

A Bill for an Act Relating to Tax Administration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Because of the terrorist attacks on September 11, 2001, the ensuing war on terrorism, and their impact on the Hawaii economy combined with the sluggish national economy, the size of the State's delinquent tax accounts grew significantly between fiscal year June 30, 2001, and June 30, 2002. To provide taxpayers an opportunity to resolve their delinquent tax accounts and to streamline that process, this Act provides that where the tax is \$50,000 or less, exclusive of penalties and interest, the department of taxation may compromise the claim without the governor's approval. This Act also allows the department of taxation to waive penalties and interest for taxes that are delinquent for more than ninety days in appropriate circumstances, and to hire investigators.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§231- Investigators; appointment and powers.** The director may appoint and commission one or more investigators as the exigencies of the public service may require. Persons appointed and commissioned under this section shall have and may exercise all of the powers and authority and the benefits and privileges of a police officer or of a deputy sheriff, including the power to arrest; provided that such powers shall remain in force and effect only while in actual performance of their duties. These investigators shall consist of personnel whose primary duty is to conduct investigations as directed by the director. Persons appointed and commissioned under this section shall be exempt from chapter 76."

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

**"§231-3 Department, general duties and powers.** The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) Assessment: To make any assessment by law required to be made by the department;
- (2) Collections: To be responsible for the collection of all taxes imposed under title 14, except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the department's duties, whenever requested by any officer acting under those laws, or by an interested person;
- (4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of the attorney general's deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures,

liabilities, and punishments for violation of the laws administered by the department;

- (5) Forms: To prescribe forms to be used in or in connection with any assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;
- (6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) Recommendations for legislation: To recommend to the governor any amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of taxes;
- (8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and any other matters of information concerning taxation as may be deemed of general interest;
- (9) Rules: To adopt such rules as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;
- (10) Compromises: With the approval of the governor, to compromise any claim where the tax exceeds \$50,000 (exclusive of penalties and interest) arising under any tax law the administration of which is within the scope of the department's duties[;], and to compromise any tax claim where the tax is \$50,000 or less (exclusive of penalties and interest) without seeking the approval of the governor; provided that the director shall have the discretion to seek the approval of the governor to compromise any tax claim where the director deems it appropriate; and in each case the department shall post each proposed compromise, as set forth in subparagraphs (A) to (D), on the department's Internet website for five calendar days before the director signs the compromise, and there shall be placed on file in the department's office a statement of:
  - (A) The name of the taxpayer and the amount and type of tax assessed, or proposed to be assessed;
  - (B) The amount of penalties and interest imposed or which could have been imposed by law with respect to the amount of tax assessed, as computed by the department;
  - (C) The total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof; and
  - (D) The reasons for the compromise.

Notwithstanding the provisions of any law making unlawful the disclosure of tax returns or return information, statements on file and included in the department's Internet website in respect of compromises shall be open to public inspection;

- (11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, rule, or construction of the tax laws, of general application, shall be applied without retroactive effect;
- (12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return

setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent [~~for not more than ninety days~~], in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in that case there shall be placed on file in the department's office a statement showing the name of the person receiving the remission, the principal amount of the tax, and the year or period involved;

- (13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of the taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; the agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:
  - (A) The matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State; and
  - (B) In any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
- (14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in other chapters of the law under title 14 administered by the department for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, receiving, and enforcing payment of the taxes imposed under the authority of those chapters as far as the provisions are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved June 4, 2003.)

**Note**

1. Edited pursuant to HRS §23G-16.5.