A BILL FOR AN ACT

RELATING TO TAXATION.

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

SECTION 1. The legislature finds that the State's earned income tax credit is designed to help working families. The legislature also finds that in order for low-income working families to truly benefit from the tax credit, eligible taxpayers should be able to benefit from the credit as they are receiving their regular paychecks and should not have to wait for a year to claim the credit.

Accordingly, the purpose of this Act is to require the department of taxation to authorize certain low-income individuals to reduce the amount of tax withheld from their wages by a prorated portion of the earned income tax credit the taxpayers would otherwise be entitled to claim on an annual basis.

SECTION 2. Section 235-61, Hawaii Revised Statutes, is amended to read as follows:

"§235-61 Withholding of tax on wages. (a) As used in this section:
"Employee" includes an officer or elected official, or any other employee.

"Employer" means:

(1) The person or government for whom an individual performs or performed any service, of whatever nature, as the employee of that person or government;

(2) The person having control of the payment of the wages if the employer as heretofore defined does not have control thereof; and

(3) Any person subject to the jurisdiction of the State and paying wages on behalf of an employer as heretofore defined if the employer is not subject to the jurisdiction of the State;

provided that the term employer shall not include any government that is not subject to the laws of the State except as, and to the extent that, it consents to the application of sections 235-61 to 235-67 to it.

"Wages" means wages, commissions, fees, salaries, bonuses, and every and all other kinds of remuneration for, or compensation attributable to, services performed by an employee for the employee's employer, including the cash value of all
remuneration paid in any medium other than cash and the cost-of-
living allowances and other payments included in gross income by
section 235-7(b), but excluding income excluded from gross
income by section 235-7 or other provisions of this chapter.

(b) Every employer, as defined herein, making payment of
wages, as herein defined, to employees, shall deduct and
withhold from such wages an amount of tax determined as provided
in this section.

(c) For each withholding period (whether weekly, biweekly,
monthly, or otherwise) the amount of tax to be withheld under
this section shall be at a rate that, for the taxable year, will
yield the tax imposed by section 235-51 upon each employee's
annual wage, as estimated from the employee's current wage in
any withholding period, but for the purposes of this subsection
of the rates provided by section 235-51 the maximum to be taken
into consideration shall be eight per cent. The tax for the
taxable year shall be calculated upon the following assumptions:

(1) That the employee's annual wage, as estimated from the
employee's current wage in the withholding period,
will be the employee's sole income for the taxable
year;
(2) That there will be no deductions therefrom in determining adjusted gross income;

(3) That in determining taxable income there shall be a standard deduction allowance, which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the director) unless the taxpayer:

(A) Is married and the taxpayer's spouse is an employee receiving wages subject to withholding;

or

(B) Has withholding exemption certificates in effect with respect to more than one employer.

For the purposes of this section, any standard deduction allowance under this paragraph shall be treated as if it were denominated a withholding exemption;

(4) That in determining taxable income there also will be deducted the amount of exemptions and withholding allowances granted to the employee in the computation of taxable income, as shown by a certificate to be filed with the employer as provided by subsection [§§] (g) and
(5) If it appears from the certificate filed pursuant to subsection \((g)\) that the employee, under section 235-93, is entitled to make a joint return, that the employee and the employee's spouse will so elect.

(d) Alternatively, at the election of the employer, the employer may deduct and withhold from each employee an amount of tax determined on the basis of tables to be prepared and furnished by the department of taxation, which amount of tax shall be substantially equivalent to the amount of tax provided by subsection (c) hereof.

(e) Subject to the limitation in section 235-55.75(h), for any taxable year beginning after December 31, 2020, the department shall authorize any qualifying individual taxpayer to elect to reduce the amount of tax withheld from the taxpayer's wages for each withholding period, by an amount equal to the prospective amount of the earned income tax credit that the taxpayer would otherwise be entitled to claim pursuant to section 235-55.75, divided by the number of withholding periods for the applicable taxable year.
The department shall adopt rules pursuant to chapter 91 and shall prepare any forms or amend existing forms as necessary to effectuate the purposes of this subsection.

For the purposes of this subsection, "qualifying individual taxpayer" means an employee who claims the earned income tax credit under section 235-55.75.

(f) The department, by rule, may require the deduction and withholding of tax from any remuneration or compensation paid for or attributable to services that are not subject to the general excise tax imposed by chapter 237, whether or not a withholding is provided for in this section. Every person so required to deduct and withhold tax, or from whom tax is required to be deducted and withheld, shall be subject to sections 235-61 to 235-67, and every person so required to deduct and withhold tax shall be deemed an employer for the purposes of this chapter.

The department, by rule, may exempt any employer from the requirement of deduction and withholding of taxes, even though the requirement is imposed by this section, if and to the extent that the department finds the requirement unduly onerous or impracticable of enforcement.
On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed certificate relating to the number of exemptions that the employee claims, which shall in no event exceed the number to which the employee is entitled on the basis of the existing facts, and also showing whether the employee is married and is, under section 235-93, entitled to make a joint return. The certificate shall be in the form and contain the information prescribed by the department.

If, on any day during the calendar year, there is a change in the employee's marital status and the employee no longer is entitled to make a joint return, or the number of exemptions to which the employee is entitled is less than the number of exemptions claimed by the employee on the certificate then in effect with respect to the employee, the employee shall, within ten days thereafter, furnish the employer with a new certificate showing the employee's present marital status, or relating to the number of exemptions that the employee then claims, which shall in no event exceed the number to which the employee is entitled on the basis of the existing facts.
facts. If, on any day during the calendar year, there is a change in the employee's marital status and though previously not entitled to make a joint return the employee now is so entitled, or the number of exemptions to which the employee is entitled is greater than the number of exemptions claimed, the employee may furnish the employer with a new certificate showing the employee's present marital status, or relating to the number of exemptions [which] the employee then claims, which shall in no event exceed the number to which the employee is entitled on the basis of the existing facts.

Such certificate shall take effect at the times set forth in the Internal Revenue Code.

(h) In determining the deduction allowed by subsection (c)(4) an employee shall be entitled to withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by rules) estimated itemized deductions and tax credits allowable under this chapter; and [such] any additional deductions and other items as
may be specified by the director in rules. For the purposes of this subsection a fractional number shall not be taken into account unless it amounts to one-half or more, in which case it shall be increased to the next whole number.

(1) As used in this subsection, unless the context otherwise requires:

(A) "Estimated itemized deductions" means the aggregate amount that the employee reasonably expects will be allowed as deductions under sections 235-2.3, 235-2.4, 235-2.45, and 235-7, other than the deductions referred to in Internal Revenue Code section 151 and those deductions required to be taken into account in determining adjusted gross income under Internal Revenue Code section 62(a) (with the exception of paragraph 10 thereof) for the estimation year.

In no case shall the aggregate amount be greater than the sum of:

(i) The amount of the deductions reflected in the employee's net income tax return for the taxable year preceding the estimation year,
of (if a return has not been filed for the preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year; or 

(ii) The amount of estimated itemized deductions and tax credits allowable under this chapter and any additional deductions to which entitled; and 

(iii) The amount of the employee's determinable additional deductions for the estimation year;

[(B)] "Estimated wages" means the aggregate amount which the employee reasonably expects will constitute wages for the estimation year;

[(C)] (B) "Determinable additional deductions" means those estimated itemized deductions [which:] that:

(i) Are in excess of the deductions referred to in subparagraph (A) reflected on the employee's net income tax return for the
taxable year preceding the estimation year;

and

(ii) Are demonstrably attributable to an identifiable event during the estimation year or the preceding taxable year which can reasonably be expected to cause an increase in the amount of the deductions on the net income tax return for the estimation year;

(C) "Estimated wages" means the aggregate amount which the employee reasonably expects will constitute wages for the estimation year;

(D) "Estimation year", in the case of an employee who files the employee's return on the basis of a calendar year, means the calendar year in which the wages are paid; provided that in the case of an employee who files the employee's return on a basis other than the calendar year, the employee's estimation year, and the amounts deducted and withheld to be governed by the
estimation year, shall be determined under rules prescribed by the director of taxation.

(2) Under this subsection, the following special rules shall apply:

(A) Married individuals. The number of withholding allowances to which a husband and wife are entitled under this subsection shall be determined on the basis of their combined wages and deductions. This subparagraph shall not apply to a husband and wife who filed separate returns for the taxable year preceding the estimation year and who reasonably expect to file separate returns for the estimation year;

(B) Limitation. In the case of employees whose estimated wages are at levels at which the amounts deducted and withheld under this chapter generally are insufficient (taking into account a reasonable allowance for deductions and exceptions) to offset the liability for tax under this chapter with respect to the wages from which the amounts are deducted and withheld, the
director [may] by rule, may reduce the withholding allowances to which those employees would, but for this subparagraph, be entitled under this subsection;

(C) Treatment of allowances. For purposes of this chapter, any withholding allowance under this subsection shall be treated as if it were denominated a withholding exemption.

(3) The director may prescribe tables by rule under chapter 91 pursuant to which employees shall determine the number of withholding allowances to which they are entitled under this subsection.

[i] The director of taxation may adopt by rule under chapter 91 the rules and regulations promulgated by the United States Secretary of Treasury or a delegate of the Secretary relating to the provisions of subtitle C, chapter 24 of the Internal Revenue Code operative in this section."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 4. This Act shall take effect on January 1, 2050, and shall apply to taxable years beginning after December 31, 2020.
Report Title:
Taxation; DOTAX; EITC; Wages; Withholding

Description:
Requires the department of taxation to authorize qualifying individual taxpayers to elect to reduce the amount of tax withheld from their wages for each withholding period, by an amount equal to the prospective amount of the earned income tax credit that the taxpayer would otherwise be entitled to claim on an annual basis. Takes effect on 1/1/2050. (HD1)

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