
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Chapter 231, Hawaii Revised Statutes, is
2 amended by adding six new sections to be appropriately
3 designated and to read as follows:

4 "§231- Limitation period. (a) General rule. The
5 amount of taxes imposed by this title shall be assessed or
6 levied within ten years after the annual or periodic return, as
7 applicable, was filed, or within ten years of the due date
8 prescribed for the filing of said return, whichever is later,
9 and no proceeding in court for the collection of any such taxes
10 shall be begun after the expiration of the period.

11 (b) Exceptions. In the case of a false or fraudulent
12 return with intent to evade tax, or of a failure to file the
13 annual or periodic return, as applicable, the tax may be
14 assessed or levied at any time; however, in the case of a return
15 claimed to be false or fraudulent with intent to evade tax, the
16 determination as to the claim shall first be made by a judge of
17 the circuit court as provided in section 235-111(c) which shall
18 apply to the tax imposed under this title.



1 (c) Under no circumstances shall there be any other
2 exceptions to the limitation period provided for in this
3 section, other than those described in subsection (b).

4 **§231- Taxpayer communications; disclosure.** In addition
5 to written opinions under section 231-19.5, the department shall
6 make available to the public all:

7 (1) Private rulings and other advice provided to
8 taxpayers; and

9 (2) Settlement agreements reached with taxpayers, under
10 this title; provided that all trade secrets or other
11 confidential, commercial, and financial information
12 and identifying details shall have been redacted
13 before release to the public.

14 **§231- Tax disputes; disclosure of settlements.** All
15 disputes in tax cases under this title settled by the department
16 of the attorney general with taxpayers shall be made available
17 to the public; provided that all trade secrets or other
18 confidential, commercial, and financial information and
19 identifying details shall have been redacted before release to
20 the public.

21 **§231- Attorney general opinions.** All opinions issued by
22 the department of the attorney general in tax cases under this



1 title shall be made available to the public; provided that all
2 trade secrets or other confidential, commercial, and financial
3 information and identifying details shall have been redacted
4 before release to the public.

5 **§231- Taxpayers; third-party communications.** A taxpayer
6 who is being audited by the department, or the taxpayer's
7 representative, shall be provided at least twenty days' notice
8 and the opportunity to participate in any interview or other
9 similar communication between the department and third parties
10 in connection with the audit of the taxpayer.

11 **§231- Audits; mediation.** (a) Within thirty days of
12 receiving a notice of audit from the department, a taxpayer may
13 request to enter into mediation with the department. The
14 request shall be made in writing to the department, which shall
15 grant the taxpayer's request.

16 (b) If the taxpayer and department are unable to reach a
17 mediated agreement in good faith within sixty days, the
18 mediation process shall cease, and the ordinary audit process
19 shall commence."

20 SECTION 2. Section 232-7, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) Each board shall hold public meetings at some central
2 location in its taxation district, commencing not later than
3 April 9 of each year and shall hear, as speedily as possible,
4 all appeals presented for each year. The dates and times of the
5 public meetings shall be posted on the website of the department
6 at least fourteen days prior to the meeting.

7 Each board shall have the power and authority to decide all
8 questions of fact and all questions of law, excepting questions
9 involving the Constitution or laws of the United States,
10 necessary to the determination of the objections raised by the
11 taxpayer in the notice of appeal; provided that no board shall
12 have power to determine or declare an assessment illegal or
13 void. Without prejudice to the generality of the foregoing,
14 each board shall have power to allow or disallow exemptions
15 pursuant to law whether or not previously allowed or disallowed
16 by the assessor and to increase or lower any assessment."

17 SECTION 3. Section 235-2.45, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§235-2.45 Operation of certain Internal Revenue Code**
20 **provisions; sections 641 to 7518.** (a) Section 641 (with
21 respect to imposition of tax) of the Internal Revenue Code shall



1 be operative for the purposes of this chapter subject to the
2 following:

3 (1) The deduction for exemptions shall be allowed as
4 provided in section 235-54(b);

5 (2) The deduction for contributions and gifts in
6 determining taxable income shall be limited to the
7 amount allowed in the case of an individual, unless
8 the contributions and gifts are to be used exclusively
9 in the State; and

10 (3) The tax imposed by section 1(e) of the Internal
11 Revenue Code as applied by section 641 of the Internal
12 Revenue Code is hereby imposed by this chapter at the
13 rate and amount as determined under section 235-51 on
14 estates and trusts.

15 (b) Section 667 (with respect to treatment of amounts
16 deemed distributed by trusts in preceding years) of the Internal
17 Revenue Code shall be operative for the purposes of this chapter
18 and the tax imposed therein is hereby imposed by this chapter at
19 the rate determined under this chapter; except that the
20 reference to tax-exempt interest to which section 103 of the
21 Internal Revenue Code applies in section 667(a) of the Internal



1 Revenue Code shall instead be a reference to tax-exempt interest
2 to which section 235-7(b) applies.

3 (c) Section 685 (with respect to treatment of qualified
4 funeral trusts) of the Internal Revenue Code shall be operative
5 for the purposes of this chapter, except that the tax imposed
6 under this chapter shall be computed at the tax rates provided
7 under section 235-51, and no deduction for the exemption amount
8 provided in section 235-54(b) shall be allowed. The cost-of-
9 living adjustment determined under section 1(f)(3) of the
10 Internal Revenue Code shall be operative for the purpose of
11 applying section 685(c)(3) under this chapter.

12 (d) Section 704 of the Internal Revenue Code (with respect
13 to a partner's distributive share) shall be operative for the
14 purposes of this chapter; except that section 704(b)(2) shall
15 not apply to:

16 (1) Allocations of the high technology business investment
17 tax credit allowed by section 235-110.9;

18 (2) Allocations of net operating loss pursuant to section
19 235-111.5;

20 (3) Allocations of the attractions and educational
21 facilities tax credit allowed by section 235-110.46;

22 or



1 (4) Allocations of low-income housing tax credits among
2 partners under section 235-110.8.

3 (e) Section 1212 (with respect to capital loss carrybacks
4 and carryforwards) of the Internal Revenue Code shall be
5 operative for the purposes of this chapter; except that for the
6 purposes of this chapter the capital loss carryback provisions
7 of section 1212 shall not be operative and the capital loss
8 carryforward allowed by section 1212(a) shall be limited to five
9 years; except for a qualified high technology business as
10 defined in section 235-7.3, which shall be limited to fifteen
11 years.

12 (f) Subchapter S (sections 1361 to 1379) (with respect to
13 tax treatment of S corporations and their shareholders) of
14 chapter 1 of the Internal Revenue Code shall be operative for
15 the purposes of this chapter as provided in part VII.

16 (g) Section 1400N (with respect to tax benefits for Gulf
17 Opportunity Zone) of the Internal Revenue Code shall be
18 operative for the purposes of this chapter, except that sections
19 1400N(a) (with respect to tax-exempt bond financing); 1400N(b)
20 (with respect to advance refundings of certain tax-exempt
21 bonds); 1400N(d) (with respect to special allowance for certain
22 property acquired on or after August 28, 2005); 1400N(e) (with



1 respect to increase in expensing under section 179); 1400N(h)
2 (with respect to increase in rehabilitation credit); 1400N(l)
3 (with respect to credit to holders of Gulf tax credit bonds);
4 1400N(m) (with respect to application of new markets tax credit
5 to investments in community development entities serving Gulf
6 Opportunity Zone); 1400N(n) (with respect to treatment of
7 representations regarding income eligibility for purposes of
8 qualified residential rental project requirements) shall not be
9 operative for the purposes of this chapter.

10 (h) Section 1400S (with respect to additional tax relief
11 provisions) of the Internal Revenue Code shall be operative for
12 the purposes of this chapter, except that section 1400S(d) (with
13 respect to the special rule for determining earned income) shall
14 not be operative for the purposes of this chapter.

15 (i) Section 6015 (with respect to relief from joint and
16 several liability on joint return) of the Internal Revenue Code
17 is operative for the purposes of this chapter.

18 (j) Sections 6103(i)(3)(C) and 6103(i)(7) (with respect to
19 disclosures of information to the United States Justice
20 Department or appropriate federal or state law enforcement
21 agency for purposes of investigating terrorist incidents,
22 threats, or activities, and for analyzing intelligence



1 concerning investigating terrorist incidents, threats, or
2 activities) of the Internal Revenue Code shall be operative for
3 the purposes of this chapter.

4 (k) Subchapter C (sections 6221 to 6233) (with respect to
5 tax treatment of partnership items) of chapter 63 of the
6 Internal Revenue Code shall be operative for the purposes of
7 this chapter.

8 (l) Subchapter D (sections 6240 to 6255) (with respect to
9 simplified audit procedures for electing large partnerships) of
10 the Internal Revenue Code shall be operative for the purposes of
11 this chapter, with due regard to chapter 232 relating to tax
12 appeals.

13 (m) Section 6511(h) (with respect to running of periods of
14 limitation suspended while taxpayer is unable to manage
15 financial affairs due to disability) of the Internal Revenue
16 Code shall be operative for the purposes of this chapter, with
17 due regard to section 235-111 relating to the limitation period
18 for assessment, levy, collection, or credit.

19 (n) Section 7430 (with respect to awarding of costs and
20 certain fees) of the Internal Revenue Code shall be operative
21 for the purposes of this chapter.



1 (o) Section 7491 (with respect to burden of proof) of the
2 Internal Revenue Code shall be operative for the purposes of
3 this chapter.

4 [~~n~~] (p) Section 7518 (with respect to capital
5 construction fund for commercial fishers) of the Internal
6 Revenue Code shall be operative for the purposes of this
7 chapter. Qualified withdrawals for the acquisition,
8 construction, or reconstruction of any qualified asset that is
9 attributable to deposits made before the effective date of this
10 section shall not reduce the basis of the asset when withdrawn.
11 Qualified withdrawals shall be treated on a first-in-first-out
12 basis."

13 SECTION 4. Section 237-40, Hawaii Revised Statutes, is
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) General rule. The amount of excise taxes imposed by
16 this chapter shall be assessed or levied within three years
17 after the [~~annual~~] periodic return was filed, or within three
18 years of the due date prescribed for the filing of said return,
19 whichever is later, and no proceeding in court without
20 assessment for the collection of any such taxes shall be begun
21 after the expiration of the period.



1 (b) Exceptions. In the case of a false or fraudulent
2 return with intent to evade tax, or of a failure to file the
3 [~~annual~~] periodic return, the tax may be assessed or levied at
4 any time; however, in the case of a return claimed to be false
5 or fraudulent with intent to evade tax, the determination as to
6 the claim shall first be made by a judge of the circuit court as
7 provided in section 235-111(c) which shall apply to the tax
8 imposed by this chapter."

9 SECTION 5. (a) No later than twenty days prior to the
10 convening of the regular session of 2009, the state auditor
11 shall submit a report to the legislature about the feasibility
12 and effectiveness of establishing an appeals office:

13 (1) Within the department of taxation; and

14 (2) That reports directly to the director of taxation,
15 to settle cases between the department and taxpayers at an
16 administrative level.

17 The department of taxation shall cooperate fully with all
18 requests for assistance made by the state auditor in completing
19 this report.

20 (b) If the state auditor determines that the establishment
21 of such an appeals office would be feasible and effective, the
22 department of taxation shall prepare legislation, to be



1 submitted to the legislature no later than twenty days prior to
2 the convening of the regular session of 2009, that establishes
3 the appeals office.

4 SECTION 6. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun, before its effective date.

7 SECTION 7. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect on January 1, 2008;
10 provided that section 4 shall take effect on July 1, 2007.

11

INTRODUCED BY: Kirk Caldwell

JAN 19 2007



Report Title:

Omnibus Taxpayer Bill

Description:

Makes various changes to Hawaii's tax laws that benefit taxpayers.

