

JAN 22 2021

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that the financial
2 impacts of the coronavirus disease 2019 pandemic in the State
3 have been pervasive and severe. Restrictions on tourism and
4 public activities necessary to mitigate the spread of the virus
5 have caused significant economic disruption in the private and
6 public sectors. The legislature further finds that, in light of
7 these disruptions, penalties for violations of the state tax
8 code should be updated to ensure an appropriate level of
9 flexibility in enforcement.

10 The purpose of this Act is to:

- 11 (1) Establish reduced taxpayer penalties for nonpayments
12 and underpayments that are due to reasonable cause;
- 13 (2) Allow a taxpayer to post a bond to avoid penalties and
14 interest; and
- 15 (3) Assess interest on a deficiency in state income taxes
16 paid caused by a change in the taxable income reported
17 on the taxpayer's federal tax return.



1 SECTION 2. Section 231-39, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§231-39 Additions to taxes for noncompliance or evasion;**
4 **interest on underpayments and overpayments.** (a) Except as
5 otherwise provided, this section shall apply to every tax or
6 revenue law of the State that provides for the filing with the
7 director of taxation of a return or statement of the tax or the
8 amount taxable.

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

11 (1) Failure to file tax return. In case of failure to
12 file any tax return required to be filed on the date
13 prescribed therefor (determined with regard to any
14 extension of time for filing), unless it is shown that
15 the failure is due to reasonable cause and not due to
16 neglect, there shall be added to the amount required
17 to be shown as tax on the return [~~five~~] three per cent
18 of the amount of the tax if the failure is for not
19 more than one month, with an additional five per cent
20 for each additional month or fraction thereof during
21 which the failure continues, not exceeding [~~twenty~~—



1 ~~five]~~ thirty per cent in the aggregate. For purposes
2 of this paragraph, the amount of tax required to be
3 shown on the return shall be reduced by the amount of
4 any part of the tax which is paid on or before the
5 date prescribed for payment of the tax and by the
6 amount of any credit against the tax which may be
7 claimed upon the return. This paragraph shall not
8 apply to any failure to file a declaration of
9 estimated tax required by section 235-97.

10 (2) Failure to pay tax.

11 (A) If any part of any underpayment is due to
12 reasonable cause, and not due to neglect,
13 intentional disregard of rules, or fraud, there
14 shall be added to the tax an amount equal to one-
15 half of one per cent of the underpayment for each
16 month or fraction thereof until full payment of
17 the tax and penalties is made; provided that the
18 aggregate amount of the penalty imposed under
19 this subparagraph shall not exceed twenty-five
20 per cent of the underpayment.



1 [~~(A)~~] (B) If any part of any underpayment is due to
2 negligence or intentional disregard of rules (but
3 without intent to defraud), there shall be added
4 to the tax an amount up to twenty-five per cent
5 of the underpayment as determined by the
6 director.

7 [~~(B)~~] (C) If any part of any underpayment of tax
8 required to be shown on a return is due to fraud,
9 there shall be added to the tax an amount up to
10 [~~fifty~~] seventy-five per cent of the underpayment
11 as determined by the director.

12 [~~(C)~~] (D) If any penalty is assessed under
13 subparagraph [~~(B)~~] (C) (relating to fraud) for an
14 underpayment of tax [~~which~~] that is required to
15 be shown on a return, no penalty under paragraph
16 (1) (relating to failure to file the return)
17 shall be assessed with respect to the same
18 underpayment.

19 (3) Failure to pay tax after filing timely returns. If a
20 return is filed on or before the date prescribed
21 therefor and the amount shown as tax on the return is



1 not completely paid within sixty days of the
2 prescribed filing date, there shall be added to the
3 unpaid tax an amount up to twenty per cent as
4 determined by the director.

5 (4) Interest on underpayment or nonpayment of tax.

6 (A) If any amount of tax is not paid on or before the
7 last date prescribed for payment, interest on
8 such amount at the rate of two-thirds of one per
9 cent a month or fraction of a month shall be paid
10 for the period beginning with the first calendar
11 day after the date prescribed for payment,
12 section 231-21 to the contrary notwithstanding,
13 to the date paid.

14 (B) If the amount of any tax is reduced by reason of
15 a carryback of a net operating loss allowed under
16 chapter 235, such reduction in tax shall not
17 affect the computation of interest under this
18 paragraph for the period ending with the last day
19 of the taxable year in which the net operating
20 loss arises.



1 (C) Interest prescribed under this paragraph on any
2 tax shall be paid upon notice and demand, and
3 shall be assessed, collected, and paid in the
4 same manner as taxes.

5 (D) No interest under this paragraph shall be imposed
6 on interest provided by this paragraph.

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

14 (F) Interest prescribed under this paragraph on any
15 tax may be assessed and collected at any time
16 during the period within which the tax to which
17 the interest relates may be collected.

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

20 (c) No taxpayer shall be exempt from any penalty or
21 interest by reason of having contested the tax, but only to the



1 extent that the tax is adjudged to be excessive or contrary to
2 law.

3 (d) Notwithstanding the above, there shall be no addition
4 to the tax from the date that the taxpayer posts bond, with or
5 without sureties, on a form specified by the director. The bond
6 shall be refundable and may be made by an agent of the taxpayer,
7 without disclosure of the taxpayer, type of tax, and periods
8 involved, in a form prescribed by the director."

9 SECTION 3. Section 235-101, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§235-101 Federal returns and assessments, when copies are**
12 **required.** (a) In prescribing the form of return the department
13 of taxation may require that a person who is required to file a
14 federal income tax return include in the person's return a
15 reconciliation of the return with the person's federal return,
16 or that the person furnish with the return and as a part thereof
17 a copy of the federal return.

18 (b) It shall be the duty of every person who is required
19 by section 235-92 to make a return, to report to the department,
20 as to any taxable year governed by this chapter, if:



- 1 (1) The amount of taxable income as returned to the United
2 States is changed, corrected, or adjusted by an
3 officer of the United States or other competent
4 authority;
- 5 (2) A change in taxable income results from a
6 renegotiation of a contract with the United States or
7 a subcontract thereunder;
- 8 (3) A recomputation of the income tax imposed by the
9 United States under the Internal Revenue Code results
10 from any cause; or
- 11 (4) An amended income tax return is made to the United
12 States.

13 The report shall be made within ninety days after the change,
14 correction, adjustment, or recomputation is finally determined
15 or the amended return is filed, as the case may be. The report
16 required by this subsection shall be made in the form of an
17 amendment of the person's return filed under this chapter. The
18 amended return shall be accompanied by a copy of the document
19 issued by the United States under paragraphs (1) to (3). The
20 statutory period for the assessment of any deficiency or the
21 determination of any refund attributable to this report shall



1 not expire before the expiration of one year from the date the
2 department is notified by the taxpayer or the Internal Revenue
3 Service, whichever is earlier, of the report in writing. Before
4 the expiration of this one-year period, the department and the
5 taxpayer may agree in writing to the extension of this period.
6 The period so agreed upon may be further extended by subsequent
7 agreements in writing made before the expiration of the period
8 previously agreed upon.

9 (c) If the department assesses a deficiency pursuant to
10 subsection (b), interest shall be assessed on the deficiency at
11 the following rates:

12 (1) Four per cent; provided that full payment of the
13 deficiency is made by the taxpayer within thirty days
14 of being notified of the deficiency by the department;
15 and

16 (2) Six per cent; provided that full payment of the
17 deficiency is made by the taxpayer after thirty days
18 but within ninety days of being notified of the
19 deficiency by the department.

20 ~~(e)~~ (d) Whenever, in the opinion of the department, it
21 is necessary to examine any federal income tax return of any



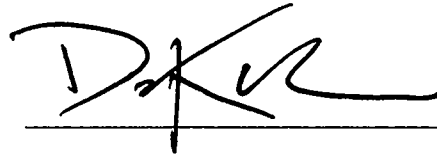
1 taxpayer or any determination, assessment, or report related
2 thereto, the department may compel the taxpayer to produce for
3 inspection a copy of any federal return, copies of all
4 statements and schedules in support thereof, and copies of all
5 determinations, assessments, and reports related thereto."

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act, upon its approval, shall apply to
9 taxable years beginning after December 31, 2020.

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INTRODUCED BY: _____



S.B. NO. 852

Report Title:

Taxation; Penalties and Interest for Nonpayment and Underpayment

Description:

Establishes reduced taxpayer penalties for nonpayments and underpayments that are due to reasonable cause. Allows a taxpayer to post a bond to avoid penalties and interest. Assesses interest on a deficiency in state income tax payment caused by a change in the taxable income reported on the taxpayer's federal tax return.

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

