
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 231-7.5, Hawaii Revised Statutes, is
4 amended to read as follows:

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



1 an auditor, audit supervisor or manager, collector, collection
2 supervisor or manager, district manager or supervisor, or tax
3 compliance administrator, shall not be eligible to be the
4 director's designee.

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

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



1 (d) The director of taxation may appoint an administrative
2 appeals officer as necessary to administer this section, and
3 perform other duties as directed by the director. The
4 administrative appeals officer shall be exempt from chapter 76
5 and may be a legal or accounting professional; provided that no
6 individual appointed under this section shall render legal
7 services reserved to the attorney general under chapter 28."

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

10 "**[+]§231-36.6[+]** **Substantial understatements or**
11 **misstatements of amounts; penalty.** (a) There shall be added to
12 the tax an amount equal to twenty per cent of the portion of any
13 underpayment that is attributable to any substantial
14 understatement of any tax in a taxable year. The penalty under
15 this section shall be in addition to any other penalty
16 assessable by law.

17 (b) Except as provided under subsection (c), there is a
18 substantial understatement of tax for any taxable year if the
19 amount of the understatement for the taxable year exceeds the
20 greater of:

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



1 (2) \$1,500.

2 (c) In the case of a corporation other than a corporation
3 taxable under subchapter S of the Internal Revenue Code, there
4 is a substantial understatement of tax for any taxable year if
5 the amount of the understatement for the taxable year exceeds
6 the greater of:

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

9 (2) \$30,000.

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

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

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

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



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

4 (f) For purposes of this section, "understatement" means
5 the excess of:

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

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

11 (g) This section shall not apply to any portion of an
12 underpayment on which a penalty is imposed under section 231-
13 36.8."

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

16 "[+]**§231-36.8**[+] **Erroneous claim for refund or credit.**

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



1 (b) It shall be a defense to the penalty under this
2 section that the claim for refund or credit had a reasonable
3 basis. A person claiming the reasonable basis defense shall
4 have the burden of proof to demonstrate the reasonableness of
5 the claim.

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

9 (d) For purposes of this section:

10 "Excessive amount" means the amount by which the amount of
11 the claim for refund or credit for any taxable year exceeds the
12 amount of the claim allowable for such taxable year.

13 "Reasonable basis" means a standard of care used in tax
14 reporting that is significantly higher than not frivolous or not
15 patently improper. A reasonable basis position will be more
16 than arguable and based on at least one or more authorities of
17 either state or federal tax administration. A position is
18 considered to have a reasonable basis if a reasonable and well-
19 informed analysis by a person knowledgeable in tax law would
20 lead that person to conclude that the position has approximately
21 a one-in-four, or greater, likelihood of being sustained on the
22 merits. A reasonable basis includes innocent mistakes where the



1 excessive amount is the result of inadvertence, mathematical
2 error, or where otherwise defined as innocent by the director
3 pursuant to a formal pronouncement issued without regard to
4 chapter 91.

5 (e) This section shall not apply to any portion of an
6 underpayment on which a penalty is imposed under section 231-
7 36.6."

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

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

- 17 (1) \$5 for each registration for transient accommodations
18 consisting of one to five units;
- 19 (2) \$15 for each registration for transient accommodations
20 consisting of six or more units; and
- 21 (3) \$15 for each resort time share vacation plan within
22 the State;



1 upon receipt of which the director shall issue a certificate of
2 registration in such form as the director determines, attesting
3 that the registration has been made. The registration shall not
4 be transferable and shall be valid only for the operator or plan
5 manager in whose name it is issued and for the transaction of
6 business at the place designated therein.

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

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

20 The website address to a website containing the operator or
21 plan manager's registration identification number shall be
22 displayed conspicuously in all advertisements and solicitations



1 and on all operator- or plan manager-maintained websites
2 regarding transient accommodations for which the registration is
3 issued, unless ten or fewer registration identification numbers
4 are to be listed, in which case the registration identification
5 number shall be displayed conspicuously directly on the
6 advertisement, solicitation, or website; provided that if the
7 operator resides out-of-state or on another island from where
8 the transient accommodations are located, contact information of
9 an agent who resides on the island on which the transient
10 accommodations are located shall be included."

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

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on July 1, 2112;
17 provided that sections 3 and 4 of this Act shall apply to
18 taxable years beginning after December 31, 2011; provided
19 further that section 5 of this Act shall take effect on January
20 1, 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. Effective July 1, 2012.
(SB2947 HD2)

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

