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# A BILL FOR AN ACT

RELATING TO STATE TAX ADMINISTRATION.

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

1           SECTION 1. Section 231-8.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§231-8.5 Electronic filing of tax returns.** (a) The  
4 department may allow filing by electronic, telephonic, or  
5 optical means of any tax return, application, report, or other  
6 document required under the provisions of title 14 administered  
7 by the department.

8           (b) If the requirements of subsection (c) are satisfied,  
9 the department may require electronic filing of any tax return,  
10 application, report, or other document required under the  
11 provisions of title 14 administered by the department for the  
12 following taxpayers:

13           (1) For withholding tax filings required under chapter  
14 235, only employers whose total tax liability under  
15 sections 235-61 and 235-62 for the calendar or fiscal  
16 year exceeds \$40,000;



- 1 (2) For income tax filings required under chapter 235,  
2 only taxpayers who are [~~subject~~]:
- 3 (A) Subject to tax under section 235-71, 235-71.5, or  
4 235-72;
- 5 (B) Required to file partnership returns under  
6 section 235-95; provided that the partnership's  
7 gross income exceeds \$250,000 for the taxable  
8 year;
- 9 (C) Required to file S corporation returns under  
10 section 235-128; provided that the S corporation's  
11 gross income exceeds \$250,000 for the taxable  
12 year; or
- 13 (D) Subject to tax under section 235-51, 235-52, or  
14 235-53; provided that the taxpayer's federal  
15 adjusted gross income, as reported on the  
16 taxpayer's Hawaii income tax return, exceeds  
17 \$100,000 for the taxable year;
- 18 (3) For general excise tax filings required under chapter  
19 237, only taxpayers whose total tax liability under  
20 chapter 237 for the calendar or fiscal year exceeds  
21 [~~\$4,000~~] \$2,000;



- 1 (4) For transient accommodations tax filings required  
2 under chapter 237D, only operators and plan managers  
3 whose total tax liability under chapter 237D for the  
4 calendar or fiscal year exceeds [~~\$4,000~~] \$2,000; and
- 5 (5) For filings required under the following chapters, all  
6 taxpayers subject to tax under those chapters:
- 7 (A) 236E;  
8 (B) 239;  
9 (C) 241;  
10 (D) 243;  
11 (E) 244D;  
12 (F) 245; and  
13 (G) 251.
- 14 (c) As a prerequisite to requiring electronic filing under  
15 subsection (b), the department shall provide:
- 16 (1) An electronic filing option to the taxpayer; and  
17 (2) No less than ninety days prior written notice to the  
18 general public of the department's intention to  
19 require electronic filing.
- 20 (d) Notwithstanding subsection (b), any return that is  
21 prepared by a tax return preparer, as defined in section 231-



1 36.5, shall be filed electronically; provided that this  
2 subsection shall only apply if an electronic filing option is  
3 available and the tax return preparer reasonably expects to  
4 prepare more than ten returns of that same tax type in the  
5 calendar year.

6 If a return that is required to be filed electronically  
7 under this subsection is not filed electronically, the tax  
8 return preparer who prepared the return and the taxpayer shall  
9 each be subject to a penalty of \$50 for every failure to  
10 electronically file a return, unless it is shown that the  
11 failure is due to reasonable cause and not due to neglect.

12 ~~[(d)]~~ (e) The date of filing shall be the date the tax  
13 return, application, report, or other document is transmitted to  
14 the department in a form and manner prescribed by departmental  
15 rules adopted pursuant to chapter 91. The department may  
16 determine alternative methods for the signing, subscribing, or  
17 verifying of a tax return, application, report, or other  
18 document that shall have the same validity and consequences as  
19 the actual signing by the taxpayer. A filing under this section  
20 shall be treated in the same manner as a filing subject to the  
21 penalties under section 231-39.



1           [-e-] (f) If a person who is required by the department  
2 under subsection (b) to electronically file any tax return fails  
3 to file using an approved method, unless it is shown that the  
4 failure is due to reasonable cause and not to neglect, the  
5 person shall be liable for a penalty of two per cent of the  
6 amount of the tax required to be shown on the return. If no tax  
7 is required to be shown on the return, the department may  
8 determine the penalty imposed by rule."

9           SECTION 2. Section 231-9.9, Hawaii Revised Statutes, is  
10 amended as follows:

11           1. By amending subsection (a) to read:

12           "(a) The director of taxation is authorized to require  
13 every person or tax return preparer subject to mandatory  
14 electronic filing under section 231-8.5 and every person whose  
15 tax liability for any one taxable year exceeds \$100,000 and who  
16 files a tax return for any tax, including consolidated filers,  
17 to remit taxes by one of the means of electronic funds transfer  
18 approved by the department; provided that for withholding taxes  
19 under section 235-62, electronic funds transfers shall apply to  
20 annual tax liabilities that exceed \$40,000. [~~Notwithstanding~~  
21 ~~the tax liability thresholds in this subsection, the director of~~



1 ~~taxation is authorized to require any person who is required to~~  
2 ~~electronically file a federal return or electronically remit any~~  
3 ~~federal taxes to the federal government, to electronically file~~  
4 ~~a state return and electronically remit any state taxes under~~  
5 ~~title 14 to the department. The director is authorized to grant~~  
6 ~~an exemption to the electronic filing and payment requirements~~  
7 ~~for good cause.]"~~

8 2. By amending subsections (c) and (d) to read:

9 "(c) If a person who is required under subsection (a) to  
10 ~~[file a return electronically or]~~ remit taxes by one of the  
11 means of electronic funds transfer approved by the department  
12 fails ~~[to file electronically or]~~ to remit the taxes using an  
13 approved method ~~[on or before the date prescribed therefor]~~,  
14 unless it is shown that the failure is due to reasonable cause  
15 and not to neglect, there shall be added to the tax required to  
16 be so remitted a penalty of two per cent of the amount of the  
17 tax. The penalty under this subsection is in addition to any  
18 penalty set forth in section 231-39.

19 (d) No later than twenty days prior to the convening of  
20 each regular session, the department shall submit a report to  
21 the legislature containing:



1 (1) The number of taxpayers who were assessed the two per  
2 cent penalty pursuant to subsection (c);  
3 [~~(2) The amounts of each assessment,~~] and  
4 [~~(3)~~] (2) The total amount of assessments [~~collected~~] for  
5 the previous year."

6 SECTION 3. Section 231-10.8, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "~~[§]~~**§231-10.8**~~[§]~~ **Tax clearance fees.** The department may  
9 charge a fee of \$20 for each tax clearance application submitted  
10 [~~and \$5 for each certified copy of a tax clearance~~]."

11 SECTION 4. Section 231-28, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§231-28 Tax clearance before procuring liquor licenses.**

14 No liquor licenses shall be issued or renewed unless the  
15 applicant therefor shall present to the issuing agency, a  
16 certificate [~~signed~~] issued by the [~~director of taxation,~~]  
17 department, showing that the applicant does not owe the State  
18 any delinquent taxes, penalties, or interest; or that the  
19 applicant has entered into and is complying with an installment  
20 plan agreement with the department [~~of taxation~~] for the payment  
21 of delinquent taxes in installments. Notwithstanding any law to



1 the contrary, the department may disclose tax information  
2 relevant to the applicant's state tax compliance to the issuing  
3 agency."

4 SECTION 5. Section 231-39, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6 "(b) There shall be added to and become a part of the tax  
7 imposed by such tax or revenue law, and collected as such:

8 (1) Failure to file tax return. In case of failure to  
9 file any tax return required to be filed on the date  
10 prescribed therefor (determined with regard to any  
11 extension of time for filing), unless it is shown that  
12 the failure is due to reasonable cause and not due to  
13 neglect, there shall be added to the amount required  
14 to be shown as tax on the return five per cent of the  
15 amount of the tax if the failure is for ~~[not]~~ no more  
16 than one month, with an additional five per cent for  
17 each additional month or fraction thereof during which  
18 the failure continues, not exceeding ~~[twenty-five]~~  
19 seventy-five per cent in the aggregate. For purposes  
20 of this paragraph, the amount of tax required to be  
21 shown on the return shall be reduced by the amount of





1 any part of the tax [~~which~~] that is paid on or before  
2 the date prescribed for payment of the tax and by the  
3 amount of any credit against the tax [~~which~~] that may  
4 be claimed upon the return. This paragraph shall not  
5 apply to any failure to file a declaration of  
6 estimated tax required by section 235-97.

7 (2) Failure to pay tax.

8 (A) If any part of any underpayment is due to  
9 negligence or intentional disregard of rules (but  
10 without intent to defraud), there shall be added  
11 to the tax an amount up to twenty-five per cent  
12 of the underpayment as determined by the  
13 director.

14 (B) If any part of any underpayment of tax required  
15 to be shown on a return is due to fraud, there  
16 shall be added to the tax an amount up to fifty  
17 per cent of the underpayment as determined by the  
18 director.

19 (C) If any penalty is assessed under subparagraph (B)  
20 (relating to fraud) for an underpayment of tax  
21 [~~which~~] that is required to be shown on a return,



1 no penalty under paragraph (1) (relating to  
2 failure to file the return) shall be assessed  
3 with respect to the same underpayment.

4 (3) Failure to pay tax after filing timely returns. If a  
5 return is filed on or before the date prescribed  
6 therefor and the amount shown as tax on the return is  
7 not completely paid within sixty days of the  
8 prescribed filing date, there shall be added to the  
9 unpaid tax an amount up to twenty per cent as  
10 determined by the director.

11 (4) Interest on underpayment or nonpayment of tax.  
12 (A) If any amount of tax is not paid on or before the  
13 last date prescribed for payment, interest on  
14 such amount at the rate of two-thirds of one per  
15 cent a month or fraction of a month shall be paid  
16 for the period beginning with the first calendar  
17 day after the date prescribed for payment,  
18 section 231-21 to the contrary notwithstanding,  
19 to the date paid.

20 (B) If the amount of any tax is reduced by reason of  
21 a carryback of a net operating loss allowed under



1 chapter 235, such reduction in tax shall not  
2 affect the computation of interest under this  
3 paragraph for the period ending with the last day  
4 of the taxable year in which the net operating  
5 loss arises.

6 (C) Interest prescribed under this paragraph on any  
7 tax shall be paid upon notice and demand, and  
8 shall be assessed, collected, and paid in the  
9 same manner as taxes.

10 (D) No interest under this paragraph shall be imposed  
11 on interest provided by this paragraph.

12 (E) If any portion of a tax is satisfied by credit of  
13 any overpayment, then no interest shall be  
14 imposed under this paragraph on the portion of  
15 the tax so satisfied for any period during which,  
16 if the credit had not been made, interest would  
17 have been allowable with respect to the  
18 overpayment.

19 (F) Interest prescribed under this paragraph on any  
20 tax may be assessed and collected at any time



1                   during the period within which the tax to which  
2                   the interest relates may be collected.

3                   (G) This paragraph shall not apply to any failure to  
4                   pay estimated tax required by section 235-97.

5                   (5) Informational returns with no tax owed. For persons  
6                   required to file information returns under sections  
7                   235-94, 235-95, 235-96, and 235-128, who fail to file  
8                   by the date prescribed therefor (determined with  
9                   regard to any extension of time for filing), unless it  
10                   is shown that the failure is due to reasonable cause  
11                   and not due to neglect, there shall be assessed a  
12                   penalty of \$200 for each month or part of a month (for  
13                   a maximum of twelve months) the failure continues,  
14                   multiplied by the total number of persons who were  
15                   partners, shareholders, or beneficiaries during any  
16                   part of the tax year for which the return is due."

17                   SECTION 6. Section 232-24, Hawaii Revised Statutes, is  
18                   amended to read as follows:

19                   "**§232-24 Taxes paid pending appeal.** (a) The tax paid  
20                   upon the amount of any assessment, actually in dispute and in  
21                   excess of that admitted by the taxpayer, and covered by an



1 appeal to the tax appeal court duly taken, shall, pending the  
2 final determination of the appeal, be paid by the director of  
3 finance into the "litigated claims fund". If the final  
4 determination is in whole or in part in favor of the appealing  
5 taxpayer, the director of finance shall repay to the taxpayer  
6 out of the fund, or if investment of the fund should result in a  
7 deficit therein, out of the general fund of the State, the  
8 amount of the tax paid upon the amount held by the court to have  
9 been excessive or nontaxable, together with, from the date of  
10 each payment into the litigated claims fund, the interest to be  
11 paid from the general fund of the State. [~~For purposes of this~~  
12 ~~section, the rate of interest shall be computed by reference to~~  
13 ~~section 6621(a), with respect to interest rate determination, of~~  
14 ~~the Internal Revenue Code of 1986, as of January 1, 2010.] The  
15 balance, if any, of the payment made by the appealing taxpayer,  
16 or the whole of the payment, in case the decision is wholly in  
17 favor of the assessor, shall, upon the final determination  
18 become a realization under the tax law concerned.~~

19 (b) For purposes of this section, the interest shall be  
20 computed using the following interest rates:



1        (1) For corporations whose overpayments are \$10,000 or  
2        less, three per cent;

3        (2) For corporations whose overpayments exceed \$10,000,  
4        1.5 per cent; and

5        (3) For all other taxpayers, four per cent.

6        [~~b~~] (c) In a case of an appeal to the taxation board of  
7 review, the tax paid, if any, upon the amount of the assessment  
8 actually in dispute and in excess of that admitted by the  
9 taxpayer, shall, during the pendency of the appeal and until and  
10 unless an appeal is taken to the tax appeal court, be held by  
11 the director of finance in a special deposit. In the event of  
12 final determination of the appeal in the taxation board of  
13 review, the director of finance shall repay to the appealing  
14 taxpayer out of the deposit the amount of the tax paid upon the  
15 amount held by the board to have been excessive or nontaxable,  
16 if any, the balance, if any, or the whole of the deposit, in  
17 case the decision is wholly in favor of the assessor, to become  
18 a realization under the tax law concerned."

19        SECTION 7. Section 235-64.2, Hawaii Revised Statutes, is  
20 amended to read as follows:



1 "[+]§235-64.2[+] **Withholdings by partnerships, estates,**  
2 **and trusts.** (a) Partnerships, estates, and trusts shall  
3 withhold an amount equal to the highest marginal tax rate  
4 applicable to a nonresident taxpayer multiplied by the amount of  
5 the taxpayer's distributive share of income attributable to the  
6 State reflected on the partnership's, estate's, and trust's  
7 return for the taxable period. All amounts withheld shall be  
8 paid to the department [~~of taxation~~] in a manner that the  
9 department may prescribe. Withholding shall not be required to  
10 be submitted by a publicly traded partnership, as defined by  
11 section 7704(b) of the Internal Revenue Code, otherwise in  
12 compliance with this section. A publicly traded partnership  
13 shall file an annual information return reporting the name,  
14 address, taxpayer identification number, and other information  
15 requested by the department [~~of taxation~~] of each unit holder  
16 with income sourced to the State.

17 (b) The amount required to be withheld under subsection  
18 (a) shall be calculated and submitted to the department on a  
19 calendar quarter basis. Payments shall be due on or before the  
20 twentieth day of the month immediately following the end of the  
21 quarter.



1       (c) All taxes withheld by any partnership, estate, or  
2 trust under this section shall be held in trust for the State  
3 and for the payment of the same to the collector in the manner  
4 and at the time required by subsection (b). If any partnership,  
5 estate, or trust fails, neglects, or refuses to deduct and  
6 withhold from the taxpayer's distributive share, or to pay over,  
7 the amount of tax required, the partnership, estate, or trust  
8 shall be liable to pay to the State the amount of the tax.

9       (d) A partnership, estate, or trust may recover from the  
10 taxpayer any amount that the partnership, estate, or trust  
11 should have withheld but did not withhold from the taxpayer's  
12 distributive share, if the partnership, estate, or trust has  
13 been required to pay and has paid the amount to the State out of  
14 its own funds pursuant to this section.

15       (e) Taxes withheld and paid to the department on behalf of  
16 nonresident taxpayers under this section shall be deemed  
17 estimated tax payments in accordance with section 235-97(g).

18       (f) For purposes of this section, "taxpayer's distributive  
19 share of income" means fifty per cent of the partnership,  
20 estate, or trust's gross income attributable to the State for  
21 the quarter multiplied by the percentage of ownership, benefit





1 or other interest that the nonresident taxpayer has in the  
2 partnership, estate, or trust."

3 SECTION 8. If any provision of this Act, or the  
4 application thereof to any person or circumstance, is held  
5 invalid, the invalidity does not affect other provisions or  
6 applications of this Act that can be given effect without the  
7 invalid provision or application, and to this end the provisions  
8 of this Act are severable.

9 SECTION 9. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 10. This Act shall take effect on January 1, 2023;  
12 provided that Section 1 shall take effect on July 1, 2022.

13



**Report Title:**

State Tax Administration; Electronic Filing; Electronic Funds Transfer; Tax Clearances; Interest Rate; Nonresident Withholding

**Description:**

Expands the department of taxation's authority to require electronic filings. Requires certain tax return preparers to file returns electronically. Repeals the authorization to require electronic funds transfer or electronic filing if the federal government required that person to file or pay electronically. Removes the timeliness requirement from the electronic funds transfer penalty. Removes the authority of the department of taxation to charge for certified copies of tax clearances. Clarifies tax clearances for liquor license holders. Increases the aggregate cap on late filing penalties. Adds an additional penalty category for late filing of certain informational returns where no tax is due. Clarifies the interest calculations for taxes paid pending appeal. Provides that a partnership, estate, or trust is liable for the required withholding from a nonresident taxpayer's distributive share of income. (HD1)

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

