
A BILL FOR AN ACT

RELATING TO LIABILITY FOR AMOUNTS PASSED ON AS TAX.

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

1 SECTION 1. The department of taxation found many instances
2 where taxpayers openly passed on to consumers Hawaii taxes such
3 as the general excise and transient accommodation taxes, but did
4 not remit those amounts to the State. Taxpayers who did not
5 remit the collected taxes often claim the amounts received are
6 not subject to taxation due to exemptions or deductions, or that
7 the transaction is subject to a lower tax rate. Current law
8 allows the office of consumer protection, or the consumers, to
9 take legal action against businesses that collect more for taxes
10 than are due to the State. Other than this type of consumer
11 protection action, the State cannot recover the total collected
12 for taxes or require the taxpayer to return the overpayment to
13 consumers. However, the department of taxation cannot violate
14 taxpayer information confidentiality by notifying the office of
15 consumer protection when these types of violations are
16 discovered.



1 The purpose of this Act is to mandate that taxes itemized
2 and passed on to consumers be remitted to the State unless
3 returned to the consumer. This Act further provides for civil
4 penalties against the taxpayer and notice to the office of
5 consumer protection of the violations.

6 SECTION 2. Chapter 231, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§231- Liability for certain amounts. (a) For all
10 taxes imposed under title 14, where an amount is charged as the
11 tax owed by the taxpayer for the transaction and is separately
12 stated or accounted for in a receipt, contract, invoice,
13 billing, or other evidence of the business activity, the
14 taxpayer is conclusively presumed to be liable for the amounts
15 charged. In addition to these tax amounts, the taxpayer shall
16 be liable for any applicable penalties and interest assessed
17 pursuant to this title.

18 (b) Any liability under subsection (a) shall be reduced by
19 the amount that the taxpayer has returned to the source from
20 which it was collected.



1 (c) The department shall adopt administrative rules
2 pursuant to chapter 91 stating the maximum rates at which taxes
3 under this title may be passed on, as described in subsection
4 (a). In addition to other penalties applicable under this
5 title, passing on a tax at a rate higher than these maximum
6 rates shall result in an assessment of a civil penalty of up to
7 \$500 per violation.

8 (d) The department shall notify the department of commerce
9 and consumer affairs of the commencement of any judicial appeal
10 in which:

11 (1) A taxpayer has passed on a tax, as described in
12 subsection (a), and failed to remit those amounts to
13 the State in a timely manner, or

14 (2) A taxpayer has been assessed a penalty under
15 subsection (c)."

16 SECTION 3. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Taxes; Liability for Taxes Passed On

Description:

Creates conclusive presumption that taxpayer is liable for any amounts passed on to consumers as payment for any tax authorized by title 14, Hawaii Revised Statutes, unless the taxpayer returns the overpayment to the consumer. Provides for civil penalty and reporting of violations to the office of consumer protection. (HB968 HD1)

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