii Revised Statutes, as necessary, for the
10 administration of this amnesty program and shall further provide
11 for necessary forms for the filing of amnesty applications and
12 returns.

13 (b) Notwithstanding any other law to the contrary, the tax
14 amnesty program shall begin by October 31, 2011, and shall be
15 completed before January 1, 2012, and shall apply to all
16 taxpayers owing taxes, penalties, or interest administered by
17 the director under title 14, Hawaii Revised Statutes, except
18 that the tax amnesty shall not apply to any real property tax or
19 any tax levied pursuant to chapter 249, Hawaii Revised Statutes.

20 The program shall apply to tax liabilities for taxable
21 periods ending or transactions occurring on or before December



1 31, 2010. Amnesty tax return forms shall be in a form
2 prescribed by the director.

3 SECTION 7. Eligibility requirements. (a) This Act shall
4 apply to any taxpayer who files an application for amnesty
5 within the time prescribed by the director and does the
6 following:

7 (1) Files all returns as may be required by the director
8 for all years or tax reporting periods as stated on
9 the application for which returns have not previously
10 been filed and files all returns as may be required by
11 the director for all years or tax reporting periods
12 for which returns were filed but the tax liability was
13 underreported; and

14 (2) Pays in full the taxes due for the periods and taxes
15 applied for at the time the application or amnesty tax
16 returns are filed within the designated amnesty
17 program period.

18 In addition to the requirements set forth in paragraphs (1) and
19 (2), the director may impose, by rule, the further condition
20 that any eligible taxpayer pay in full, within the amnesty
21 period, all taxes previously assessed by the director that are



1 final, due, and owing at the time the application or amnesty tax
2 returns are filed.

3 (b) An eligible taxpayer may participate in the amnesty
4 program regardless of whether the taxpayer is under audit,
5 notwithstanding the fact that the amount due is included in a
6 proposed assessment or an assessment, bill, notice, or demand
7 for payment issued by the director and without regard to whether
8 the amount due is subject to a pending administrative or
9 judicial proceeding. An eligible taxpayer may participate in
10 the amnesty program to the extent of the uncontested portion of
11 any assessed liability. However, participation in the program
12 shall be conditioned upon the taxpayer's agreement that the
13 right to protest or initiate an administrative or judicial
14 proceeding or to claim any refund of moneys paid under the
15 program is barred with respect to the amounts paid with the
16 application or amnesty return.

17 (c) The director shall allow installment payment
18 agreements in cases of severe hardship in lieu of the complete
19 payment required under subsection (a). In those cases, twenty-
20 five per cent of the amount due shall be paid with the
21 application or amnesty return, with the balance to be paid in
22 monthly installments determined by the taxpayer and the



1 director. Failure of the taxpayer to make timely payments shall
2 void the terms of the amnesty. All agreements and payments
3 shall not include interest due and accruing during the
4 installment agreement.

5 SECTION 8. **Amnesty provisions.** (a) Amnesty shall be
6 granted for any taxpayer who meets the requirements of section 7
7 of this Act in accordance with the following:

8 (1) For taxes that are owed as a result of the
9 nonreporting or underreporting of tax liabilities or
10 the nonpayment of any accounts receivable owed by an
11 eligible taxpayer, the State shall waive criminal
12 prosecution and all civil penalties that may be
13 assessed under title 14, Hawaii Revised Statutes, for
14 the taxable years or periods for which the tax amnesty
15 is requested; and

16 (2) With the exception of instances in which the taxpayer
17 and director enter into an installment payment
18 agreement authorized under section 7(c) of this Act,
19 the failure to pay all taxes as shown on the
20 taxpayer's amnesty tax return shall invalidate any
21 amnesty granted pursuant to this Act.



1 (b) This Act shall not apply to any taxpayer who is on
2 notice, written or otherwise, of a criminal investigation being
3 conducted by an agency of the State or any county or the United
4 States, nor shall this Act apply to any taxpayer who is the
5 subject of any criminal litigation that is pending on the date
6 of the taxpayer's application in any court of this State or the
7 United States for nonpayment, delinquency, evasion, or fraud in
8 relation to any federal taxes or to any of the taxes to which
9 this amnesty program is applicable.

10 (c) No refund or credit shall be granted for any interest
11 or penalty paid prior to the time the taxpayer requests amnesty
12 pursuant to section 7 of this Act.

13 (d) Unless the director, in the director's discretion,
14 redetermines the amount of taxes and interest due, no refund or
15 credit shall be granted for any taxes or interest paid under the
16 amnesty program.

17 SECTION 9. Public awareness. The director shall adopt
18 rules under chapter 91, Hawaii Revised Statutes, as necessary,
19 issue forms and instructions, and take all actions necessary to
20 implement this Act. The director shall publicize the tax
21 amnesty program in order to maximize the public awareness of,
22 and participation in the program. The director, for the purpose



1 of publicizing the tax amnesty program, may contract with any
2 advertising agency within or outside this State.

3 SECTION 10. **Separate accounting.** For purposes of
4 accounting for the revenues received pursuant to this Act, the
5 director shall maintain an accounting and reporting of funds
6 collected under the amnesty program. . All funds collected shall
7 be remitted to the general fund.

8 Part III.

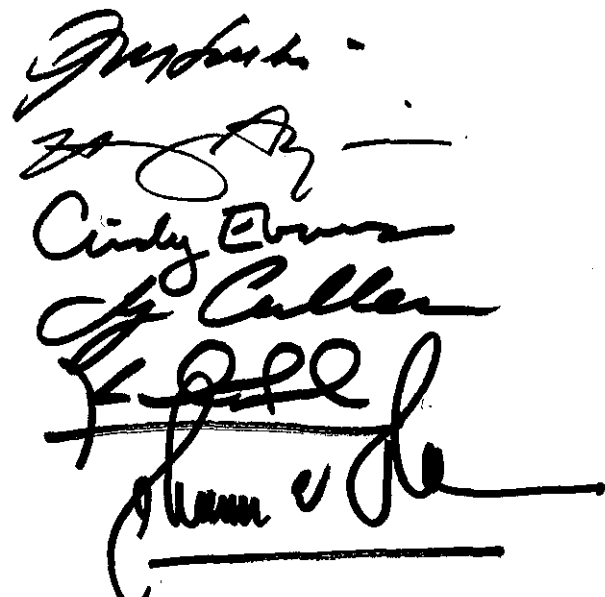
9 SECTION 11. This Act shall take effect upon its approval.

10

INTRODUCED BY:



Karen Aurnea



JAN 20 2011



Report Title:

Taxation; Amnesty; Burden of Proof; Equitable Relief

Description:

Establishes a one-time amnesty program for delinquent income tax obligations, provides equitable relief in certain tax situations, and places the burden of proof on the department of taxation in certain circumstances.

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

