



GOV. MSG. NO. 1288

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 28, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 28, 2012, the following bill was signed into law:

HB1695 SD1

RELATING TO TAXATION.
Act 185 (12)

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 28 2012

ORIGINAL

ACT 185

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

H.B. NO. 1695
S.D. 1

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 231-36.8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§231-36.8[+] **Erroneous claim for refund or credit.**

4 (a) If a claim for refund or credit with respect to tax is made
5 for an excessive amount, the person making the claim shall be
6 liable for a penalty in an amount equal to twenty per cent of
7 the excessive amount; provided that there shall be no penalty
8 assessed where the penalty calculation under this section
9 results in an amount of less than \$400.

10 (b) It shall be a defense to the penalty under this
11 section that the claim for refund or credit had a reasonable
12 basis. A person claiming the reasonable basis defense shall
13 have the burden of proof to demonstrate the reasonableness of
14 the claim.

15 (c) This section shall be construed in accordance with
16 regulations and judicial interpretations given to section 6676
17 of the Internal Revenue Code.

18 (d) For purposes of this section:

HB1695 SD1 LRB 12-2058.doc



1 "Excessive amount" means the amount by which the amount of
2 the claim for refund or credit for any taxable year exceeds the
3 amount of the claim allowable for such taxable year.

4 "Reasonable basis" means a standard of care used in tax
5 reporting that is significantly higher than not frivolous or not
6 patently improper. A reasonable basis position will be more
7 than arguable and based on at least one or more authorities of
8 either state or federal tax administration. A position is
9 considered to have a reasonable basis if a reasonable and well-
10 informed analysis by a person knowledgeable in tax law would
11 lead that person to conclude that the position has approximately
12 a one-in-four, or greater, likelihood of being sustained on the
13 merits. A reasonable basis includes innocent mistakes where the
14 excessive amount is the result of inadvertence, mathematical
15 error, or where otherwise defined as innocent by the director
16 pursuant to a formal pronouncement issued without regard to
17 chapter 91.

18 (e) This section shall not apply to any portion of an
19 underpayment on which a penalty is imposed under section 231-
20 36.6."



1 SECTION 2. 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 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act, upon its approval, shall apply to
7 taxable years beginning after December 31, 2011.

APPROVED this 28 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII

