
A BILL FOR AN ACT

RELATING TO LIABILITY FOR AMOUNTS PASSED ON AS TAX.

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

1 SECTION 1. The department of taxation found many instances
2 where taxpayers openly passed on to consumers Hawaii taxes, such
3 as the general excise and transient accommodations taxes, but
4 did not remit those amounts to the State. Taxpayers who do not
5 remit the collected taxes often claim the amounts received are
6 not subject to taxation due to exemptions or deductions, or that
7 the transaction is subject to a lower tax rate. Current law
8 allows the office of consumer protection or the consumers to
9 take legal action against businesses that collect more for taxes
10 than are due to the State. Other than this type of consumer
11 protection action, the State cannot recover the total collected
12 for taxes or require the taxpayer to return the overpayment to
13 consumers. However, the department of taxation cannot violate
14 taxpayer information confidentiality by notifying the office of
15 consumer protection when these types of violations are
16 discovered.

17 The purpose of this Act is to:



- 1 (1) Require that taxes itemized and passed on to consumers
- 2 be remitted to the State unless returned to the
- 3 consumer;
- 4 (2) Specify how adjustments to liability are applied;
- 5 (3) Provide for civil penalties against the taxpayer; and
- 6 (4) Allow the department of taxation to provide notice to
- 7 the department of commerce and consumer affairs of the
- 8 commencement of any judicial appeal involving a
- 9 violation or penalty assessment.

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

13 **"§231- Liability for certain amount passed on as tax.**

14 (a) When an amount is passed on and separately stated as the
 15 tax owed by the taxpayer for the transaction in a receipt,
 16 contract, invoice, billing, or other evidence of the business
 17 activity, the taxpayer shall be liable for the amount passed on.
 18 In addition to the liability under this section, the taxpayer
 19 shall be liable for any applicable penalties and interest
 20 assessed pursuant to this title.



1 (b) Adjustments under this section shall be applied as
2 follows:

3 (1) Any liability under subsection (a) shall be reduced
4 by:

5 (A) The amount passed on and separately stated as tax
6 that the taxpayer has returned to the source from
7 which it was collected;

8 (B) The amount passed on and separately stated as tax
9 that the taxpayer collected solely through
10 rounding the correct amount of tax upward to the
11 nearest cent;

12 (C) The amount of tax due on any amount properly
13 deducted;

14 (D) The amount passed on and separately stated as tax
15 on any portion of receipts properly remitted to
16 another taxpayer under an income splitting
17 provision under title 14;

18 (E) The amount passed on and separately stated as tax
19 but not collected; and

20 (F) Any amount authorized by the department under
21 administrative rules;



1 (2) All adjustments allowed under this subsection shall be
2 made independently for each chapter under title 14;

3 and

4 (3) Any adjustment allowed under this subsection shall not
5 reduce the liability under subsection (a) to an amount
6 that is lower than the actual amount of tax due that
7 is calculated without regard to this section.

8 (c) The department shall adopt rules pursuant to chapter
9 91 stating the maximum rates at which taxes under this title may
10 be passed on and separately stated as described in subsection
11 (a). In addition to other penalties applicable under this
12 title, passing on a tax at a rate higher than these maximum
13 rates shall result in an assessment of a civil penalty of up to
14 \$500 per violation.

15 (d) The department may notify the department of commerce
16 and consumer affairs of the commencement of any judicial appeal
17 in which:

18 (1) A taxpayer has passed on a tax, as described in
19 subsection (a), and failed to remit those amounts to
20 the State in a timely manner; or



1 (2) A taxpayer has been assessed a penalty under
2 subsection (c)."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect on January 7, 2059.



Report Title:

Taxes; Liability for Amounts Passed on as Tax

Description:

Establishes that a taxpayer is liable for any amounts passed on and separately stated as the tax owed by the taxpayer for the transaction in a receipt, contract, invoice, billing, or other evidence of the business activity. Provides for civil penalty and reporting of violations to the department of commerce and consumer affairs. Takes effect 01/07/2059. (SD1)

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