
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 231-36.4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§~~231-36.4~~§~~ Wilful failure to collect and pay over
4 tax. (a) Any person required to collect, account for, and pay
5 over any tax imposed by title 14, who wilfully fails to collect
6 or truthfully account for and pay over such tax shall be guilty
7 of a class C felony, in addition to other penalties provided by
8 law and, upon conviction, shall be subject to one or any
9 combination of the following:

- 10 (1) A fine of not more than \$100,000;
11 (2) Imprisonment of not more than five years; or
12 (3) Probation;
13 provided that a corporation shall be fined not more than
14 \$500,000.

15 (b) This section shall not apply to any portion of an
16 underpayment on which a penalty is imposed under section 231-36,
17 231-36.6, or 231-36.8."



1 SECTION 2. Section 231-36.6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§231-36.6[+] Substantial understatements or
4 misstatements of amounts; penalty. (a) There shall be added to
5 the tax an amount equal to twenty per cent of the portion of any
6 underpayment that is attributable to any substantial
7 understatement of any tax in a taxable year. The penalty under
8 this section shall be in addition to any other penalty
9 assessable by law.

10 (b) Except as provided under subsection (c), there is a
11 substantial understatement of tax for any taxable year if the
12 amount of the understatement for the taxable year exceeds the
13 greater of:

14 (1) Ten per cent of the tax required to be shown on the
15 return for the taxable year; or

16 (2) \$1,500.

17 (c) In the case of a corporation other than a corporation
18 taxable under subchapter S of the Internal Revenue Code, there
19 is a substantial understatement of tax for any taxable year if
20 the amount of the understatement for the taxable year exceeds
21 the greater of:



1 (1) Ten per cent of the tax required to be shown on the
2 return for the taxable year; or

3 (2) \$30,000.

4 (d) The amount of any understatement shall be reduced by
5 that portion of the understatement that is attributable to:

6 (1) The tax treatment of any item by the taxpayer if there
7 is or was substantial authority for such treatment; or

8 (2) Any item if the relevant facts affecting the item's
9 tax treatment are adequately disclosed in the return
10 or in a statement attached to the return and there is
11 a reasonable basis, as defined under section 231-36.8,
12 for the tax treatment by the taxpayer.

13 The reduction in this subsection shall not apply to any item
14 attributable to a tax shelter as described in section 231-36.7.

15 (e) This section shall be construed in accordance with
16 regulations and judicial interpretations given to section 6662
17 of the Internal Revenue Code.

18 (f) For purposes of this section, "understatement" means
19 the excess of:

20 (1) The amount of tax required to be shown on the return
21 for the taxable year; over



1 (2) The amount of tax imposed that is shown on the return,
2 reduced by any rebate as that term is defined by
3 section 6211(b)(2) of the Internal Revenue Code.

4 (g) This section shall not apply to any portion of an
5 underpayment on which a penalty is imposed under section 231-36,
6 231-36.4, or 231-36.8."

7 SECTION 3. Section 231-36.8, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~§~~231-36.8~~§~~ **Erroneous claim for refund or credit.**

10 (a) If a claim for refund or credit with respect to tax is made
11 for an excessive amount, the person making the claim shall be
12 liable for a penalty in an amount equal to twenty per cent of
13 the excessive amount; provided that there shall be no penalty
14 assessed where the penalty calculation under this section
15 results in an amount of less than \$400.

16 (b) It shall be a defense to the penalty under this
17 section that the claim for refund or credit had a reasonable
18 basis. A person claiming the reasonable basis defense shall
19 have the burden of proof to demonstrate the reasonableness of
20 the claim.



1 (c) This section shall be construed in accordance with
2 regulations and judicial interpretations given to section 6676
3 of the Internal Revenue Code.

4 (d) For purposes of this section:

5 "Excessive amount" means the amount by which the amount of
6 the claim for refund or credit for any taxable year exceeds the
7 amount of the claim allowable for such taxable year.

8 "Reasonable basis" means a standard of care used in tax
9 reporting that is significantly higher than not frivolous or not
10 patently improper. A reasonable basis position will be more
11 than arguable and based on at least one or more authorities of
12 either state or federal tax administration. A position is
13 considered to have a reasonable basis if a reasonable and well-
14 informed analysis by a person knowledgeable in tax law would
15 lead that person to conclude that the position has approximately
16 a one-in-four, or greater, likelihood of being sustained on the
17 merits. A reasonable basis includes innocent mistakes where the
18 excessive amount is the result of inadvertence, mathematical
19 error, or where otherwise defined as innocent by the director
20 pursuant to a formal pronouncement issued without regard to
21 chapter 91.



1 (e) This section shall not apply to any portion of an
2 underpayment on which a penalty is imposed under section 231-36,
3 231-36.4, or 231-36.6."

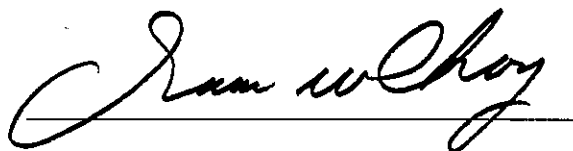
4 SECTION 4. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

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

9 SECTION 6. This Act, upon its approval, shall apply to
10 taxable years beginning after December 31, 2011.

11

INTRODUCED BY:



JAN 11 2012



H.B. NO. 1695

Report Title:

Tax Penalties

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.

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

