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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. Chapter 231, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4           "§231-           Whistleblower awards. (a) Except as provided  
5 in subsections (b) and (c), if the director of taxation proceeds  
6 with an administrative or judicial action for any violation of  
7 title 14 by a taxpayer based on information received from an  
8 individual, the individual shall receive as an award at least  
9 fifteen per cent but not more than thirty per cent of the  
10 collected proceeds, including penalties, interest, additions to  
11 tax, and additional amounts, resulting from the action, any  
12 related actions, or any settlement in response to the action;  
13 provided that no award shall be made under this section unless:  
14           (1) In the case of any action brought against an  
15           individual taxpayer, the taxpayer's gross income  
16           exceeds \$200,000 for any taxable year subject to the  
17           action;



- 1       (2) The tax, penalties, interest, additions to tax, and  
2       additional amounts in dispute exceed \$500,000; and  
3       (3) The information that the individual provides the  
4       director of taxation is submitted under penalty of  
5       perjury.

6       The determination of the amount of any award under this  
7       subsection shall depend upon the extent to which the individual  
8       substantially contributed to the action, as determined by the  
9       director of taxation.

- 10       (b) In the event the action described in subsection (a) is  
11       one which the director of taxation determines to be based  
12       principally on disclosures of specific allegations, rather than  
13       information provided by the individual described in subsection  
14       (a), resulting from a judicial or administrative hearing, or  
15       from a governmental report, hearing, audit, or investigation, or  
16       from the news media, the director of taxation may award such  
17       sums as the director of taxation determines to be appropriate,  
18       but in no case more than ten per cent of the collected proceeds,  
19       including penalties, interest, additions to tax and additional  
20       amounts, resulting from the action, any related actions, or any  
21       settlement in response to the action, taking into account the  
22       significance of the individual's information and the role of the



1 individual and any legal representative of the individual in  
2 contributing to the action.

3 This subsection shall not apply if the information  
4 resulting in the initiation of an action described in subsection  
5 (a) was originally provided by the individual described in that  
6 subsection.

7 (c) If the director of taxation determines that the claim  
8 for an award under this section is brought by an individual who  
9 planned and initiated the activities that led to the violation  
10 for which the director of taxation proceeded with an  
11 administrative or judicial action, the director of taxation may  
12 reduce the award accordingly; provided that if the individual is  
13 convicted of criminal conduct arising from those activities, the  
14 director of taxation shall deny any award.

15 (d) Within thirty days of any determination regarding an  
16 award under this section, the determination may be appealed to  
17 the tax appeal court, which shall have jurisdiction over the  
18 matter.

19 (e) No contract with the department shall be necessary for  
20 any individual to receive an award under this section.

21 (f) Any individual described in subsection (a) or (b) may  
22 be represented by counsel."



1 SECTION 2. 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."

18 SECTION 3. Section 231-36.6, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+]§231-36.6[+] **Substantial understatements or**  
21 **misstatements of amounts; penalty.** (a) There shall be added to  
22 the tax an amount equal to twenty per cent of the portion of any



1 underpayment that is attributable to any substantial  
2 understatement of any tax in a taxable year. The penalty under  
3 this section shall be in addition to any other penalty  
4 assessable by law.

5 (b) Except as provided under subsection (c), there is a  
6 substantial understatement of tax for any taxable year if the  
7 amount of the understatement for the taxable year exceeds the  
8 greater of:

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

11 (2) \$1,500.

12 (c) In the case of a corporation other than a corporation  
13 taxable under subchapter S of the Internal Revenue Code, there  
14 is a substantial understatement of tax for any taxable year if  
15 the amount of the understatement for the taxable year exceeds  
16 the greater of:

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

19 (2) \$30,000.

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



- 1 (1) The tax treatment of any item by the taxpayer if there  
2 is or was substantial authority for such treatment; or  
3 (2) Any item if the relevant facts affecting the item's  
4 tax treatment are adequately disclosed in the return  
5 or in a statement attached to the return and there is  
6 a reasonable basis, as defined under section 231-36.8,  
7 for the tax treatment by the taxpayer.

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

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

13 (f) For purposes of this section, "understatement" means  
14 the excess of:

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

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

20 (g) This section shall not apply to any portion of an  
21 underpayment on which a penalty is imposed under section 231-36,  
22 231-36.4, or 231-36.8."



1 SECTION 4. Section 231-36.8, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§231-36.8[+] **Erroneous claim for refund or credit.**

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

10 (b) It shall be a defense to the penalty under this  
11 section that the claim for refund or credit had a reasonable  
12 basis. A person claiming the reasonable basis defense shall  
13 have the burden of proof to demonstrate the reasonableness of  
14 the claim.

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

18 (d) For purposes of this section:

19 "Excessive amount" means the amount by which the amount of  
20 the claim for refund or credit for any taxable year exceeds the  
21 amount of the claim allowable for such taxable year.



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

15 (e) This section shall not apply to any portion of an  
16 underpayment on which a penalty is imposed under section 231-36,  
17 231-36.4, or 231-36.6."

18 SECTION 5. Section 237-9.3, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+]§237-9.3[+] **General excise tax benefits; denial of tax**  
21 **benefits for failure to properly claim.** (a) Notwithstanding  
22 any other law to the contrary, a person shall not be entitled to





1 any general excise tax benefit under this chapter unless the  
2 person claiming the general excise tax benefit:

3 (1) Obtains a license to engage in and conduct business as  
4 required under section 237-9; and

5 (2) Files the annual general excise tax reconciliation tax  
6 return as provided under this chapter or chapter 231  
7 not later than twelve months from the due date  
8 prescribed for the return.

9 (b) The director may require any taxpayer to furnish  
10 information to determine the validity of any general excise tax  
11 benefit and may adopt rules pursuant to chapter 91 necessary to  
12 effectuate the purposes of this section.

13 (c) The director may waive the denial of the general  
14 excise tax benefit under subsection (a) if the failure to comply  
15 is due to reasonable cause and not to the wilful neglect of the  
16 taxpayer.

17 (d) The director shall first give written notice to a  
18 nonprofit organization to comply with the requirements of this  
19 section before imposing a denial of any general excise tax  
20 benefit under this chapter, and the organization shall have  
21 ninety days from the date of the receipt of the notice to comply  
22 with the requirements.



1        [~~(d)~~] (e) For purposes of this section [~~,"general"]:~~  
2        "General excise tax benefit" means any tax exemption,  
3 exclusion of a taxable amount, a reduction from the measure of a  
4 tax imposed, a tax deduction, a tax credit, a lower rate of tax,  
5 a segregation or division of taxable amounts between multiple  
6 taxpayers involved in the same transaction, or any income  
7 splitting allowed under this chapter.

8        "Nonprofit organization" shall have the same meaning  
9 ascribed to it under section 201H-1."

10        SECTION 6. Section 237-41.5, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12        "(b) The personal liability under this section applies to  
13 any officer, member, manager, or other person having control or  
14 supervision over amounts of gross proceeds or gross income  
15 collected to pay the general excise tax and held in trust under  
16 subsection (a), or who is charged with the responsibility for  
17 the filing of returns or the payment of general excise tax on  
18 gross income or gross proceeds collected and held in trust under  
19 subsection (a). The person shall be personally liable for any  
20 unpaid taxes and interest and penalties on those taxes, if such  
21 officer or other person wilfully fails to pay or to cause to be  
22 paid any taxes due from the taxpayer pursuant to this chapter.



1        This subsection shall not apply to any officer, manager, or  
2 other person having control or supervision over amounts of gross  
3 proceeds or gross income collected to pay the general excise tax  
4 and held in trust under subsection (a), or who is charged with  
5 the responsibility for the filing of returns or the payment of  
6 general excise tax on gross income or gross proceeds collected  
7 and held in trust under subsection (a) for a nonprofit  
8 organization.

9        For purposes of this subsection [~~,"wilfully fails to pay or~~  
10 ~~to cause to be paid"~~ shall be construed in accordance with  
11 ~~judicial interpretations given to similar provisions of the~~  
12 ~~Internal Revenue Code; consistent therewith, the term "wilfully"~~  
13 ~~shall mean a voluntary, intentional violation of a known legal~~  
14 ~~duty.]:~~

15        "Nonprofit organization" shall have the same meaning  
16 ascribed to it under section 201H-1.

17        "Wilfully fails to pay or to cause to be paid" shall be  
18 construed in accordance with judicial interpretations given to  
19 similar provisions of the Internal Revenue Code; consistent  
20 therewith, the term "wilfully" shall mean a voluntary,  
21 intentional violation of a known legal duty."



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

6 SECTION 9. This Act shall take effect on July 1, 2112,  
7 provided that sections 2, 3, and 4 of this Act shall apply to  
8 taxable years beginning after December 31, 2011.



**Report Title:**

Taxation; General Excise Tax; Repeal; Tax Penalties

**Description:**

Prohibits penalties from being added to tax underpayments on which certain other penalties are already imposed. Establishes monetary awards for whistleblowers for a Department of Taxation action for violations of tax laws. Mandates that nonprofit organizations receive notice before denial of general excise tax benefit. Limits liability of persons having control of certain amounts held in trust for nonprofit organizations. Effective July 1, 2112. (SB2238 HD1)

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

