

ACT 92

H.B. NO. 2038

A Bill for an Act Relating to Criminal Tax Penalties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to consolidate the criminal tax penalties under title 14 by repealing each penalty section throughout title 14 and setting forth the criminal tax penalties applicable to all state taxes administered by the department of taxation in chapter 231. The legislature finds that providing a uniform standard of conduct and burden of proof for the evasion or defeat of a tax, failure to file a return or supply information, or making false or fraudulent statements will provide appropriate emphasis and support for the criminal enforcement of the state tax laws, similar to that found on the federal level.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“**§231- Interpretation.** Sections 231-34, 231-35, and 231-36 shall be construed in accordance with judicial interpretations given to similar provisions of Title 26 of the United States Code; consistent therewith, the term “wilfully” shall mean a voluntary, intentional violation of a known legal duty.

§231- Statute of limitation for criminal penalties. Notwithstanding any laws to the contrary, prosecutions under sections 231-34, 231-35, and 231-36 shall be commenced within seven years after the commission of the offense.”

SECTION 3. Chapter 231, Hawaii Revised Statutes, is amended by amending the subtitle¹ for sections 231-34 through 231-39 to read as follows:

“**[MISDEMEANORS:] PENALTIES AND INTEREST**”

SECTION 4. Section 231-34, Hawaii Revised Statutes, is amended to read as follows:

“**§231-34 [False returns, etc.; penalty.] Attempt to evade or defeat tax.** Any person who [makes any false or fraudulent return or false statement in any return, with intent to defraud the State or to evade the payment of any tax or any part thereof, or who in any manner intentionally deceives or attempts to deceive the department of taxation in relation to any such tax,] wilfully attempts in any manner to evade or defeat any tax imposed under title 14, or the payment thereof, in addition to other penalties provided by law, shall be guilty of a class C felony and, upon conviction thereof, shall be fined not more than [\$1,000] \$100,000 or imprisoned not more than [one year,] five years, or both[.]; provided that a corporation shall be fined not more than \$500,000.”

SECTION 5. Section 231-35, Hawaii Revised Statutes, is amended to read as follows:

“§231-35 [Failure to make return; misdemeanor.] Wilful failure to file return or supply information. Any person [who by wilful neglect, fraud, act, or contrivance whatsoever used or practiced, evades or attempts to evade the assessment of the person’s property or of property concerning which the person is required to make a statement, list, or return for assessment, shall] required to make a return, make a report, keep any records, or supply any information required under title 14, who wilfully fails to make the return, make the report, keep the records, or supply the information, at the time or times required by law, in addition to other penalties provided by law, shall be [deemed] guilty of a misdemeanor[.] and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned not more than one year, or both; provided that a corporation shall be fined not more than \$100,000.”

SECTION 6. Section 231-36, Hawaii Revised Statutes, is amended to read as follows:

“§231-36 [Abetting, etc., misdemeanor. All persons wilfully aiding, abetting, or assisting in any manner whatsoever any person to commit any act constituted a misdemeanor by this chapter, shall be deemed guilty of a misdemeanor.] **False and fraudulent statements; aiding and abetting.** (a) Any person who wilfully makes and subscribes any return, statement, or other document required to be made under title 14, which contains or is verified by a written declaration that is made under the penalties of perjury, and which the person does not believe to be true and correct as to every material matter shall be guilty of a class C felony and, upon conviction thereof, shall be fined not more than \$100,000 or imprisoned not more than three years, or both; provided that a corporation shall be fined not more than \$500,000.

(b) Any person who wilfully aids or assists in, or procures, counsels, or advises the preparation or presentation of any tax return, affidavit, claim, or other document required to be made under title 14, which is fraudulent or is false as to any material matter, regardless of whether the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document shall be guilty of a class C felony and, upon conviction thereof, shall be fined not more than \$100,000 or imprisoned not more than three years, or both; provided that a corporation shall be fined not more than \$500,000.”

SECTION 7. 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:

- (1) “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;
- (2) “Employee” includes an officer or elected official, or any other employee;
- (3) “Employer” means (A) the person or government for whom an individual performs or performed any service, of whatever nature, as the employee of such person or government, and (B) the person having control of the payment of the wages if the employer² as heretofore defined does not have control thereof, and (C) any person subject to the jurisdiction of the State and paying wages on behalf of an employer² as

heretofore defined if the employer is not subject to the jurisdiction of the State; provided that the term employer² 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.

(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 which, 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. 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 (A) the taxpayer is married and the taxpayer's spouse is an employee receiving wages subject to withholding, or (B) the taxpayer 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 (f); and
- (5) If it appears from the certificate filed pursuant to subsection (f) 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) The department, by [regulation,] 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 such withholding is provided for hereinabove. 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 [regulation,] rule, may exempt any employer from the requirement of deduction and withholding of taxes, even though [such] the requirement is imposed by this section, if and to the extent that the department finds [such] the requirement unduly onerous or impracticable of enforcement.

(f) 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 which 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 such form and contain such information as may be 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 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. 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.

(g) 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 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 which the employee reasonably expects will be allowed as deductions under sections 235-2.3, 235-2.4, 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 [such] the aggregate amount be greater than the sum of:

- (i) The amount of [such] the deductions reflected in the employee's net income tax return for the taxable year preceding the estimation year of (if [such] a return has not been filed for [such] 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 [such] 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) “Determinable additional deductions” means those estimated itemized deductions which:
- (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 such deductions on the net income tax return 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 [such] 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 [such] the amounts are deducted and withheld, the director may by rule reduce the withholding allowances to which [such] 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.

[h) Any individual required to supply information to the individual’s employer under this section who wilfully supplies false or fraudulent information, or who wilfully fails to supply information under this section which would require an increase in the tax to be withheld, shall be fined not more than \$500, or imprisoned not more than six months, or both.

(i) (h) 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 8. Section 235-68, Hawaii Revised Statutes, is amended to read as follows:

“§235-68 Withholding of tax on the disposition of real property by nonresident persons. (a) As used in this section:

“Nonresident person” means every person other than a resident person.

“Property” or “real property” [means “property” or “real property” as the] has the meaning as the same term is defined in section 231-1.

“Resident person” means any individual included in the definition of resident² in section 235-1; any corporation incorporated or granted a certificate of authority under chapter 415, 415A, or 415B; any partnership formed or registered under chapter 425 or 425D; any foreign partnership qualified to transact business pursuant to chapter 425 or 425D; or any trust included in the definition of resident trust² in section 235-1; or any estate included in the definition of resident estate² in section 235-1.

“Transferee” means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

“Transferor” means any person disposing real property which is located in Hawaii.

(b) Unless otherwise provided in this section, every transferee shall deduct and withhold a tax equal to five per cent of the amount realized on the disposition of Hawaii real property. Every person required to withhold a tax under this section is made liable for the tax and is relieved of liability for or upon the claim or demand of any other person for the amount of any payments to the department made in accordance with this section.

(c) Every transferee required by this section to withhold tax under subsection (b) shall make a return of the amount withheld to the department of taxation not more than twenty days following the transfer date.

(d) No person shall be required to deduct and withhold any amount under subsection (b), if the transferor furnishes to the transferee an affidavit by the transferor stating the transferor’s taxpayer identification number and:

- (1) The transferor is a resident person; or
 - (2) That by reason of a nonrecognition provision of the Internal Revenue Code as operative under this chapter or the provisions of any United States treaty, the transferor is not required to recognize any gain or loss with respect to the transfer;
 - (3) A brief description of the transfer; and
 - (4) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.
- This subsection shall not apply if the transferee has actual knowledge that the affidavit referred to in this subsection is false.

[(e) Any transferor who wilfully supplies false or fraudulent information on an affidavit pursuant to subsection (d) or (g) or on an application for a withholding certificate pursuant to subsection (f) shall be in violation of section 231-34 and shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(f) (e) An application for a withholding certificate may be submitted by the transferor to the department setting forth:

- (1) The name, address, and taxpayer identification number, if any, of the parties to the transaction and the location and general description of the real property to be transferred; and
- (2) A calculation and written justification showing that the transferor will not realize any gain with respect to the transfer; or

- (3) A calculation and written justification showing that there will be insufficient proceeds to pay the withholding required under subsection (b) after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property.

Upon receipt of the application, the department shall determine whether the transferor has realized or will realize any gain with respect to the transfer, or whether there will be insufficient proceeds to pay the withholding. If the department is satisfied that no gain will be realized or that there will be insufficient proceeds to pay the withholding, it shall issue a withholding certificate stating the amount to be withheld, if any.

The submission of an application for a withholding certificate to the department does not relieve the transferee of its obligation to withhold or to make a return of the tax under subsections (b) and (c).

[g)] (f) No person shall be required to deduct and withhold any amount under subsection (b) if one or more individual transferors furnishes to the transferee an affidavit by the transferor stating the transferor's taxpayer identification number, that for the year preceding the date of the transfer the property has been used by the transferor as a principal residence, and that the amount realized for the property does not exceed \$300,000.

[h)] (g) The department may enter into written agreements with persons who engage in more than one real property transaction in a calendar year or other persons to whom meeting the withholding requirements of this section are not practicable. The written agreements may allow the use of a withholding method other than that prescribed by this section or may waive the withholding requirement under this section."

SECTION 9. Section 235-95, Hawaii Revised Statutes, is amended to read as follows:

"§235-95 Partnership returns. Every partnership shall make a return for each taxable year upon forms prescribed by the department of taxation, itemizing its gross income and allowable deductions and including the names and addresses of the persons who would be entitled to share in the income if distributed and the amount of each distributive share. The return shall be authenticated by the signature of any one of the partners, under the penalties provided by section [231-34.] 231-36, and the fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership. All provisions of this chapter relating to returns shall be applicable to partnership returns except as specifically otherwise stated in this section."

SECTION 10. Section 235-98, Hawaii Revised Statutes, is amended to read as follows:

"§235-98 Returns; form, verification and authentication, time of filing. Returns shall be in such form as the department of taxation may prescribe from time to time and shall be verified by written declarations that the statements therein made are subject to the penalties prescribed in section [231-34.] 231-36. Corporate returns shall be authenticated by the signature of the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act, under the penalties prescribed by section [231-34.] 231-36. The fact that an individual's name is signed on the corporation return shall be prima facie evidence that the individual is authorized to sign the return on behalf of the corporation.

The department may grant a reasonable extension of time for filing returns under such rules and regulations as it shall prescribe. Except in the case of persons who are outside the United States, no extension shall be for more than six months.”

SECTION 11. Section 235-105, Hawaii Revised Statutes, is amended to read as follows:

“**§235-105 Failure to keep records, render returns, or make reports[, misdemeanors.] by responsible persons.** [(a) Every person required by sections 235-92, 235-94, 235-95, and 235-97, or any such section, to make a declaration of estimated tax or a return, who wilfully fails to make the declaration or return at the time or times required by law, or wilfully fails to authenticate the declaration or return, if made, as required by law, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) Every person required by section 235-55(b) or section 235-101(b) to make a report, who wilfully fails to make such report at the time or times required by law shall be fined not more than \$1,000 or imprisoned not more than six months, or both.

(c) Every person required by regulations duly promulgated under section 235-96 or by notice duly served under section 235-102(b), to supply any information, who wilfully fails to supply such information at the time or times required by the department of taxation, shall be fined not more than \$50 for the first offense and \$100 for the second and each succeeding offense.

(d) Every person required by section 235-102(a) to keep any records who wilfully fails to keep such records shall be fined not more than \$500 or imprisoned not more than six months, or both.

(e) The penalties provided by [this section and section 235-61 and 235-65] sections 231-34, 231-35, and 231-36 shall apply to any person, whether acting as principal, agent, officer, or director for oneself, itself, or another person and shall apply to each single violation. [Such] These penalties shall be in addition to other penalties provided by law.”

SECTION 12. Section 237-9, Hawaii Revised Statutes, is amended to read as follows:

“**§237-9 Licenses; penalty.** (a) Any person who shall have a gross income or gross proceeds of sales or value of products upon which a privilege tax is imposed by this chapter, as a condition precedent to engaging or continuing in such business, shall in writing apply for and obtain from the department of taxation, upon a one-time payment of the sum of \$20, a license to engage in and to conduct such business, upon condition that the person shall pay the taxes accruing to the State under this chapter, and the person shall thereby be duly licensed to engage in and conduct the business. Any person licensed or holding a license under this chapter before January 1, 1990, shall pay a one-time license renewal fee of \$20 on or before January 31, 1990, as a condition precedent to engaging or continuing in business. The license shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The license may be inspected and examined, and shall at all times be conspicuously displayed at the place for which it is issued.

(b) Licenses and applications therefor shall be in such form as the department shall prescribe, except that where the licensee is engaged in two or more forms of business of different classification, the license shall so state on its face. The license provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled license identification number

after December 31, 1989, shall be regarded as a new license application and subject to the payment of the one-time license fee of \$20. The director may revoke or cancel any license issued under this chapter for cause as provided by rules adopted pursuant to chapter 91.

(c) If the license fee is paid, the department shall not refuse to issue a license or revoke or cancel a license for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237-46 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

[(d) Any person who may lawfully be required by the State, and who is required by this chapter, to secure a license as a condition precedent to engaging or continuing in any business subject to taxation under this chapter, who engages or continues in the business without securing a license in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without securing a license in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section 237-48 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.]”

SECTION 13. Section 237-41, Hawaii Revised Statutes, is amended to read as follows:

“**§237-41 Records to be kept; examination; penalties.** Every taxpayer shall keep in the English language within the State, and preserve for a period of three years, suitable records of gross proceeds of sales and gross income, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. [Any person violating this section shall be guilty of a misdemeanor; and any director, president, secretary, or treasurer of a corporation who permits, aids, or abets the corporation to violate this section shall likewise be guilty of a misdemeanor; the penalty for such misdemeanor shall be that prescribed by section 237-48 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.]”

SECTION 14. Section 237-43, Hawaii Revised Statutes, is amended to read as follows:

“**§237-43 Bulk sales; penalties.** (a) Report. In any case of the sale in bulk of the whole, or a large part of a stock of merchandise and fixtures, or merchandise, or fixtures, or other assets of a business, otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller’s business, the seller shall make a written and verified report of the bulk sale to the department of taxation not later than ten days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser. The report shall contain the name and address of the purchaser, a brief description of the property sold and the purchase price, the date when the sale is to be or was consummated, and such other facts as the department may require. The purchaser may make the report for the seller.

(b) Tax clearance. The purchaser of the property shall withhold payment of the purchase price until the receipt of a certificate from the department to the effect that all taxes, penalties, and interest levied or accrued under this chapter against the

seller, or constituting a lien upon the property, have been paid, which certificate shall show on its face that the department has had notice of the bulk sale, and shall also show the names of the seller and purchaser, a brief description of the property sold, and the date of consummation of the sale, together with such other information as the department shall prescribe.

(c) Purchaser's liability. If the required report of the bulk sale is not made, or if the taxes, penalties, and interest shall not be paid within twenty days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser, or within such further time as the department may allow, the purchaser shall be personally liable to pay to the State the amount of all taxes, penalties, and interest levied or accrued under this chapter against the seller or constituting a lien upon the property, together with penalties and interest thereafter accruing, not exceeding, however, the amount of the purchase price, but the issuance of a certificate in the prescribed form shall be a complete defense to such liability of the purchaser. In any case of such liability upon the part of the purchaser, a written report thereof shall be made by the purchaser upon the next due date for the payment of gross income taxes.

(d) Purchase price defined. For the purposes of this section the "purchase price" shall include money, or the value of any consideration other than money.

(e) Penalties. Failure to make any report required by this section shall constitute a misdemeanor punishable by a fine of not more than \$100. In addition, penalties and interest shall apply to such delinquent taxes if not paid within twenty days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser, or within such further time as the department may allow, whether or not an assessment of the tax has been made or notice of the delinquency given.

(f) (e) Purchaser's remedy. The purchaser shall have the purchaser's remedy against the seller for the amount of taxes, penalties, or interest paid by the purchaser."

SECTION 15. Section 237D-12, Hawaii Revised Statutes, is amended to read as follows:

"§237D-12 Records to be kept; examination; penalties]. Every operator shall keep in the English language within the State, and preserve for a period of three years, suitable records of gross rental or gross rental proceeds relating to transient accommodations taxed under this chapter, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. [Any person violating this section shall be guilty of a misdemeanor; and any director, president, secretary, or treasurer of a corporation who permits, aids, or abets the corporation to violate this section shall likewise be guilty of a misdemeanor; the penalty for such misdemeanor shall be that prescribed by section 231-34 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.]"

SECTION 16. Section 244D-16, Hawaii Revised Statutes, is amended to read as follows:

"§244D-16 Penalties. (a) The penalties provided by this section shall apply to any person whether acting as principal, agent, officer, or director, for oneself, itself, or for another person, and shall apply to each single violation, but shall not apply to any act the punishment for which is elsewhere prescribed by this chapter.

(b) Any dealer who sells liquor without a permit as required by this chapter shall be fined not more than \$1,000.

[(c) Any person who makes any false or fraudulent or false statement in any return, with intent to defraud the State or to evade the payment of any tax or any part thereof imposed by this chapter, or who in any manner intentionally deceives or attempts to deceive the director of taxation or the director's authorized agent in relation to any such tax shall be punished as provided in section 231-34.

(d) Any person who fails or refuses to permit the examination of any book, paper, account, record, or property by the director, the commission, or the authorized agent of either of them, as required by this chapter, and any person who fails, neglects, or refuses to comply with or violates the rules and regulations prescribed, adopted, and promulgated by the director under this chapter, shall be fined not more than \$500, or imprisoned not more than six months, or both.]”

SECTION 17. Section 245-2, Hawaii Revised Statutes, is amended to read as follows:

“**§245-2 License.** It shall be unlawful for any person to engage in the business of a wholesaler or dealer in the State without having received first a license therefor issued by the department of taxation under this chapter; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business.

The license shall be issued by the department upon application therefor, in such form and manner as shall be required by rule of the department, and the payment of a fee of \$2.50, and shall be renewable annually on July 1 for the twelve months ending the succeeding June 30.

[Any person who may be required by the State, and who is required by this chapter, to secure a license as a condition precedent to engaging or continuing to act as a wholesaler or dealer, who acts as a wholesaler or dealer without securing a license in conformity with this chapter, and any officer or agent of any firm who aids or abets the firm to act as wholesaler or dealer without securing a license in conformity with this chapter, shall be guilty of a misdemeanor, punishable as provided in the case of other misdemeanors by section 245-14(b).]”

SECTION 18. Section 247-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any party, with the exception of governmental bodies, agencies, or officers, to a document or instrument subject to this chapter, or the party's authorized representative, shall file, in the manner and place which the director of taxation shall prescribe, a certificate of conveyance setting forth the actual and full consideration of the property transferred, including any lien or encumbrance on the property, and such other facts as the director may by rules prescribe. The certificate of conveyance shall be verified by a written declaration thereon that the statements made therein are subject to the penalties [prescribed for false declaration in section 247-11.] in section 231-36. The certificate shall be appended to the document or instrument made subject to this chapter and shall be filed with the director simultaneously with the aforementioned document or instrument for the imprinting of the required seal or seals.”

SECTION 19. Section 251-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§251-11]] Records to be kept; examination[; penalties].~~ Every person shall keep in the English language within the State, and preserve for a period of three years, suitable records relating to the surcharge tax levied and assessed under this chapter, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, operators records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. [Any person violating this section shall be guilty of a misdemeanor; and any officer or director of a corporation who permits, aids, or abets the corporation to violate this section likewise shall be guilty of a misdemeanor. The penalty for the misdemeanor shall be that prescribed by section 231-34 for violation of that section.]”

SECTION 20. Section 231-12, Hawaii Revised Statutes, is repealed.

SECTION 21. Section 231-38, Hawaii Revised Statutes, is repealed.

SECTION 22. Section 235-65, Hawaii Revised Statutes, is repealed.

SECTION 23. Section 235-106, Hawaii Revised Statutes, is repealed.

SECTION 24. Section 236D-14, Hawaii Revised Statutes, is repealed.

SECTION 25. Section 237-48, Hawaii Revised Statutes, is repealed.

SECTION 26. Section 237D-17, Hawaii Revised Statutes, is repealed.

SECTION 27. Section 238-12, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 243-15, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 245-14, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 247-11, Hawaii Revised Statutes, is repealed.

SECTION 31. Section 247-12, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 251-16, Hawaii Revised Statutes, is repealed.

SECTION 33. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 34. This Act shall take effect on July 1, 1995.

(Approved June 7, 1995.)

Notes

1. So in original.
2. Should be quoted.
3. Edited pursuant to HRS §23G-16.5.