

JAN 25 2012

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# A BILL FOR AN ACT

RELATING TO TAX PENALTIES.

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

1           SECTION 1. Act 166, Session Laws of Hawaii 2009, enacted  
2 new tax penalties that are similar to penalties imposed under  
3 federal law. However, unlike federal law, Act 166 did not  
4 prohibit the stacking of tax underpayment penalties.  
5 Consequently, in Hawaii a taxpayer is potentially subject to  
6 penalties of sixty per cent or more.

7           In comparison, under federal law a twenty per cent penalty  
8 generally applies to the portion of any tax underpayment that is  
9 attributable to any of the following:

- 10           (1) Negligence or disregard of Internal Revenue Code rules  
11           and regulations;  
12           (2) Substantial understatement of tax liability;  
13           (3) Overvaluation of property; or  
14           (4) Undervaluation of property that is subject to a gift  
15           or estate tax return.

16           Federal law also provides that only a single twenty per  
17 cent penalty may be imposed on a portion of an underpayment,  
18 even if that portion is attributable to more than one type of



1 prohibited conduct. The legislature finds that Hawaii should  
2 have fairness provisions in state tax laws that are similar to  
3 federal law.

4 The purpose of this Act is to incorporate fairness  
5 provisions into Hawaii tax laws that are similar to those used  
6 in the Internal Revenue Code for the calculation of tax  
7 penalties.

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

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

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

20 provided that a corporation shall be fined not more than  
21 \$500,000.



1        (b) This section shall not apply to any portion of an  
2 underpayment on which a penalty is imposed under section 231-36,  
3 231-36.6, or 231-36.8."

4        SECTION 3. Section 231-36.6, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6        "(a) There shall be added to the tax an amount equal to  
7 twenty per cent of the portion of any underpayment that is  
8 attributable to any substantial understatement of any tax in a  
9 taxable year. [~~The penalty under this section shall be in~~  
10 ~~addition to any other penalty assessable by law.~~] This section  
11 shall not apply to any portion of an underpayment on which a  
12 penalty is imposed under section 231-36, 231-36.4, or 231-36.8."

13        SECTION 4. Section 231-36.8, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15        "(a) If a claim for refund or credit with respect to tax  
16 is made for an excessive amount, the person making the claim  
17 shall be liable for a penalty in an amount equal to twenty per  
18 cent of the excessive amount; provided that there shall be no  
19 penalty assessed where the penalty calculation under this  
20 section results in an amount of less than \$400. This section  
21 shall not apply to any portion of an underpayment on which a  
22 penalty is imposed under section 231-36, 231-36.4, or 231-36.6."



1 SECTION 5. 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 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon approval, and  
7 shall apply to taxable years beginning after December 31, 2011.  
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# S.B. NO. 2998

**Report Title:**

Taxation; Penalties

**Description:**

Prohibits penalties for substantial understatements or misstatements and erroneous claims for refund or credit from being added to tax underpayments on which other penalties have been imposed.

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