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## A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that the State's earned  
2 income tax credit is designed to help working families. The  
3 legislature also finds that in order for low-income working  
4 families to truly benefit from the tax credit, eligible  
5 taxpayers should be able to benefit from the credit as they are  
6 receiving their regular paychecks, and should not have to wait  
7 for a year to claim the credit.

8           Accordingly, the purpose of this Act is to require the  
9 department of taxation to authorize certain low-income  
10 individuals to reduce the amount of tax withheld from their  
11 wages by a prorated portion of the earned income tax credit the  
12 taxpayers would otherwise be entitled to claim on an annual  
13 basis.

14           SECTION 2. Section 235-61, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "**§235-61 Withholding of tax on wages.** (a) As used in  
17 this section:



1 "Employee" includes an officer or elected official, or any  
2 other employee.

3 "Employer" means:

4 (1) The person or government for whom an individual  
5 performs or performed any service, of whatever nature,  
6 as the employee of that person or government;

7 (2) The person having control of the payment of the wages  
8 if the employer as heretofore defined does not have  
9 control thereof; and

10 (3) Any person subject to the jurisdiction of the State  
11 and paying wages on behalf of an employer as  
12 heretofore defined if the employer is not subject to  
13 the jurisdiction of the State;

14 provided that the term employer shall not include any government  
15 that is not subject to the laws of the State except as, and to  
16 the extent that, it consents to the application of sections  
17 235-61 to 235-67 to it.

18 "Wages" means wages, commissions, fees, salaries, bonuses,  
19 and every and all other kinds of remuneration for, or  
20 compensation attributable to, services performed by an employee  
21 for the employee's employer, including the cash value of all



1 remuneration paid in any medium other than cash and the cost-of-  
2 living allowances and other payments included in gross income by  
3 section 235-7(b), but excluding income excluded from gross  
4 income by section 235-7 or other provisions of this chapter.

5 (b) Every employer, as defined herein, making payment of  
6 wages, as herein defined, to employees, shall deduct and  
7 withhold from such wages an amount of tax determined as provided  
8 in this section.

9 (c) For each withholding period (whether weekly, biweekly,  
10 monthly, or otherwise) the amount of tax to be withheld under  
11 this section shall be at a rate that, for the taxable year, will  
12 yield the tax imposed by section 235-51 upon each employee's  
13 annual wage, as estimated from the employee's current wage in  
14 any withholding period, but for the purposes of this subsection  
15 of the rates provided by section 235-51 the maximum to be taken  
16 into consideration shall be eight per cent. The tax for the  
17 taxable year shall be calculated upon the following assumptions:

18 (1) That the employee's annual wage, as estimated from the  
19 employee's current wage in the withholding period,  
20 will be the employee's sole income for the taxable  
21 year;



- 1           (2) That there will be no deductions therefrom in
- 2                   determining adjusted gross income;
- 3           (3) That in determining taxable income there shall be a
- 4                   standard deduction allowance, which shall be an amount
- 5                   equal to one exemption (or more than one exemption if
- 6                   so prescribed by the director) unless the taxpayer:
- 7                   (A) Is married and the taxpayer's spouse is an
- 8                           employee receiving wages subject to withholding;
- 9                           or
- 10                  (B) Has withholding exemption certificates in effect
- 11                           with respect to more than one employer.

12           For the purposes of this section, any standard  
13           deduction allowance under this paragraph shall be  
14           treated as if it were denominated a withholding  
15           exemption;

- 16           (4) That in determining taxable income there also will be
- 17                   deducted the amount of exemptions and withholding
- 18                   allowances granted to the employee in the computation
- 19                   of taxable income, as shown by a certificate to be
- 20                   filed with the employer as provided by subsection
- 21                   [~~(f)~~] (g) and



1 (5) If it appears from the certificate filed pursuant to  
2 subsection ~~[(f)]~~ (g) that the employee, under section  
3 235-93, is entitled to make a joint return, that the  
4 employee and the employee's spouse will so elect.

5 (d) Alternatively, at the election of the employer, the  
6 employer may deduct and withhold from each employee an amount of  
7 tax determined on the basis of tables to be prepared and  
8 furnished by the department of taxation, which amount of tax  
9 shall be substantially equivalent to the amount of tax provided  
10 by subsection (c) hereof.

11 (e) Subject to the limitation in section 235-55.75(h), for  
12 any taxable year beginning after December 31, 2020, the  
13 department shall authorize any qualifying individual taxpayer  
14 with:

15 (1) One or more dependents; and

16 (2) An income that does not exceed forty per cent of the  
17 median family income as determined by the United  
18 States Department of Housing and Urban Development,  
19 to elect to reduce the amount of tax withheld from the  
20 taxpayer's wages for each withholding period, by an amount equal  
21 to the prospective amount of the earned income tax credit that



1 the taxpayer would otherwise be entitled to claim pursuant to  
2 section 235-55.75, divided by the number of withholding periods  
3 for the applicable taxable year.

4 The department shall adopt rules pursuant to chapter 91 and  
5 shall prepare any forms or amend existing forms as necessary to  
6 effectuate the purposes of this subsection.

7 [~~e~~] (f) The department, by rule, may require the  
8 deduction and withholding of tax from any remuneration or  
9 compensation paid for or attributable to services that are not  
10 subject to the general excise tax imposed by chapter 237,  
11 whether or not a withholding is provided for [~~hereinabove~~] in  
12 this section . Every person so required to deduct and withhold  
13 tax, or from whom tax is required to be deducted and withheld,  
14 shall be subject to sections 235-61 to 235-67, and every person  
15 so required to deduct and withhold tax shall be deemed an  
16 employer for the purposes of this chapter.

17 The department, by rule, may exempt any employer from the  
18 requirement of deduction and withholding of taxes, even though  
19 the requirement is imposed by this section, if and to the extent  
20 that the department finds the requirement unduly onerous or  
21 impracticable of enforcement.



1           [~~(f)~~] (g) On or before the date of the commencement of  
2 employment with an employer, the employee shall furnish the  
3 employer with a signed certificate relating to the number of  
4 exemptions [~~which~~] that the employee claims, which shall in no  
5 event exceed the number to which the employee is entitled on the  
6 basis of the existing facts, and also showing whether the  
7 employee is married and is, under section 235-93, entitled to  
8 make a joint return. The certificate shall be in [~~such~~] the  
9 form and contain [~~such~~] the information [~~as may be~~] prescribed  
10 by the department.

11           If, on any day during the calendar year, there is a change  
12 in the employee's marital status and the employee no longer is  
13 entitled to make a joint return, or the number of exemptions to  
14 which the employee is entitled is less than the number of  
15 exemptions claimed by the employee on the certificate then in  
16 effect with respect to the employee, the employee [~~shall~~],  
17 within ten days thereafter, shall furnish the employer with a  
18 new certificate showing the employee's present marital status,  
19 or relating to the number of exemptions [~~which~~] that the  
20 employee then claims, which shall in no event exceed the number  
21 to which the employee is entitled on the basis of the existing



1 facts. If, on any day during the calendar year, there is a  
2 change in the employee's marital status and though previously  
3 not entitled to make a joint return the employee now is so  
4 entitled, or the number of exemptions to which the employee is  
5 entitled is greater than the number of exemptions claimed, the  
6 employee may furnish the employer with a new certificate showing  
7 the employee's present marital status, or relating to the number  
8 of exemptions [~~which~~] that the employee then claims, which shall  
9 in no event exceed the number to which the employee is entitled  
10 on the basis of the existing facts.

11 Such certificate shall take effect at the times set forth  
12 in the Internal Revenue Code.

13 [~~(g)~~] (h) In determining the deduction allowed by  
14 subsection (c) (4) an employee shall be entitled to withholding  
15 allowances or additional reductions in withholding under this  
16 subsection. In determining the number of additional withholding  
17 allowances or the amount of additional reductions in withholding  
18 under this subsection, the employee may take into account (to  
19 the extent and in the manner provided by rules) estimated  
20 itemized deductions and tax credits allowable under this  
21 chapter; and [~~such~~] any additional deductions and other items as





1 may be specified by the director in rules. For the purposes of  
2 this subsection a fractional number shall not be taken into  
3 account unless it amounts to one-half or more, in which case it  
4 shall be increased to the next whole number.

5 (1) As used in this subsection, unless the context  
6 otherwise requires:

7 (A) "Estimated itemized deductions" means the  
8 aggregate amount [~~which~~] that the employee  
9 reasonably expects will be allowed as deductions  
10 under sections 235-2.3, 235-2.4, 235-2.45, and  
11 235-7, other than the deductions referred to in  
12 Internal Revenue Code section 151 and those  
13 deductions required to be taken into account in  
14 determining adjusted gross income under Internal  
15 Revenue Code section 62(a) (with the exception of  
16 paragraph 10 thereof) for the estimation year.  
17 In no case shall the aggregate amount be greater  
18 than the sum of:

19 (i) The amount of the deductions reflected in  
20 the employee's net income tax return for the  
21 taxable year preceding the estimation year



1 of (if a return has not been filed for the  
2 preceding taxable year at the time the  
3 withholding exemption certificate is  
4 furnished the employer) the second taxable  
5 year preceding the estimation year; or  
6 (ii) The amount of estimated itemized deductions  
7 and tax credits allowable under this chapter  
8 and any additional deductions to which  
9 entitled; and  
10 (iii) The amount of the employee's determinable  
11 additional deductions for the estimation  
12 year;  
13 (B) "Estimated wages" means the aggregate amount  
14 which the employee reasonably expects will  
15 constitute wages for the estimation year;  
16 (C) "Determinable additional deductions" means those  
17 estimated itemized deductions [~~which~~] that:  
18 (i) Are in excess of the deductions referred to  
19 in subparagraph (A) reflected on the  
20 employee's net income tax return for the



1 taxable year preceding the estimation year;  
2 and  
3 (ii) Are demonstrably attributable to an  
4 identifiable event during the estimation  
5 year or the preceding taxable year which can  
6 reasonably be expected to cause an increase  
7 in the amount of [~~such~~] the deductions on  
8 the net income tax return for the estimation  
9 year;  
10 (D) "Estimation year", in the case of an employee who  
11 files the employee's return on the basis of a  
12 calendar year, means the calendar year in which  
13 the wages are paid; provided that in the case of  
14 an employee who files the employee's return on a  
15 basis other than the calendar year, the  
16 employee's estimation year, and the amounts  
17 deducted and withheld to be governed by the  
18 estimation year, shall be determined under rules  
19 prescribed by the director of taxation.  
20 (2) Under this subsection, the following special rules  
21 shall apply:



1           (A) Married individuals. The number of withholding  
2 allowances to which a husband and wife are  
3 entitled under this subsection shall be  
4 determined on the basis of their combined wages  
5 and deductions. This subparagraph shall not  
6 apply to a husband and wife who filed separate  
7 returns for the taxable year preceding the  
8 estimation year and who reasonably expect to file  
9 separate returns for the estimation year;

10          (B) Limitation. In the case of employees whose  
11 estimated wages are at levels at which the  
12 amounts deducted and withheld under this chapter  
13 generally are insufficient (taking into account a  
14 reasonable allowance for deductions and  
15 exceptions) to offset the liability for tax under  
16 this chapter with respect to the wages from which  
17 the amounts are deducted and withheld, the  
18 director [~~may~~], by rule, may reduce the  
19 withholding allowances to which those employees  
20 would, but for this subparagraph, be entitled  
21 under this subsection;



1 (C) Treatment of allowances. For purposes of this  
 2 chapter, any withholding allowance under this  
 3 subsection shall be treated as if it were  
 4 denominated a withholding exemption.

5 (3) The director may prescribe tables by rule under  
 6 chapter 91 pursuant to which employees shall determine  
 7 the number of withholding allowances to which they are  
 8 entitled under this subsection.

9 [~~h~~] (i) The director of taxation may adopt by rule under  
 10 chapter 91 the rules and regulations promulgated by the United  
 11 States Secretary of Treasury or a delegate of the Secretary  
 12 relating to the provisions of subtitle C, chapter 24 of the  
 13 Internal Revenue Code operative in this section."

14 SECTION 3. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act, upon its approval, shall apply to  
 17 taxable years beginning after December 31, 2020.

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# H.B. NO. 2708

**Report Title:**

Taxation; DOTAX; EITC; Wages; Withholding

**Description:**

Requires the Department of Taxation to authorize certain low-income individuals to reduce the amount of tax withheld from their wages by a prorated portion of the state earned income tax credit the taxpayers would otherwise be entitled to claim on an annual basis.

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