
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 section.

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

1 SECTION 2. Section 231-7.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§231-7.5[+] **Expedited appeals and dispute resolution**
4 **program.** (a) The department shall be authorized to implement
5 an administrative appeals and dispute resolution program that
6 shall expeditiously resolve all tax, penalty, interest, fine,
7 assessment, and other such disputes between the department and
8 the taxpayer or return preparer. The director or the director's
9 designee, who shall report directly and be answerable solely to
10 the director, shall serve as an independent appeals officer and
11 shall be authorized to compromise, settle, or otherwise resolve
12 any dispute on any basis, including hazards and costs of
13 litigation, considering equally the position of the taxpayer and
14 the department on an impartial basis. The independent appeals
15 officer shall not be influenced by any department tax compliance
16 initiatives and policies, or loss of revenue to the State.
17 Decisions of the independent appeals officer shall be in writing
18 stating the facts, analysis, and conclusions in support, which
19 shall be provided to the taxpayer and return preparer. Persons
20 who currently serve or have served in the previous five years as
21 an auditor, audit supervisor or manager, collector, collection
22 supervisor or manager, district manager or supervisor, or tax

1 compliance administrator, shall not be eligible to be the
2 director's designee.

3 (b) Notwithstanding any other law to the contrary,
4 including tax appeal procedures set forth under chapter 232, a
5 taxpayer shall be eligible to petition the department once for
6 participation in the administrative appeals and dispute
7 resolution program after issuance of a notice of proposed
8 assessment; provided that if a taxpayer has filed a tax appeal
9 with the tax appeal court or other court, the taxpayer shall
10 first be required to obtain the approval of the director and
11 permission from the respective court prior to petitioning the
12 department for participation. The director shall have the right
13 to deny a petition for cause.

14 (c) The department shall adopt procedures to carry out the
15 purposes of this section, including procedures relating to ex
16 parte communications between the director or the director's
17 designee and other department personnel to ensure that such
18 communications do not compromise or appear to compromise the
19 independence of the administrative appeals and dispute
20 resolution program.

21 (d) The director of taxation may appoint an administrative
22 appeals officer as necessary to administer this section, and

1 perform other duties as directed by the director. The
2 administrative appeals officer shall be exempt from chapters 76
3 and may be a legal or accounting professional; provided that no
4 individual appointed under this section shall render legal
5 services reserved to the attorney general under chapter 28."

6 SECTION 3. Section 231-36.4, Hawaii Revised Statutes, is
7 amended to read as follows:

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

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

18 provided that a corporation shall be fined not more than
19 \$500,000.

20 (b) This section shall not apply to any portion of an
21 underpayment on which a penalty is imposed under section 231-36,
22 231-36.6, or 231-36.8."

1 SECTION 4. 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 5. 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 6. Section 237D-4, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Each operator or plan manager as a condition
7 precedent to engaging or continuing in the business of
8 furnishing transient accommodations or in business as a resort
9 time share vacation plan shall register with the director the
10 name and address of each place of business within the State
11 subject to this chapter. The operator or plan manager shall
12 make a one-time payment as follows:

- 13 (1) \$5 for each registration for transient accommodations
14 consisting of one to five units;
15 (2) \$15 for each registration for transient accommodations
16 consisting of six or more units; and
17 (3) \$15 for each resort time share vacation plan within
18 the State;

19 upon receipt of which the director shall issue a certificate of
20 registration in such form as the director determines, attesting
21 that the registration has been made. The registration shall not
22 be transferable and shall be valid only for the operator or plan

1 manager in whose name it is issued and for the transaction of
2 business at the place designated therein.

3 The registration, or in lieu thereof a notice stating where
4 the registration may be inspected and examined, shall at all
5 times be conspicuously displayed at the place for which it is
6 issued. Acquisition of additional transient accommodation units
7 after payment of the one-time fee shall not result in additional
8 fees.

9 The registration provided for by this section shall be
10 effective until canceled in writing. Any application for the
11 reissuance of a previously canceled registration identification
12 number shall be regarded as a new registration application and
13 shall be subject to the payment of the one-time registration
14 fee. The director may revoke or cancel any license issued under
15 this chapter for cause as provided by rule under chapter 91.

16 The website address to a website containing the operator or
17 plan manager's registration identification number shall be
18 displayed conspicuously in all advertisements and solicitations
19 and on all operator- or plan manager-maintained websites
20 regarding transient accommodations for which the registration is
21 issued, unless ten or fewer registration identification numbers
22 are to be listed, in which case the registration identification

1 number shall be displayed conspicuously directly on the
2 advertisement, solicitation, or website; provided that if the
3 operator resides out-of-state or on another island from where
4 the transient accommodations are located, contact information of
5 an agent who resides on the island on which the transient
6 accommodations are located shall be included."

7 SECTION 7. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 8. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect on July 1, 2012;
13 provided that sections 3, 4, and 5 of this Act shall apply to
14 taxable years beginning after December 31, 2011; provided
15 further that section 6 of this Act shall commence on January 1,
16 2013.

Report Title:

Taxation; Whistleblower Awards; Administrative Appeals Officer;
Transient Accommodations Tax; Tax Penalties

Description:

Establishes monetary awards for whistleblowers for a Department of Taxation administrative or judicial action. Authorizes the Director of Taxation to appoint an administrative appeals officer. Prohibits certain penalties from being added to tax underpayments on which certain other penalties are already imposed. Requires all advertisements and solicitations for transient accommodations to display the registration identification number or the website address containing the registration identification number.

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