

JAN 27 2021

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# 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]~~:

(A) Subject to tax under section 235-71, 235-71.5, or 235-72;

(B) Required to file partnership returns under  
section 235-95, provided that the partnership's  
gross income exceeds \$250,000 for the taxable  
year;

(C) Required to file S corporation returns under section 235-128, provided that the S corporation's gross income exceeds \$250,000 for the taxable year; or

(D) Subject to tax under section 235-51, 235-52, or 235-53, provided that the taxpayer's federal adjusted gross income, as reported on the taxpayer's Hawaii income tax return, exceeds \$100,000 for the taxable year;

(3) For general excise tax filings required under chapter 237, only taxpayers whose total tax liability under chapter 237 for the calendar or fiscal year exceeds \$4,000;

(4) For transient accommodations tax filings required under chapter 237D, only operators and plan managers whose total tax liability under chapter 237D for the calendar or fiscal year exceeds \$4,000; and

(5) For filings required under the following chapters, all taxpayers subject to tax under those chapters:

(A) 236E;

(B) 239;

(C) 241;

(D) 243;

(E) 244D;

(F) 245; and

(G) 251.

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

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

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

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

1        If a return that is required to be filed electronically  
2        under this subsection is not filed electronically, the tax  
3        return preparer who prepared the return and the taxpayer shall  
4        each be subject to a penalty of \$50 for every failure to  
5        electronically file a return, unless it is shown that the  
6        failure is due to reasonable cause and not due to neglect.

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

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

1 is required to be shown on the return, the department may  
2 determine the penalty imposed by administrative rule."

3 SECTION 2. Section 231-9.9, Hawaii Revised Statutes, is  
4 amended as follows:

5 (1) By amending subsection (a) to read as follows:

6 "(a) The director of taxation is authorized to require  
7 every person or tax return preparer subject to mandatory  
8 electronic filing under section 231-8.5 and every person whose  
9 tax liability for any one taxable year exceeds \$100,000 and who  
10 files a tax return for any tax, including consolidated filers,  
11 to remit taxes by one of the means of electronic funds transfer  
12 approved by the department; provided that for withholding taxes  
13 under section 235-62, electronic funds transfers shall apply to  
14 annual tax liabilities that exceed \$40,000. [~~Notwithstanding~~  
15 ~~the tax liability thresholds in this subsection, the director of~~  
16 ~~taxation is authorized to require any person who is required to~~  
17 ~~electronically file a federal return or electronically remit any~~  
18 ~~federal taxes to the federal government, to electronically file~~  
19 ~~a state return and electronically remit any state taxes under~~  
20 ~~title 14 to the department. The director is authorized to grant~~  
21 ~~an exemption to the electronic filing and payment requirements~~  
22 ~~for good cause.]"~~

1           (2) By amending subsections (c) and (d) to read as  
2 follows:

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

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

16           (1) The number of taxpayers who were assessed the two per  
17 cent penalty pursuant to subsection (c); and  
18 ~~[(2) The amounts of each assessment; and~~  
19 ~~+(3)]~~ (2) The total amount of assessments ~~[collected]~~ for  
20 the previous year."

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

1        "[~~f~~]**\$231-10.8**[~~f~~]   **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  
23   appeal to the tax appeal court duly taken, shall, pending the

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

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

20 (1) For corporations, 3 per cent;

21 (2) For corporations whose overpayments exceed \$10,000,  
22 1.5 per cent; and

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



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

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

20        SECTION 7. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22        SECTION 8. This Act shall take effect upon its approval,  
23 provided that section 2 shall take effect on January 1, 2022.

S.B. NO. 1198

INTRODUCED BY: *Am. 4/1*  
BY REQUEST

**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 and individual tax returns if the federal adjusted gross income as shown on the taxpayer's Hawaii return exceeds \$100,000. 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 and requires electronic funds transfers for tax return preparers and any person subject to mandatory electronic filing. 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 and to individuals whose federal adjusted gross income exceeds \$100,000. 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. First, authorization to require electronic funds transfer is expanded to include taxpayers and tax return preparers who are subject to mandatory electronic filing. Next, 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, 2022.