
A BILL FOR AN ACT

RELATING TO TAX ENFORCEMENT.

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

1 SECTION 1. Section 235-108, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§235-108 Audit of return; procedure; additional taxes.**

4 (a) Audit. The director of taxation or a responsible person
5 designated by the director to act in the premises for the
6 purpose of verification or audit of a return made by the
7 taxpayer or employer, or for the purpose of making a return
8 where none has been made, is authorized and empowered to examine
9 all account books, bank books, bank statements, records,
10 vouchers, copies of federal tax returns, and any and all other
11 documents and [~~evidences having any relevancy~~] evidence relevant
12 to the determination of the income or wages as required to be
13 returned under this chapter, and the director may employ the
14 director's powers under section 231-7 for such purposes.

15 (b) Any person liable for any tax imposed under this
16 chapter or for the collection or deduction thereof at the source
17 shall produce all account books, bank books, bank statements,



1 records, vouchers, copies of federal tax returns, and any and
 2 all other documents and evidence relevant to the determination
 3 of the income or wages as required to be returned under this
 4 chapter within thirty business days after a written demand is
 5 mailed to that person by the department, or as soon thereafter
 6 as the director may deem reasonable under the circumstances.

7 Any person who fails to produce documents or evidence as
 8 provided in this subsection shall be prohibited from introducing
 9 the documents or matters in evidence, or otherwise relying upon
 10 or utilizing said documents or matters, in any tax appeal or
 11 action under section 40-35 arising from the audit in which the
 12 documents or matters were demanded, unless it is shown that the
 13 failure is due to reasonable cause and not neglect or refusal.

14 [~~(b)~~] (c) Additional taxes. If the department of taxation
 15 discovers from the examination of the return or otherwise that
 16 income, or the liability of an employer in respect of wages, or
 17 any portion thereof, has not been assessed, it may assess the
 18 same and give notice to the taxpayer or employer of the
 19 assessment, and the taxpayer or employer shall thereupon have an
 20 opportunity within thirty days to confer with the department as
 21 to the proposed assessment. After the expiration of thirty days



1 from such notification the department shall assess the income of
2 the taxpayer, or the liability of the employer in respect of
3 wages, or any portion thereof which it believes has not
4 heretofore been assessed, and shall give notice to the taxpayer
5 or employer of the amount of the tax and interest and penalties
6 if any, and the amount thereof shall be paid within twenty days
7 after the date the notice was mailed, properly addressed to the
8 taxpayer or employer at the taxpayer's or employer's last known
9 address or place of business."

10 SECTION 2. Section 236E-18.5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[+]§236E-18.5[+] **Audit of return; procedure upon failure**
13 **to file return; additional taxes; limitation period.** (a) The
14 director of taxation, or the director's designee, is authorized
15 and empowered to examine all account books, bank books, bank
16 statements, records, vouchers, copies of federal tax returns,
17 and any and all other documents and evidence [~~having any~~
18 ~~relevance~~] relevant to the determination of any amount relevant
19 to the Hawaii transfer tax, as required to be returned under
20 this chapter, and the director may employ the director's powers
21 under section 231-7 for these purposes.



1 (b) Any person liable for any tax imposed under this
2 chapter shall produce all account books, bank books, bank
3 statements, records, vouchers, copies of federal tax returns,
4 and any and all other documents and evidence relevant to the
5 determination of the income as required to be returned under
6 this chapter within thirty business days after a written demand
7 is mailed to that person by the department, or as soon
8 thereafter as the director may deem reasonable under the
9 circumstances. Any person who fails to produce documents or
10 evidence as provided in this subsection shall be prohibited from
11 introducing the documents or matters in evidence, or otherwise
12 relying upon or utilizing said documents or matters, in any tax
13 appeal or action under section 40-35 arising from the audit in
14 which the documents or matters were demanded, unless it is shown
15 that the failure is due to reasonable cause and not neglect or
16 refusal.

17 [~~(b)~~] (c) If the department discovers from the examination
18 of the return or otherwise that any amount has not been assessed
19 or otherwise properly included in determining any amount
20 relevant to the Hawaii transfer tax, it may assess those
21 amounts.



1 [~~(e)~~] (d) If the person required to file the return
2 required under this chapter fails to file the return or declines
3 to authenticate a return, the department shall make a return for
4 the person based upon the best information obtainable and shall
5 levy and assess against the person the tax as shown on the
6 return.

7 [~~(d)~~] (e) For the purposes of this section, the department
8 shall give notice of the assessment to the person required to
9 file the return required under this chapter. The person put on
10 notice shall have thirty days to confer with the department as
11 to the proposed assessment. After the expiration of thirty days
12 from the notification, the department shall finalize the
13 assessment and give notice to the person of the tax and interest
14 and penalties, if any. The amount shall be paid within twenty
15 days after the date the notice, properly addressed to the person
16 required to file the return required to be filed under this
17 chapter, is mailed to the person's last known address.

18 [~~(e)~~] (f) In the case of an audit commenced under this
19 section, the amount of Hawaii transfer tax imposed by this
20 chapter shall be assessed or levied within three years after the
21 return was filed, or within three years of the due date



1 prescribed for the filing of that return, whichever is later.
2 In the case of a false or fraudulent return with intent to evade
3 tax, or of a failure to file a return, the tax may be assessed
4 or levied at any time; provided that the burden of proof with
5 respect to the issues of falsity or intent to evade tax shall be
6 upon the State. The limitation period shall be suspended if the
7 person required to file the return agrees to suspend the
8 period."

9 SECTION 3. Section 237-39, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§237-39 Audits; procedure, penalties.** (a) For the
12 purpose of verification or audit of a return made by the
13 taxpayer, or where there is reasonable ground to believe that
14 any return made is so deficient as not to form the basis of a
15 satisfactory assessment of the tax, or for the purpose of making
16 an assessment where no return has been made, the department of
17 taxation or the Multistate Tax Commission pursuant to chapter
18 255, or the authorized representative thereof, may examine all
19 account books, bank books, bank statements, records, vouchers,
20 taxpayer's copies of federal tax returns, and any and all other
21 documents and evidence [~~having any relevancy~~] relevant to the



1 determination of the gross income or gross proceeds of sales of
 2 any taxpayer as required to be returned under this chapter and
 3 may summon or require the attendance of the person by or for
 4 whom the return, if any, has been made or whose tax is being
 5 assessed, and any employee of the person, and may summon or
 6 require the attendance of any person having knowledge in the
 7 premises, naming the time and place in the summons, and may
 8 require the production of any books, statements, or other
 9 evidence open to examination, and may take testimony in
 10 reference to any matter relevant to the gross income or gross
 11 proceeds of sales of the taxpayer for the period under
 12 consideration, with power to require that the person so called
 13 and appearing shall be interrogated under oath and to administer
 14 the oath.

15 (b) Any person liable for any tax imposed under this
 16 chapter or for the collection or deduction thereof at the source
 17 shall produce all account books, bank books, bank statements,
 18 records, vouchers, taxpayer's copies of federal tax returns, and
 19 any and all other documents and evidence relevant to the
 20 determination of the gross income or gross proceeds of sales as
 21 required to be returned under this chapter within thirty



1 business days after a written demand is mailed to that person by
2 the department, or as soon thereafter as the director may deem
3 reasonable under the circumstances. Any person who fails to
4 produce documents or evidence as provided in this subsection
5 shall be prohibited from introducing the documents or matters in
6 evidence, or otherwise relying upon or utilizing said documents
7 or matters, in any tax appeal or action under section 40-35
8 arising from the audit in which the documents or matters were
9 demanded, unless it is shown that the failure is due to
10 reasonable cause and not neglect or refusal.

11 [~~(b)~~] (c) If the department determines that any gross
12 income or gross proceeds of sales liable to the tax have not
13 been assessed, the department may assess the same as provided in
14 sections 237-36 and 237-38.

15 [~~(e)~~] (d) Any individual knowingly giving false testimony
16 under oath at any hearing before the department shall be guilty
17 of perjury and shall be punished as provided by law.

18 [~~(d)~~] (e) Any person refusing or neglecting to obey any
19 summons issued by the department, and any individual appearing
20 and refusing to testify under oath, shall be fined \$50 for the
21 first offense and \$100 for each succeeding offense."



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval;
4 provided that:

5 (1) Sections 1 and 3 shall apply to taxable years
6 beginning after December 31, 2023; and

7 (2) Section 2 shall apply to decedents dying and taxable
8 transfers occurring after December 31, 2023.



Report Title:

Tax Enforcement; Audits; Time to Respond; Failure to Respond;
Appeals

Description:

Provides deadlines for taxpayers under audit to comply with demands to produce documents and evidence. Authorizes the tax appeal court to preclude documents or information not produced pursuant to a demand from being introduced in evidence in a tax appeal or action under section 40-35, Hawaii Revised Statutes, unless the failure was due to reasonable cause. (SD1)

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

