
A BILL FOR AN ACT

RELATING TO TAX ADMINISTRATION.

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

1 SECTION 1. A self-reporting system that relies upon the
2 honesty and integrity of taxpayers and enforcement of Hawaii's
3 tax laws is only as effective as the compliance tools that exist
4 to deter dishonest conduct. Hawaii lacks a vast majority of the
5 tools used by the Internal Revenue Service and its Criminal
6 Investigations Division to investigate, prosecute, and deter
7 criminal tax frauds.

8 This Act will assist the department of taxation's criminal
9 enforcement unit, as well as the department of the attorney
10 general and the prosecuting attorney offices of the respective
11 counties, by providing these essential compliance tools.

12 The purpose of this Act is to amend title 14, Hawaii
13 Revised Statutes, to conform Hawaii criminal tax administration
14 provisions to the Internal Revenue Code, by including provisions
15 relating to tax administration enforcement, criminal tax
16 penalties, and tax fraud proceedings.

17 **PART I. TAX ADMINISTRATION ENFORCEMENT**



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

4 "§231- Understatement of taxpayer's liability by tax
5 return preparer. (a) Any tax return preparer making
6 understatements of liability based upon unrealistic positions on
7 a tax return or claim for tax refund shall pay a penalty of
8 \$250, with respect to each such tax return or claim, unless
9 there is reasonable cause for the understatement and the tax
10 return preparer acted in good faith.

11 (b) A tax return preparer wilfully or recklessly makes an
12 understatement of liability based upon unrealistic positions on
13 a tax return or claim for tax refund if the tax return preparer:

14 (1) Wilfully attempts to understate a person's tax
15 liability; or

16 (2) Recklessly disregards any tax law or rule.

17 Any tax return preparer who violates this subsection shall pay a
18 penalty of \$1,000, with respect to each such tax return or
19 claim. Penalties assessed under this subsection shall be
20 reduced by any penalties assessed under subsection (a).



1 (c) For purposes of subsections (a) and (b),
2 understatements of liability using unrealistic positions occur
3 when:

4 (1) Any part of a tax return or claim for tax refund is
5 based on a position that does not have a realistic
6 possibility of being sustained on its merits;

7 (2) Any tax return preparer who prepares a tax return or
8 claim for tax refund who knew or reasonably should
9 have known of such an unrealistic position; and

10 (3) The unrealistic position was not a disclosed item as
11 provided in subsection (h) or was frivolous.

12 (d) If, within thirty days after the notice and demand of
13 any penalty under subsection (a) or (b) is made, the tax return
14 preparer:

15 (1) Pays an amount that is not less than fifteen per cent
16 of the penalty amount; and

17 (2) Files a claim for refund of the amount paid,
18 no action to levy or file a proceeding in court to collect the
19 remainder of the penalty shall be commenced except in accordance
20 with subsection (e).

21 (e) An action may be brought thirty days after either of
22 the following events, whichever occurs first:



1 (1) The tax return preparer fails to file an appeal to the
2 tax appeal court within thirty days after the day on
3 which the claim for refund of any partial payment of
4 any penalty under subsection (a) or (b) is denied; or

5 (2) The tax return preparer fails to file an appeal to the
6 tax appeal court for the determination of the tax
7 return preparer's liability for the penalty assessed
8 under subsection (a) or (b) within six months after
9 the day on which the claim for refund was filed.

10 Nothing in this subsection shall be construed to prohibit any
11 counterclaim for the remainder of the penalty in any proceeding.

12 (f) If there is a final administrative determination or a
13 final judicial decision that the penalty assessed under
14 subsection (a) or (b) should not apply, then that portion of the
15 penalty assessed shall be voided. Any portion of the penalty
16 that has been paid shall be refunded to the tax return preparer
17 as an overpayment of tax without regard to any period of
18 limitations which, but for this subsection, would apply to the
19 making of the refund.

20 (g) At the request of the director of taxation, a civil
21 action may be brought to enjoin a tax return preparer from
22 further acting as a tax return preparer or from engaging in



1 conduct prohibited under subsection (a) or (b). Any action
2 under this subsection may be brought in the circuit court of the
3 circuit in which the tax return preparer resides, or has a
4 principal place of business, or in which the taxpayer with
5 respect to whose tax return the action is brought resides.

6 The court may exercise its jurisdiction over the action
7 separate and apart from any other action brought by the State
8 against the tax return preparer or taxpayer. If the court finds
9 that a tax return preparer has engaged in conduct subject to
10 penalty under subsection (a) or (b) and that injunctive relief
11 is appropriate to prevent the recurrence of that conduct, the
12 court may enjoin the preparer accordingly. If the court finds
13 that a tax return preparer has continually or repeatedly engaged
14 in conduct prohibited under subsection (a) or (b) and that an
15 injunction prohibiting that conduct would not be sufficient to
16 prevent the preparer's interference with the proper
17 administration of this chapter, the court may enjoin the
18 preparer from acting as a tax return preparer.

19 (h) For purposes of this section:

20 "Disclosed item" means any item where:



1 (1) The relevant facts affecting the item's tax treatment
2 are adequately disclosed in a tax return or in a
3 statement attached to a tax return; and

4 (2) There is a reasonable basis for the tax treatment of
5 the item by the taxpayer.

6 "Tax return preparer" means a professional who prepares a
7 tax return or a claim for a tax refund or employs or supervises
8 one or more persons who prepare a tax return or a claim for a
9 tax refund, for payment. A professional includes an enrolled
10 agent, certified public accountant, attorney, or other person
11 paid for preparation of a tax return or claim for tax refund.

12 Preparation of a substantial portion of a tax return or
13 claim for tax refund shall be treated as if it were the
14 preparation of a tax return or claim for tax refund.

15 "Understatement of liability" means any understatement of
16 the net amount payable for any tax imposed or any overstatement
17 of the net amount creditable or refundable for any tax. Except
18 as otherwise provided in subsection (f), the determination of
19 whether there is an understatement of liability shall be made
20 without regard to any administrative or judicial action
21 involving the taxpayer.



1 (i) The penalty imposed by this section shall be in
2 addition to any other penalty provided by law."

3 SECTION 3. Chapter 231, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§231- Promoting abusive tax shelters. (a) A person
7 promotes an abusive tax shelter by:

8 (1) Organizing or assisting in the organization of, or
9 participating directly or indirectly in the sale of an
10 interest in:

11 (A) A partnership or other entity;

12 (B) Any investment plan or arrangement; or

13 (C) Any other plan or arrangement; and

14 (2) In connection with any activity described under
15 paragraph (1), making, furnishing, or causing another
16 person to make or furnish, a statement with respect
17 to:

18 (A) Whether any deduction or credit is allowed;

19 (B) Whether any income may be excluded; or

20 (C) The securing of any other tax benefit by reason
21 of holding an interest in the entity or
22 participating in the plan or arrangement,



1 which the person knows or has reason to know is false or
2 fraudulent or is a gross valuation overstatement as to any
3 material matter.

4 (b) A person found promoting an abusive tax shelter shall
5 pay, with respect to each activity described in subsection (a),
6 a penalty of \$1,000 or, if the person establishes that it is
7 less, one hundred per cent of the gross income derived or to be
8 derived by the person from the activity. For purposes of this
9 section, activities described in subsection (a)(1) shall be
10 treated as a separate activity for each entity or arrangement.
11 Participation in each sale described in subsection (a)(2) shall
12 be treated as a separate activity for each entity or
13 arrangement.

14 (c) At the request of the director, a civil action may be
15 brought to enjoin any person described in subsection (a) from
16 engaging in any conduct described in subsection (a). Any action
17 under this section shall be brought in the circuit court of the
18 circuit where the person in subsection (a) resides or where the
19 person's principal place of business is located. The court may
20 exercise its jurisdiction over the action separate and apart
21 from any other action brought by the State against those persons
22 described in subsection (a). If the court finds that a person



1 described in subsection (a) has engaged in any conduct subject
2 to penalty under subsection (b) and that injunctive relief is
3 appropriate to prevent the recurrence of that conduct, the court
4 may enjoin the person accordingly.

5 (d) For purposes of this section, "gross valuation
6 overstatement" means any statement of value for any property or
7 services if:

8 (1) The value exceeds two hundred per cent of the amount
9 determined to be the correct valuation; and

10 (2) The value of the property or services is directly
11 related to the amount of any deduction or credit
12 allowable to any participant.

13 (e) The director may waive all or any part of the penalty
14 provided by subsection (b) with respect to any gross valuation
15 overstatement on a showing that there was a reasonable basis for
16 the valuation and that the valuation was made in good faith.

17 (f) The penalty imposed by this section shall be in
18 addition to any other penalty provided by law."

19 **PART II. CRIMINAL TAX ENFORCEMENT**

20 SECTION 4. Chapter 231, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:



1 "§231- Wilful failure to collect and pay over tax. In
2 addition to other penalties provided by law, any person required
3 to collect, account for, and pay over any tax imposed by title
4 14, who wilfully fails to collect or truthfully account for and
5 pay over such tax shall be guilty of a class C felony and, upon
6 conviction, shall be subject to one or any combination of the
7 following:

- 8 (1) A fine of not more than \$100,000;
9 (2) Imprisonment of not more than five years; or
10 (3) Probation;

11 provided that a corporation shall be fined not more than
12 \$500,000."

13 **PART III. TAX FRAUD PROCEEDINGS**

14 SECTION 5. Chapter 231, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 "§231- Signature presumed authentic. An individual's
18 signature on a return, statement, or other document shall be
19 prima facie evidence for all purposes that the return,
20 statement, or other document was actually signed by the
21 individual."



1 SECTION 6. Section 235-111, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Exceptions; fraudulent return or no return. In the
4 case of a false or fraudulent return with intent to evade tax or
5 liability, or of a failure to file return, the tax or liability
6 may be assessed or levied at any time[~~; provided that in the~~
7 ~~case of a return claimed to be false or fraudulent with intent~~
8 ~~to evade tax or liability, the determination as to the claim~~
9 ~~shall first be made by a judge of the circuit court for or in~~
10 ~~the circuit within which the taxpayer or employer has the~~
11 ~~taxpayer's or employer's residence or principal place of~~
12 ~~business, or if none in the State then in the first circuit,~~
13 ~~upon petition filed by the department of taxation. The petition~~
14 ~~and other pleadings and proceedings in the matter shall be~~
15 ~~governed and conducted in accordance with statutory and other~~
16 ~~requirements relating to proceedings in equity, including all~~
17 ~~rights to appeal allowed in the proceedings. No assessment or~~
18 ~~levy of the tax or liability after the expiration of the three-~~
19 ~~year period shall be made unless so provided in the final decree~~
20 ~~entered in the proceedings]."~~

21 SECTION 7. Section 237-40, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) Exceptions. In the case of a false or fraudulent
2 return with intent to evade tax, or of a failure to file the
3 annual return, the tax may be assessed or levied at any time[+
4 however, in the case of a return claimed to be false or
5 fraudulent with intent to evade tax, the determination as to the
6 claim shall first be made by a judge of the circuit court as
7 provided in section 235-111(e) which shall apply to the tax
8 imposed by this chapter]."

9 SECTION 8. Section 237D-9, Hawaii Revised Statutes, is
10 amended by amending subsection (d) to read as follows:

11 "(d) In the case of a false or fraudulent return with
12 intent to evade tax, or of a failure to file the annual return,
13 the tax may be assessed or levied at any time[+ however, in the
14 case of a return claimed to be false or fraudulent with intent
15 to evade tax, the determination as to the claim shall first be
16 made by a judge of the circuit court as provided in section 235-
17 111(e) which shall apply to the tax imposed by this chapter]."

18 SECTION 9. Section 243-14, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) In the case of a false or fraudulent statement with
21 intent to evade tax or liability, or of a failure to file a
22 statement, the tax or liability may be assessed or levied at any



1 ~~time [; provided that in the case of a statement claimed to be~~
2 ~~false or fraudulent with intent to evade tax or liability, the~~
3 ~~determination as to the claim shall first be made by a judge of~~
4 ~~the circuit court as provided in section 235 111(c) which shall~~
5 ~~apply to the tax imposed by this chapter]."~~

6 SECTION 10. Section 251-8, Hawaii Revised Statutes, is
7 amended by amending subsection (d) to read as follows:

8 "(d) In the case of a false or fraudulent return with
9 intent to evade the surcharge tax, or of a failure to file the
10 annual return, the surcharge tax may be assessed or levied at
11 any time [~~; however, in the case of a return claimed to be false~~
12 ~~or fraudulent with intent to evade the surcharge tax, the~~
13 ~~determination as to the claim shall first be made by a judge of~~
14 ~~the circuit court as provided in section 235 111(c) which shall~~
15 ~~apply to the surcharge tax imposed by this chapter]."~~

16 SECTION 11. This Act does not affect returns prepared and
17 transactions promoted, rights and duties that matured, penalties
18 that were incurred, and proceedings that were begun, before its
19 effective date.

20 SECTION 12. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 13. This Act shall take effect on July 1, 2007.



Report Title:

Tax Administration

Description:

Conforms Hawaii tax law to federal tax law relating to tax administration and criminal tax enforcement. (SD2)

