

---

---

# A BILL FOR AN ACT

RELATING TO TAX ADMINISTRATION.

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

1           SECTION 1. As a self-reporting system that relies upon the  
2 honesty and integrity of taxpayers, enforcement of Hawaii's tax  
3 laws is only as effective as the compliance tools that exist to  
4 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. The purpose of this Act is to amend title  
8 14, Hawaii Revised Statutes, to conform Hawaii criminal tax  
9 administration provisions to the Internal Revenue Code.

10           This Act will assist the department of taxation's criminal  
11 enforcement unit, as well as the department of the attorney  
12 general and the prosecuting attorney offices of the respective  
13 counties, by providing these essential compliance tools. The  
14 tools provided by this Act include provisions relating to tax  
15 administration enforcement, criminal tax penalties, and tax  
16 fraud proceedings. This Act shall be known as "The Tax  
17 Compliance Omnibus Act of 2007."

18                           **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 so 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).



1       (e) An action that is stayed pursuant to subsection (d)  
2 may be brought thirty days after either of the following events,  
3 whichever occurs first:

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

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

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

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



1       (g) At the request of the director of taxation, a civil  
2 action may be brought to enjoin a tax return preparer from  
3 further acting as a tax return preparer or from engaging in  
4 conduct prohibited under subsection (a) or (b) as follows:

5       (1) Any action under this subsection may be brought in the  
6 circuit court of the circuit in which the tax return  
7 preparer resides or has a principal place of business,  
8 or in which the taxpayer with respect to whose tax  
9 return the action is brought resides;

10       (2) The court may exercise its jurisdiction over the  
11 action separate and apart from any other action  
12 brought by the State against the tax return preparer  
13 or taxpayer;

14       (3) If the court finds that a tax return preparer has  
15 engaged in conduct subject to penalty under subsection  
16 (a) or (b) and that injunctive relief is appropriate  
17 to prevent the recurrence of that conduct, the court  
18 may enjoin the preparer accordingly; and

19       (4) If the court finds that a tax return preparer has  
20 continually or repeatedly engaged in conduct  
21 prohibited under subsection (a) or (b) and that an  
22 injunction prohibiting that conduct would not be



1           sufficient to prevent the preparer's interference with  
2           the proper administration of this chapter, the court  
3           may enjoin the preparer from acting as a tax return  
4           preparer.

5           (h) For purposes of this section:

6           "Disclosed item" means any item where:

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

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

12          "Tax return preparer" means a professional who prepares,  
13          employs, or supervises one or more persons who prepare a tax  
14          return or a claim for a tax refund, for payment. A professional  
15          includes an enrolled agent, certified public accountant,  
16          attorney, or other person paid for preparation of a tax return  
17          or claim for tax refund.

18          Preparation of a substantial portion of a tax return or  
19          claim for tax refund shall be treated as if it were the  
20          preparation of a tax return or claim for tax refund.

21          "Understatement of liability" means any understatement of  
22          the net amount payable for any tax imposed or any overstatement



1 of the net amount creditable or refundable for any tax. Except  
2 as otherwise provided in subsection (f), the determination of  
3 whether there is an understatement of liability shall be made  
4 without regard to any administrative or judicial action  
5 involving the taxpayer.

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

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

11 "§231- Promoting abusive tax shelters. (a) A person  
12 promotes an abusive tax shelter by:

13 (1) Organizing or assisting in the organization of, or  
14 participating directly or indirectly in the sale of an  
15 interest in:

16 (A) A partnership or other entity;

17 (B) Any investment plan or arrangement; or

18 (C) Any other plan or arrangement; and

19 (2) In connection with any activity described under  
20 paragraph (1), making, furnishing, or causing another  
21 person to make or furnish, a statement with respect  
22 to:



1           (A) Whether any deduction or credit is allowed;  
2           (B) Whether any income may be excluded; or  
3           (C) The securing of any other tax benefit by reason  
4           of holding an interest in the entity or  
5           participating in the plan or arrangement,  
6           which the person knows or has reason to know is false or  
7           fraudulent or is a gross valuation overstatement as to any  
8           material matter.

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

19          (c) At the request of the director, a civil action may be  
20          brought to enjoin any person described in subsection (a) from  
21          engaging in any conduct described in subsection (a). Any action  
22          under this section shall be brought in the circuit court of the





1 circuit where the person in subsection (a) resides or where the  
2 person's principal place of business is located. The court may  
3 exercise its jurisdiction over the action separate and apart  
4 from any other action brought by the State against those persons  
5 described in subsection (a). If the court finds that a person  
6 described in subsection (a) has engaged in any conduct subject  
7 to penalty under subsection (b) and that injunctive relief is  
8 appropriate to prevent the recurrence of that conduct, the court  
9 may enjoin the person accordingly.

10 (d) For purposes of this section, "gross valuation  
11 overstatement" means any statement of value for any property or  
12 services if:

- 13 (1) The value so stated exceeds two hundred per cent of  
14 the amount determined to be the correct valuation; and  
15 (2) The value of the property or services is directly  
16 related to the amount of any deduction or credit  
17 allowable to any participant.

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



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

3                                **PART II. CRIMINAL TAX ENFORCEMENT**

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

7        "§231- Wilful failure to collect and pay over tax. Any  
8 person required to collect, account for, and pay over any tax  
9 imposed by title 14, who wilfully fails to collect or truthfully  
10 account for and pay over such tax, in addition to other  
11 penalties provided by law, shall be guilty of a class C felony  
12 and, upon conviction, shall be subject to one or any combination  
13 of the following:

- 14        (1) A fine of not more than \$100,000;
- 15        (2) Imprisonment of not more than five years; or
- 16        (3) Probation;

17 provided that a corporation shall be fined not more than  
18 \$500,000."

19                                **PART III. TAX FRAUD PROCEEDINGS**

20        SECTION 5. 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- Signature presumed authentic. The fact that an  
2 individual's name is signed on a return, statement, or other  
3 document shall be prima facie evidence for all purposes that the  
4 return, statement, or other document was actually signed by the  
5 individual."

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

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



1 ~~levy of the tax or liability after the expiration of the three-~~  
2 ~~year period shall be made unless so provided in the final decree~~  
3 ~~entered in the proceedings]."~~

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

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

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

16 "(d) In the case of a false or fraudulent return with  
17 intent to evade tax, or of a failure to file the annual return,  
18 the tax may be assessed or levied at any time [~~7~~ ~~however, in the~~  
19 ~~case of a return claimed to be false or fraudulent with intent~~  
20 ~~to evade tax, the determination as to the claim shall first be~~  
21 ~~made by a judge of the circuit court as provided in section 235-~~  
22 ~~111(c) which shall apply to the tax imposed by this chapter]."~~



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

3 "(c) In the case of a false or fraudulent statement with  
4 intent to evade tax or liability, or of a failure to file a  
5 statement, the tax or liability may be assessed or levied at any  
6 time [~~; provided that in the case of a statement claimed to be~~  
7 ~~false or fraudulent with intent to evade tax or liability, the~~  
8 ~~determination as to the claim shall first be made by a judge of~~  
9 ~~the circuit court as provided in section 235-111(e) which shall~~  
10 ~~apply to the tax imposed by this chapter]."~~

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

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

21 SECTION 11. This Act does not affect returns prepared and  
22 transactions promoted, rights and duties that matured, penalties



1 that were incurred, and proceedings that were begun, before its  
2 effective date.

3 SECTION 12. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 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. (SD1)

