

JAN 24 2024

A BILL FOR AN ACT

RELATING TO TAX ENFORCEMENT.

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

1 SECTION 1. Section 231-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§231-7 Audits, investigations, hearings, and subpoenas.**

4 (a) The director of taxation, and any representative of the
5 director duly authorized by the director, may conduct any civil
6 audit or criminal investigation, investigation, or hearing,
7 relating to any tax, assessment, [~~or the amount of any tax,~~] or
8 [the] collection of any delinquent tax, including any audit or
9 investigation into the financial resources of any delinquent
10 taxpayer or the collectability of any delinquent tax.

11 (b) The director of taxation or other person conducting
12 hearings may administer oaths and take testimony under oath
13 relating to the matter of audit, investigation, or hearing.

14 (c) The director of taxation or representative of the
15 director duly authorized by the director, when conducting a
16 civil audit, investigation, or hearing may subpoena witnesses
17 and require the production of books, papers, documents, other
18 designated objects, or any other record however maintained,

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1 including those electronically stored, that are relevant or
2 material to the civil audit, investigation, or hearing; provided
3 that the director of taxation or deputy director of taxation
4 shall give written approval for the issuance of a subpoena only
5 after a review of the appropriateness of the issuance. A
6 subpoena issued under this subsection:

7 (1) Shall state that the subpoena is issued by the
8 department and shall command each person to whom it is
9 directed to attend and give testimony at the time and
10 place specified, and may also command the person to
11 whom the subpoena is directed to produce books,
12 papers, documents, or other objects specifically
13 designated;

14 (2) May be served at any place within or without the State
15 by an investigator appointed pursuant to section 231-
16 4.3, or by any [~~ether~~] representative of the director
17 duly authorized by the director;

18 (3) Shall require attendance of the person only in the
19 county wherein the person is served with the subpoena
20 or at any other place as is agreed upon by the person
21 and the department; provided that if the subpoena is
22 served in a county other than that in which the person

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1 resides, is employed, or transacts the person's
2 business in person, the department shall bear the
3 person's expenses for travel to and attendance at the
4 place named in the subpoena to the same extent as
5 provided by the rules of court other than the expenses
6 of the taxpayer or the taxpayer's witnesses, officers,
7 directors, agents, or employees; and

8 (4) Shall contain a short, plain statement of the person's
9 rights and the procedure for enforcing and contesting
10 the subpoena.

11 If any person disobeys any process or, having appeared in
12 obedience thereto, refuses to answer pertinent questions put to
13 the person by the director or other person conducting the civil
14 audit, investigation, or hearing, or to produce any books,
15 papers, documents, objects, or records pursuant thereto, the
16 director may apply to the circuit court of the circuit wherein
17 the civil audit, investigation, or hearing is being conducted,
18 or to any judge of the court, setting forth the disobedience to
19 process or refusal to answer, and the court or judge shall cite
20 the person to appear before the court or judge to answer the
21 questions or to produce the books, papers, documents, objects,
22 or records; provided that the court, upon a motion promptly made

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1 by the person, may quash or modify the subpoena if compliance
2 would be unreasonable or oppressive or would violate any
3 privilege the person would be entitled to exercise in a court
4 proceeding. If the person fails or refuses to produce the
5 subpoenaed books, papers, documents, objects, or record, the
6 court shall institute a contempt proceeding against the person,
7 at which time the court shall determine whether good cause is
8 shown for the failure to obey the subpoena or the refusal to
9 testify; provided that the court, on a motion promptly made, may
10 quash or modify the subpoena if compliance would be unreasonable
11 or oppressive or would violate any privilege the person would be
12 entitled to exercise in a court proceeding. In the event that
13 no good cause is shown, the court does not quash or modify the
14 subpoena, and the person fails or refuses to comply with the
15 subpoena, then the court shall commit the person to jail until
16 the person testifies, but not for a longer period than sixty
17 days. Notwithstanding the serving of the term of commitment by
18 any person, the director may proceed in all respects as if the
19 witness had not previously been called upon to testify.

20 Witnesses (other than the taxpayer or the taxpayer's officers,
21 directors, agents, and employees) shall be allowed their fees
22 and mileage as authorized in cases in the circuit courts, to be

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1 paid on vouchers of the department of taxation, from any moneys
2 available for the expenses of the department.

3 (d) Subject to the privileges applicable to any witness in
4 this State, the director of taxation or any representative of
5 the director duly authorized by the director, when conducting a
6 criminal investigation, may subpoena witnesses, examine
7 witnesses under oath, and require the production of any books,
8 papers, documents, other designated objects, or any other record
9 however maintained, including those electronically stored, that
10 are relevant or material to the investigation; provided that the
11 director of taxation or deputy director of taxation shall give
12 written approval for the issuance of a subpoena only after a
13 review of the appropriateness of the issuance. A subpoena
14 issued under this subsection:

15 (1) Shall state that the subpoena is issued by the
16 department and shall command each person to whom it is
17 directed to attend and give testimony at the time and
18 place specified, and may command the person to whom it
19 is directed to produce books, papers, documents, or
20 other objects specifically designated;

21 (2) May be served at any place within or without the State
22 by an investigator appointed pursuant to section 231-

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1 4.3, or by any [ether] duly authorized law enforcement
2 official with the powers of a police officer;

3 (3) Shall require attendance of the person only in the
4 county wherein the person is served with the subpoena
5 or at any other place agreed upon by the person and
6 the department; provided that if the subpoena is
7 served in a county other than that in which the person
8 resides, is employed, or transacts the person's
9 business in person, the department shall bear the
10 person's expenses for travel to and attendance at the
11 place named in the subpoena to the same extent as
12 provided by the rules of court; and

13 (4) Shall contain a short, plain statement of the person's
14 rights and the procedure for enforcing and contesting
15 the subpoena.

16 Upon application by the director, a circuit court of the county
17 wherein the person resides or is found may compel obedience to
18 the subpoena; provided that the court, on a motion promptly
19 made, may quash or modify the subpoena if compliance would be
20 unreasonable or oppressive or would violate any privilege the
21 witness may be entitled to exercise in a court proceeding.

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1 (e) Any subpoena issued under this section that does not
2 identify the person with respect to whose liability, audit, or
3 investigation the subpoena is issued may be served on the
4 intended recipient only after a court proceeding in which the
5 director or another person establishes that:

6 (1) The subpoena relates to the liability, audit, or
7 investigation of a particular person or ascertainable
8 group or class of persons;

9 (2) There is a reasonable basis for believing that the
10 person or group or class of persons may fail or may
11 have failed to comply with any provision of title 14;
12 and

13 (3) The information sought to be obtained from the
14 examination of records or testimony and the identity
15 of the person or persons with respect to whose
16 liability the subpoena is issued is not readily
17 available from other sources.

18 (f) The department shall pay to a financial institution
19 that is served a subpoena issued under this section a fee for
20 reimbursement of the institution's costs as are necessary and
21 that have been directly incurred by or on behalf of the
22 institution in searching for, reproducing, or transporting

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1 books, papers, documents, or other objects designated in the
2 subpoena. Reimbursement shall be paid at the rate of \$15 per
3 hour for research and 50 cents per page for reproduction.

4 (g) A person or entity that is compelled to testify or
5 produce documents, information, or other items by a subpoena
6 issued pursuant to an audit, investigation, or hearing
7 pertaining to another person or entity shall not be liable for
8 damages arising from compliance with the subpoena.

9 (h) The provisions of this section are in addition to all
10 other provisions of law, and apply to any tax within the
11 jurisdiction of the department."

12 SECTION 2. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

15

INTRODUCED BY: 

BY REQUEST

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Report Title:

Tax Enforcement; Subpoena Powers

Description:

Authorizes the Department of Taxation to serve administrative subpoenas outside the State.

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 **SB. NO. 3175**

DEPARTMENT: Taxation

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

PURPOSE: To authorize the Department of Taxation to serve administrative subpoenas outside the State.

MEANS: Amend section 231-7, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 231-7, HRS, authorizes the Department of Taxation (Department) to issue administrative subpoenas when necessary to enforce tax law. In the new digital economy, a growing number of taxpayers engage in business in the State but do not have a physical location in the State where administrative subpoenas may be served. By engaging in business in the State, a taxpayer implicitly consents to the exercise of the State's taxation power. This bill will allow the Department to serve an administrative subpoena both within and outside the State.

Impact on the public: Persons who have information relevant to a tax audit, investigation, collection, or hearing, including taxpayers engaging in business in the State but who do not have a physical location in the State, may be served with an administrative subpoena at their location outside of the State.

Impact on the department and other agencies: This bill will assist the Department in its tax enforcement efforts, including audits and investigations, against taxpayers who engage in business in the State but who do not have a physical location in the State.

GENERAL FUND: No material impact expected.

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OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.