
A BILL FOR AN ACT

RELATING TO TAX ADMINISTRATION.

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

1 SECTION 1. Section 231-8.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§231-8.5 Electronic filing of tax returns.** (a) The
4 department may allow filing by electronic, telephonic, or
5 optical means of any tax return, application, report, or other
6 document required under the provisions of title 14 administered
7 by the department.

8 (b) If the requirements of subsection (c) are satisfied,
9 the department may require electronic filing of any tax return,
10 application, report, or other document required under the
11 provisions of title 14 administered by the department for the
12 following taxpayers:

13 (1) For withholding tax filings required under chapter
14 235, only employers whose total tax liability under
15 sections 235-61 and 235-62 for the calendar or fiscal
16 year exceeds \$40,000;

17 (2) For income tax filings required under chapter 235,
18 only taxpayers who are [~~subject~~]:

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- 1 (A) Subject to tax under section 235-71, 235-71.5, or
2 235-72;
- 3 (B) Required to file partnership returns under
4 section 235-95, provided that the partnership's
5 gross income exceeds \$250,000 for the taxable
6 year; or
- 7 (C) Required to file S corporation returns under
8 section 235-128, provided that the S corporation's
9 gross income exceeds \$250,000 for the taxable
10 year;
- 11 (3) For general excise tax filings required under chapter
12 237, only taxpayers whose total tax liability under
13 chapter 237 for the calendar or fiscal year exceeds
14 \$4,000;
- 15 (4) For transient accommodations tax filings required
16 under chapter 237D, only operators and plan managers
17 whose total tax liability under chapter 237D for the
18 calendar or fiscal year exceeds \$4,000; and
- 19 (5) For filings required under the following chapters, all
20 taxpayers subject to tax under those chapters:
- 21 (A) 236E;
- 22 (B) 239;

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1 (C) 241;

2 (D) 243;

3 (E) 244D;

4 (F) 245; and

5 (G) 251.

6 (c) As a prerequisite to requiring electronic filing under
7 subsection (b), the department shall provide:

8 (1) An electronic filing option to the taxpayer; and

9 (2) No less than ninety days prior written notice to the
10 general public of the department's intention to
11 require electronic filing.

12 (d) Notwithstanding subsections (b) and (c), any return
13 that is prepared by a tax return preparer, as defined in section
14 231-36.5, shall be filed electronically; provided that this
15 subsection shall only apply if an electronic filing option is
16 available and the tax return preparer reasonably expects to
17 prepare more than ten returns of that same tax type in the
18 calendar year.

19 If a return that is required to be filed electronically
20 under this subsection is not filed electronically, the tax
21 return preparer who prepared the return and the taxpayer shall
22 each be subject to a penalty of \$50 for every failure to

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1 electronically file a return, unless it is shown that the
2 failure is due to reasonable cause and not due to neglect.

3 ~~(d)~~ (e) The date of filing shall be the date the tax
4 return, application, report, or other document is transmitted to
5 the department in a form and manner prescribed by departmental
6 rules adopted pursuant to chapter 91. The department may
7 determine alternative methods for the signing, subscribing, or
8 verifying of a tax return, application, report, or other
9 document that shall have the same validity and consequences as
10 the actual signing by the taxpayer. A filing under this section
11 shall be treated in the same manner as a filing subject to the
12 penalties under section 231-39.

13 ~~(e)~~ (f) If a person who is required by the department
14 under subsection (b) to electronically file any tax return fails
15 to file using an approved method, unless it is shown that the
16 failure is due to reasonable cause and not to neglect, the
17 person shall be liable for a penalty of two per cent of the
18 amount of the tax required to be shown on the return. If no tax
19 is required to be shown on the return, the department may
20 determine the penalty imposed by administrative rule."

21 SECTION 2. Section 231-9.9, Hawaii Revised Statutes, is
22 amended to read as follows:

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1 "§231-9.9 Filing and payment of taxes by electronic funds
2 **transfer.** (a) The director of taxation is authorized to
3 require every person whose tax liability for any one taxable
4 year exceeds \$100,000 and who files a tax return for any tax,
5 including consolidated filers, to remit taxes by one of the
6 means of electronic funds transfer approved by the department;
7 provided that for withholding taxes under section 235-62,
8 electronic funds transfers shall apply to annual tax liabilities
9 that exceed \$40,000. [~~Notwithstanding the tax liability~~
10 ~~thresholds in this subsection, the director of taxation is~~
11 ~~authorized to require any person who is required to~~
12 ~~electronically file a federal return or electronically remit any~~
13 ~~federal taxes to the federal government, to electronically file~~
14 ~~a state return and electronically remit any state taxes under~~
15 ~~title 14 to the department. The director is authorized to grant~~
16 ~~an exemption to the electronic filing and payment requirements~~
17 ~~for good cause.]~~

18 (b) Any person who files a tax return for any tax and is
19 not required by subsection (a) to remit taxes by means of
20 electronic funds transfer may elect to remit taxes by one of the
21 means of electronic funds transfer approved by the department
22 with the approval of the director of taxation.

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1 (c) If a person who is required under subsection (a) to
2 ~~[file a return electronically or]~~ remit taxes by one of the
3 means of electronic funds transfer approved by the department
4 fails ~~[to file electronically or]~~ to remit the taxes using an
5 approved method ~~[on or before the date prescribed therefor]~~,
6 unless it is shown that the failure is due to reasonable cause
7 and not to neglect, there shall be added to the tax required to
8 be so remitted a penalty of two per cent of the amount of the
9 tax. The penalty under this subsection is in addition to any
10 penalty set forth in section 231-39.

11 (d) No later than twenty days prior to the convening of
12 each regular session, the department shall submit a report to
13 the legislature containing:

14 (1) The number of taxpayers who were assessed the two per
15 cent penalty pursuant to subsection (c); and

16 (2) The ~~[amounts of each assessment; and]~~ total amount of
17 assessments for the previous year.

18 ~~[(3) The total amount of assessments collected for the~~
19 ~~previous year.]"~~

20 SECTION 3. Section 231-10.8, Hawaii Revised Statutes, is
21 amended to read as follows:

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1 "~~{}~~§231-10.8~~{}~~ **Tax clearance fees.** The department may
2 charge a fee of \$20 for each tax clearance application submitted
3 [~~and \$5 for each certified copy of a tax clearance~~]."

4 SECTION 4. Section 231-28, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§231-28 Tax clearance before procuring liquor licenses.**

7 No liquor licenses shall be issued or renewed unless the
8 applicant therefor shall present to the issuing agency, a
9 certificate [~~signed~~] issued by the [~~director of taxation,~~
10 department, showing that the applicant does not owe the State
11 any delinquent taxes, penalties, or interest; or that the
12 applicant has entered into and is complying with an installment
13 plan agreement with the department of taxation for the payment
14 of delinquent taxes in installments. Notwithstanding any law to
15 the contrary, the department may disclose tax information
16 relevant to the applicant's state tax compliance to the issuing
17 agency."

18 SECTION 5. Section 232-24, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§232-24 Taxes paid pending appeal.** (a) The tax paid
21 upon the amount of any assessment, actually in dispute and in
22 excess of that admitted by the taxpayer, and covered by an

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1 appeal to the tax appeal court duly taken, shall, pending the
2 final determination of the appeal, be paid by the director of
3 finance into the "litigated claims fund". If the final
4 determination is in whole or in part in favor of the appealing
5 taxpayer, the director of finance shall repay to the taxpayer
6 out of the fund, or if investment of the fund should result in a
7 deficit therein, out of the general fund of the State, the
8 amount of the tax paid upon the amount held by the court to have
9 been excessive or nontaxable, together with from the date of
10 each payment into the litigated claims fund, the interest to be
11 paid from the general fund of the State. [~~For purposes of this~~
12 ~~section, the rate of interest shall be computed by reference to~~
13 ~~section 6621(a) (with respect to interest rate determination) of~~
14 ~~the Internal Revenue Code of 1986, as of January 1, 2010.~~] The
15 balance, if any, of the payment made by the appealing taxpayer,
16 or the whole of the payment, in case the decision is wholly in
17 favor of the assessor, shall, upon the final determination
18 become a realization under the tax law concerned.

19 (b) For purposes of this section, the interest shall be
20 computed using the following interest rates:

21 (1) For corporations, 3 per cent;

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1 (2) For corporations whose overpayments exceed \$10,000,
2 1.5 per cent; and

3 (3) For all other taxpayers, 4 per cent.


4 (c) In a case of an appeal to a board of review, the tax
5 paid, if any, upon the amount of the assessment actually in
6 dispute and in excess of that admitted by the taxpayer, shall
7 during the pendency of the appeal and until and unless an appeal
8 is taken to the tax appeal court, be held by the director of
9 finance in a special deposit. In the event of final
10 determination of the appeal in the board of review, the director
11 of finance shall repay to the appealing taxpayer out of the
12 deposit the amount of the tax paid upon the amount held by the
13 board to have been excessive or nontaxable, if any, the balance,
14 if any, or the whole of the deposit, in case the decision is
15 wholly in favor of the assessor, to become a realization under
16 the tax law concerned."

17 SECTION 6. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of this Act that can be given effect without the
21 invalid provision or application, and to this end the provisions
22 of this Act are severable.

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1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon its approval,
4 provided that section 2 shall take effect on January 1, 2021.

INTRODUCED BY: 

BY REQUEST

JAN 21 2020

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Report Title:

Tax Administration; Electronic Filing; Electronic Funds Transfer; Tax Clearances; Interest Rate

Description:

Allows the Department of Taxation to mandate the electronic filing of partnership and S-corporation returns if the taxpayer's gross receipts exceed \$250,000. Requires certain tax return preparers to file returns electronically. Amends the rules for electronic funds transfer to remove the authorization to require electronic funds transfer or electronic filing if the federal government required that person to file or pay electronically. Removes the timeliness requirement from the electronic funds transfer penalty. Removes the authority of the department to charge for certified copies of tax clearances. Amends the statute that mandates tax clearances for liquor license holders. Clarifies the interest rate for payments made to taxpayers out of the litigated claims fund.

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO TAX ADMINISTRATION.

PURPOSE: To amend and simplify chapters 231 and 232, Hawaii Revised Statutes (HRS), relating to mandatory electronic filing, mandatory electronic payment and interest rates.

MEANS: Amend sections 231-8.5, 231-9.9, 231-10.8, 231-28, and 232-24, HRS.

JUSTIFICATION: The mandatory electronic filing requirement is expanded to partnerships and S-corporations whose gross receipts exceed \$250,000. The department needs flexibility to determine the electronic filing penalty by administrative rule if no tax is shown on a return. A new requirement for tax return preparers to file electronically in some circumstances is imposed. The requirement applies only if an electronic filing method is available and the tax return preparer files more than ten returns of the same type in the calendar year. Tax return preparers who fail to meet the requirement are subject to a \$50 penalty per failure. The electronic funds transfer rules and penalties are out of date and must be updated. Specifically, the statute currently provides limited authority for requiring electronic filing. There is now superseding authority giving much greater authority for requiring electronic filing. Additionally, the statute provides for the penalty based on the method of payment as well as the timing of the payment. Title 14 has other penalties for late payment, so the electric funds transfer penalty should be simplified to only apply to the method of payment. Finally, the amendment to the

report on electronic funds transfer penalties and assessments clarifies the statute to reflect the information the department provides to the Legislature. The department no longer offers certified copies of tax clearances so the statute authorizing the department to charge for them is no longer necessary. The statute that requires a tax clearance to be issued prior to issuing a liquor license must be updated to reflect current administrative processes.

The interest rate the State must pay to taxpayers who have paid into the litigated claims fund and are due a refund is not clear. The amendment clarifies that the interest rate is a fixed interest rate.

Impact on the public: There will be minimal impact on the general public. The only impact on the general public will be less exposure to penalties for failing to pay electronically.

Impact on the department and other agencies: The State will benefit from a simplified electronic funds transfer penalty. The State will benefit from a clear and fixed rate of interest owed from the litigated claims fund.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval, provided that Section 2 shall take effect on January 1, 2021.