

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 235-108, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§235-108 Audit of return; procedure; additional taxes.**

4 (a) Audit. The director of taxation or a responsible person
5 designated by the director to act in the premises for the
6 purpose of verification or audit of a return made by the
7 taxpayer or employer, or for the purpose of making a return
8 where none has been made, is authorized and empowered to examine
9 all account books, bank books, bank statements, records,
10 vouchers, copies of federal tax returns, and any and all other
11 documents and [~~evidences having any relevancy~~] evidence relevant
12 to the determination of the income or wages as required to be
13 returned under this chapter, and the director may employ the
14 director's powers under section 231-7 for such purposes.

15 (b) Any person liable for any tax imposed under this
16 chapter or for the collection or deduction thereof at the source
17 shall produce all account books, bank books, bank statements,
18 records, vouchers, copies of federal tax returns, and any and

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1 all other documents and evidence relevant to the determination
2 of the income or wages as required to be returned under this
3 chapter within twenty days after a written demand is mailed to
4 that person by the department, or as soon thereafter as the
5 director may deem reasonable under the circumstances. Any
6 person who fails to produce documents or evidence as provided in
7 this subsection shall be prohibited from introducing the
8 documents or matters in evidence, or otherwise relying upon or
9 utilizing said documents or matters, in any tax appeal or action
10 under section 40-35 arising from the audit in which the
11 documents or matters were demanded, unless it is shown that the
12 failure is due to reasonable cause and not neglect or refusal.

13 ~~(b)~~ (c) Additional taxes. If the department of taxation
14 discovers from the examination of the return or otherwise that
15 income, or the liability of an employer in respect of wages, or
16 any portion thereof, has not been assessed, it may assess the
17 same and give notice to the taxpayer or employer of the
18 assessment, and the taxpayer or employer shall thereupon have an
19 opportunity within thirty days to confer with the department as
20 to the proposed assessment. After the expiration of thirty days
21 from such notification the department shall assess the income of
22 the taxpayer, or the liability of the employer in respect of

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1 wages, or any portion thereof which it believes has not
2 heretofore been assessed, and shall give notice to the taxpayer
3 or employer of the amount of the tax and interest and penalties
4 if any, and the amount thereof shall be paid within twenty days
5 after the date the notice was mailed, properly addressed to the
6 taxpayer or employer at the taxpayer's or employer's last known
7 address or place of business."

8 SECTION 2. Section 236E-18.5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[+]§236E-18.5[+] **Audit of return; procedure upon failure**
11 **to file return; additional taxes; limitation period.** (a) The
12 director of taxation, or the director's designee, is authorized
13 and empowered to examine all account books, bank books, bank
14 statements, records, vouchers, copies of federal tax returns,
15 and any and all other documents and evidence [~~having any~~
16 ~~relevance~~] relevant to the determination of any amount relevant
17 to the Hawaii transfer tax, as required to be returned under
18 this chapter, and the director may employ the director's powers
19 under section 231-7 for these purposes.

20 (b) Any person liable for any tax imposed under this
21 chapter shall produce all account books, bank books, bank
22 statements, records, vouchers, copies of federal tax returns,

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1 and any and all other documents and evidence relevant to the
2 determination of the income as required to be returned under
3 this chapter within twenty days after a written demand is mailed
4 to that person by the department, or as soon thereafter as the
5 director may deem reasonable under the circumstances. Any
6 person who fails to produce documents or evidence as provided in
7 this subsection shall be prohibited from introducing the
8 documents or matters in evidence, or otherwise relying upon or
9 utilizing said documents or matters, in any tax appeal or action
10 under section 40-35 arising from the audit in which the
11 documents or matters were demanded, unless it is shown that the
12 failure is due to reasonable cause and not neglect or refusal.

13 ~~[(b)]~~ (c) If the department discovers from the examination
14 of the return or otherwise that any amount has not been assessed
15 or otherwise properly included in determining any amount
16 relevant to the Hawaii transfer tax, it may assess those
17 amounts.

18 ~~[(e)]~~ (d) If the person required to file the return
19 required under this chapter fails to file the return or declines
20 to authenticate a return, the department shall make a return for
21 the person based upon the best information obtainable and shall

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1 levy and assess against the person the tax as shown on the
2 return.

3 ~~[(d)]~~ (e) For the purposes of this section, the department
4 shall give notice of the assessment to the person required to
5 file the return required under this chapter. The person put on
6 notice shall have thirty days to confer with the department as
7 to the proposed assessment. After the expiration of thirty days
8 from the notification, the department shall finalize the
9 assessment and give notice to the person of the tax and interest
10 and penalties, if any. The amount shall be paid within twenty
11 days after the date the notice, properly addressed to the person
12 required to file the return required to be filed under this
13 chapter, is mailed to the person's last known address.

14 ~~[(e)]~~ (f) In the case of an audit commenced under this
15 section, the amount of Hawaii transfer tax imposed by this
16 chapter shall be assessed or levied within three years after the
17 return was filed, or within three years of the due date
18 prescribed for the filing of that return, whichever is later.
19 In the case of a false or fraudulent return with intent to evade
20 tax, or of a failure to file a return, the tax may be assessed
21 or levied at any time; provided that the burden of proof with
22 respect to the issues of falsity or intent to evade tax shall be

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1 upon the State. The limitation period shall be suspended if the
2 person required to file the return agrees to suspend the
3 period."

4 SECTION 3. Section 237-39, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§237-39 Audits; procedure, penalties. (a) For the
7 purpose of verification or audit of a return made by the
8 taxpayer, or where there is reasonable ground to believe that
9 any return made is so deficient as not to form the basis of a
10 satisfactory assessment of the tax, or for the purpose of making
11 an assessment where no return has been made, the department of
12 taxation or the Multistate Tax Commission pursuant to chapter
13 255, or the authorized representative thereof, may examine all
14 account books, bank books, bank statements, records, vouchers,
15 taxpayer's copies of federal tax returns, and any and all other
16 documents and evidence [~~having any relevancy~~] relevant to the
17 determination of the gross income or gross proceeds of sales of
18 any taxpayer as required to be returned under this chapter and
19 may summon or require the attendance of the person by or for
20 whom the return, if any, has been made or whose tax is being
21 assessed, and any employee of the person, and may summon or
22 require the attendance of any person having knowledge in the

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1 premises, naming the time and place in the summons, and may
2 require the production of any books, statements, or other
3 evidence open to examination, and may take testimony in
4 reference to any matter relevant to the gross income or gross
5 proceeds of sales of the taxpayer for the period under
6 consideration, with power to require that the person so called
7 and appearing shall be interrogated under oath and to administer
8 the oath.

9 (b) Any person liable for any tax imposed under this
10 chapter or for the collection or deduction thereof at the source
11 shall produce all account books, bank books, bank statements,
12 records, vouchers, taxpayer's copies of federal tax returns, and
13 any and all other documents and evidence relevant to the
14 determination of the gross income or gross proceeds of sales as
15 required to be returned under this chapter within twenty days
16 after a written demand is mailed to that person by the
17 department, or as soon thereafter as the director may deem
18 reasonable under the circumstances. Any person who fails to
19 produce documents or evidence as provided in this subsection
20 shall be prohibited from introducing the documents or matters in
21 evidence, or otherwise relying upon or utilizing said documents
22 or matters, in any tax appeal or action under section 40-35

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1 arising from the audit in which the documents or matters were
2 demanded, unless it is shown that the failure is due to
3 reasonable cause and not neglect or refusal.

4 [~~(b)~~] (c) If the department determines that any gross
5 income or gross proceeds of sales liable to the tax have not
6 been assessed, the department may assess the same as provided in
7 sections 237-36 and 237-38.

8 [~~(e)~~] (d) Any individual knowingly giving false testimony
9 under oath at any hearing before the department shall be guilty
10 of perjury and shall be punished as provided by law.

11 [~~(d)~~] (e) Any person refusing or neglecting to obey any
12 summons issued by the department, and any individual appearing
13 and refusing to testify under oath, shall be fined \$50 for the
14 first offense and \$100 for each succeeding offense."

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

18

INTRODUCED BY: 

BY REQUEST

S .B. NO. 3176

Report Title:

Tax Enforcement; Audits; Time to Respond; Failure to Respond; Appeals

Description:

Provides deadlines for taxpayers under audit to comply with demands to produce documents and evidence. Authorizes the tax appeal court to preclude documents or information not produced pursuant to a demand from being introduced in evidence in a tax appeal or action under section 40-35 unless the failure was due to reasonable cause.

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. 3176

DEPARTMENT: Taxation

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

PURPOSE: To specify a deadline for taxpayers under audit to comply with demands to produce books and records and provide potential consequences for failure to comply.

MEANS: Amend sections 235-108, 236E-18.5, and 237-39, Hawaii Revised Statutes.

JUSTIFICATION: Under current law, taxpayers are required to keep account and transaction records and permit the Department of Taxation (Department) to examine those records. Taxpayers are also subject to criminal penalties for willfully failing to supply information to the Department at the times required by law, but there is no statutory deadline for taxpayers to comply with information and document requests during an audit.

Many taxpayers ignore the Department's requests for information or refuse to permit the Department to examine records during an audit, opting instead to produce the records during a tax appeal, after conclusion of the audit and issuance of a final assessment.

This bill provides a specified time for taxpayers to comply with the Department's demands for information and documents during an audit. This bill also authorizes the tax appeal court to preclude taxpayers who fail to comply with the Department's demands from introducing the documents or evidence during a judicial appeal arising from the audit in which the documents or matters were demanded unless it is shown that the failure was due to reasonable cause.

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Impact on the public: Provides deadlines for taxpayers to respond to the Department's demands for information and documents during an audit.

Impact on the department and other agencies: This bill will assist the Department in obtaining accurate information from taxpayers under audit.

GENERAL FUND: No material impact expected.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.