
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Act 166, Session Laws of Hawaii 2009, imposed
2 new tax penalties that are similar to penalties imposed under
3 federal law. However, unlike the federal law that prohibits the
4 stacking of penalties, Act 166 did not prohibit the stacking of
5 tax underpayment penalties. In Hawaii, a taxpayer could be
6 subject to penalties of sixty per cent or more.

7 Under federal law, a twenty per cent penalty generally
8 applies to the portion of any tax underpayment attributable to
9 any of the following:

- 10 (1) Negligence or disregard of Internal Revenue Code rules
11 and regulations;
- 12 (2) Substantial understatement of tax liability;
- 13 (3) Overvaluation of property; and
- 14 (4) Undervaluation of property on a gift tax or estate tax
15 return.

16 Federal law, however, provides that only one twenty per cent
17 penalty can be imposed on a portion of an underpayment, even if
18 that portion is attributable to more than one of the types of



1 prohibited conduct listed above. The legislature finds that
2 Hawaii should have fairness provisions that are similar to those
3 under federal law.

4 The purpose of this Act is to incorporate the fairness
5 provisions provided in the Internal Revenue Code of 1986, as
6 amended, when imposing penalties.

7 SECTION 2. Section 231-36.4, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§231-36.4[+] Wilful failure to collect and pay over
10 tax. (a) Any person required to collect, account for, and pay
11 over any tax imposed by title 14, who wilfully fails to collect
12 or truthfully account for and pay over such tax shall be guilty
13 of a class C felony, in addition to other penalties provided by
14 law and, upon conviction, shall be subject to one or any
15 combination of the following:

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

19 provided that a corporation shall be fined not more than
20 \$500,000.



1 (b) This section shall not apply to any portion of an
2 underpayment on which a penalty is imposed under section 231-36,
3 231-36.6, or 231-36.8."

4 SECTION 3. Section 231-36.6, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) There shall be added to the tax an amount equal to
7 twenty per cent of the portion of any underpayment that is
8 attributable to any substantial understatement of any tax in a
9 taxable year. [~~The penalty under this section shall be in~~
10 ~~addition to any other penalty assessable by law.] This section
11 shall not apply to any portion of an underpayment on which a
12 penalty is imposed under section 231-36, 231-36.4, or 231-36.8."~~

13 SECTION 4. Section 231-36.8, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) If a claim for refund or credit with respect to tax
16 is made for an excessive amount, the person making the claim
17 shall be liable for a penalty in an amount equal to twenty per
18 cent of the excessive amount; provided that there shall be no
19 penalty assessed where the penalty calculation under this
20 section results in an amount of less than \$400. This section
21 shall not apply to any portion of an underpayment on which a
22 penalty is imposed under section 231-36, 231-36.4, or 231-36.6."



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval;
7 provided that this Act shall apply to taxable years beginning
8 after December 31, 2010.



Report Title:

Tax Underpayments; Penalties

Description:

Prohibits penalties for wilful failure to collect and pay over taxes, substantial understatements or misstatements, and erroneous claims for refund or credit from being added to tax underpayments on which certain other penalties are already imposed. (SD1)

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