
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), the director of taxation shall award
6 an individual for:

7 (1) Detecting underpayments of tax; or

8 (2) Detecting and bringing to trial and punishment persons
9 guilty of violating title 14 or conniving at the same,

10 in cases where such expenses are not otherwise provided for by

11 law. The individual shall receive as an award at least fifteen

12 per cent but not more than thirty per cent of the collected

13 proceeds, including penalties, interest, additions to tax, and

14 additional amounts, resulting from the action, any related

15 actions, or any settlement in response to the action; provided

16 that no award shall be made under this section unless:

17 (1) In the case of any action brought against an

18 individual taxpayer, the taxpayer's gross income



1 exceeds \$200,000 for any taxable year subject to the
2 action;

3 (2) The tax, penalties, interest, additions to tax, and
4 additional amounts in dispute exceed \$500,000; and

5 (3) The information that the individual provides the
6 director of taxation is submitted under penalty of
7 perjury.

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

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



1 settlement in response to the action, taking into account the
2 significance of the individual's information and the role of the
3 individual and any legal representative of the individual in
4 contributing to the action.

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

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

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

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



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

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

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

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

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

18 (2) \$1,500.

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



1 the amount of the understatement for the taxable year exceeds
2 the greater of:

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

5 (2) \$30,000.

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

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

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

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

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

20 (f) For purposes of this section, "understatement" means
21 the excess of:



- 1 (1) The amount of tax required to be shown on the return
2 for the taxable year; over
- 3 (2) The amount of tax imposed that is shown on the return,
4 reduced by any rebate as that term is defined by
5 section 6211(b)(2) of the Internal Revenue Code.
- 6 (g) This section shall not apply to any portion of an
7 underpayment on which a penalty is imposed under section 231-
8 36.8."

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

11 "[+]§231-36.8[+] **Erroneous claim for refund or credit.**

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

18 (b) It shall be a defense to the penalty under this
19 section that the claim for refund or credit had a reasonable
20 basis. A person claiming the reasonable basis defense shall
21 have the burden of proof to demonstrate the reasonableness of
22 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-
3 36.6."

4 SECTION 4. Section 237-9.3, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~§~~237-9.3~~§~~ **General excise tax benefits; denial of tax**
7 **benefits for failure to properly claim.** (a) Notwithstanding
8 any other law to the contrary, a person shall not be entitled to
9 any general excise tax benefit under this chapter unless the
10 person claiming the general excise tax benefit:

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

13 (2) Files the annual general excise tax reconciliation tax
14 return as provided under this chapter or chapter 231
15 not later than twelve months from the due date
16 prescribed for the return.

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

21 (c) The director may waive the denial of the general
22 excise tax benefit under subsection (a) if the failure to comply



1 is due to reasonable cause and not to the wilful neglect of the
2 taxpayer.

3 (d) The director shall first give written notice to a
4 nonprofit organization to comply with the requirements of this
5 section before imposing a denial of any general excise tax
6 benefit under this chapter, and the organization shall have
7 ninety days from the date of the receipt of the notice to comply
8 with the requirements.

9 ~~[(d)]~~ (e) For purposes of this section~~["general"]~~:

10 "General excise tax benefit" means any tax exemption,
11 exclusion of a taxable amount, a reduction from the measure of a
12 tax imposed, a tax deduction, a tax credit, a lower rate of tax,
13 a segregation or division of taxable amounts between multiple
14 taxpayers involved in the same transaction, or any income
15 splitting allowed under this chapter.

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

18 SECTION 5. Section 237-41.5, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) The personal liability under this section applies to
21 any officer, member, manager, or other person having control or
22 supervision over amounts of gross proceeds or gross income



1 collected to pay the general excise tax and held in trust under
2 subsection (a), or who is charged with the responsibility for
3 the filing of returns or the payment of general excise tax on
4 gross income or gross proceeds collected and held in trust under
5 subsection (a). The person shall be personally liable for any
6 unpaid taxes and interest and penalties on those taxes, if such
7 officer or other person wilfully fails to pay or to cause to be
8 paid any taxes due from the taxpayer pursuant to this chapter.

9 This subsection shall not apply to any officer, manager, or
10 other person having control or supervision over amounts of gross
11 proceeds or gross income collected to pay the general excise tax
12 and held in trust under subsection (a), or who is charged with
13 the responsibility for the filing of returns or the payment of
14 general excise tax on gross income or gross proceeds collected
15 and held in trust under subsection (a) for a nonprofit
16 organization.

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



1 "Nonprofit organization" shall have the same meaning
2 ascribed to it under section 201H-1.
3 "Wilfully fails to pay or to cause to be paid" shall be
4 construed in accordance with judicial interpretations given to
5 similar provisions of the Internal Revenue Code; consistent
6 therewith, the term "wilfully" shall mean a voluntary,
7 intentional violation of a known legal duty."

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

11 SECTION 7. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 8. This Act shall take effect on July 1, 2112,
14 provided that sections 2, 3, and 4 of this Act shall apply to
15 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 HD2)

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

