

JAN 27 2021

A BILL FOR AN ACT

RELATING TO WITHHOLDING TAX.

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

1 SECTION 1. Section 235-63, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§235-63 Statements to employees.** (a) Every employer
4 required to deduct and withhold any tax on the wages of any
5 employee shall furnish to each employee in respect of the
6 employee's employment during the calendar year, on or before
7 January 31 of the succeeding year, or if the employee's
8 employment is terminated before the close of a calendar year,
9 within thirty days after the date of receipt of a written
10 request from the employee if such thirty-day period ends before
11 January 31, a written statement, showing the period covered by
12 the statement, the wages paid by the employer to the employee
13 during such period, and the amount of the tax deducted and
14 withheld or paid in respect of such wages. Each such employer
15 shall file on or before [~~the last day of February~~] January 31
16 following the close of the calendar year a duplicate copy of
17 each such statement. The department of taxation may grant to
18 any employer a reasonable extension of time, not in excess of

1 sixty days, with respect to any statement required by this
2 section to be furnished to an employee or filed, and may by
3 regulation provide for the furnishing or filing of statements at
4 such other times and containing such other information as may be
5 required for the administration of this chapter. The department
6 shall prescribe the form of the statement required by this
7 section and may adopt any federal form appropriate for the
8 purpose.

9 (b) In regard to the statement required under subsection

10 (a), an employer that fails to:

11 (1) Furnish the statement to the employee by the
12 prescribed due date;

13 (2) File the statement with the department by the
14 prescribed due date; or

15 (3) Electronically file the statement with the department
16 if the employer is required to file electronically
17 under section 231-8.5;

18 shall be subject to a penalty of \$25 per failure; provided that
19 the penalty imposed under this section shall not exceed \$50 per
20 employee."

21 SECTION 2. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

23

S.B. NO. 1196

1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY: *W.D. ...*

BY REQUEST

S.B. NO. 1196

Report Title:

Withholding Tax

Description:

Amends the due date for employers to file the wage and tax statement from the last day of February to January 31 following the close of the calendar year. Imposes a penalty on employers that fail to timely furnish and file the wage and tax statement.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO WITHHOLDING TAX.

PURPOSE: To amend the due date for employers to file a duplicate copy of the wage and tax statement (Form W-2) to January 31 following the close of the calendar year, and to impose a penalty of \$25 per violation if an employer fails to furnish the Form W-2 to the employee by the prescribed due date, fails to file Form W-2 with the Department of Taxation (Department) by the by the prescribed due date, or fails to electronically file Form W-2 if the employer is required to file electronically.

MEANS: Amend section 235-63, Hawaii Revised Statutes.

JUSTIFICATION: Currently, employers are required to furnish employees and the Internal Revenue Service (IRS) with Form W-2 on or before January 31 following the end of a calendar year. However, employers are not required to file Form W-2 with the Department until the last day of February following the close of the calendar year. For consistency and simplicity for employers, this measure proposes to change the due date to file Form W-2 with the Department to January 31 following each calendar year.

In addition, under current law, there is no penalty if an employer fails to furnish an employee with Form W-2 or fails to file Form W-2 with the Department. The Department believes that a flat fee penalty is appropriate and necessary as there is no tax that is owed based on Form W-2 itself that

would allow for an alternate method of calculating the penalty. The IRS imposes a similar penalty for failure to file Form W-2 at a rate of \$50 per violation.

Impact on the public: Employers will benefit from conformity with the IRS filing due date. Compliant employers will not be affected by the proposed penalty. The proposed penalty will only be imposed on employers that fail to meet existing requirements.

Impact on the department and other agencies: The Department will benefit from conformity with the IRS filing due date. The Department will also benefit from timely filing of Form W-2 as well as the electronic filing of Form W-2 when applicable.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.