

JAN 26 2022

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;

17 (2) For income tax filings required under chapter 235,
18 only taxpayers who are ~~subject~~:

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1 whose total tax liability under chapter 237D for the
2 calendar or fiscal year exceeds [~~\$4,000~~] \$2,000; and

3 (5) For filings required under the following chapters, all
4 taxpayers subject to tax under those chapters:

5 (A) 236E;

6 (B) 239;

7 (C) 241;

8 (D) 243;

9 (E) 244D;

10 (F) 245; and

11 (G) 251.

12 (c) As a prerequisite to requiring electronic filing under
13 subsection (b), the department shall provide:

14 (1) An electronic filing option to the taxpayer; and

15 (2) No less than ninety days prior written notice to the
16 general public of the department's intention to
17 require electronic filing.

18 (d) Notwithstanding subsection (b), any return that is
19 prepared by a tax return preparer, as defined in section 231-
20 36.5, shall be filed electronically; provided that this
21 subsection shall only apply if an electronic filing option is
22 available and the tax return preparer reasonably expects to

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1 prepare more than ten returns of that same tax type in the
2 calendar year.

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

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

19 [~~(e)~~] (f) If a person who is required by the department
20 under subsection (b) to electronically file any tax return fails
21 to file using an approved method, unless it is shown that the
22 failure is due to reasonable cause and not to neglect, the

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1 person shall be liable for a penalty of two per cent of the
2 amount of the tax required to be shown on the return. If no tax
3 is required to be shown on the return, the department may
4 determine the penalty imposed by administrative rule."

5 SECTION 2. Section 231-9.9, Hawaii Revised Statutes, is
6 amended to read as follows:

7 (1) By amending subsection (a) to read as follows:

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

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1 ~~an exemption to the electronic filing and payment requirements~~
2 ~~for good cause.] "~~

3 (2) By amending subsections (c) and (d) to read as
4 follows:

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

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

18 (1) The number of taxpayers who were assessed the two per
19 cent penalty pursuant to subsection (c);

20 ~~[-(2)- The amounts of each assessment,] and~~

21 ~~[-(3)-]~~ (2) The total amount of assessments ~~[collected]~~ for
22 the previous year."

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

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

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

8 "**§231-28 Tax clearance before procuring liquor licenses.**

9 No liquor licenses shall be issued or renewed unless the
10 applicant therefor shall present to the issuing agency, a
11 certificate ~~[signed]~~ issued by the ~~[director of taxation,]~~
12 department, showing that the applicant does not owe the State
13 any delinquent taxes, penalties, or interest; or that the
14 applicant has entered into and is complying with an installment
15 plan agreement with the department ~~[of taxation]~~ for the payment
16 of delinquent taxes in installments. Notwithstanding any law to
17 the contrary, the department may disclose tax information
18 relevant to the applicant's state tax compliance to the issuing
19 agency."

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

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

3 (1) Failure to file tax return. In case of failure to
4 file any tax return required to be filed on the date
5 prescribed therefor (determined with regard to any
6 extension of time for filing), unless it is shown that
7 the failure is due to reasonable cause and not due to
8 neglect, there shall be added to the amount required
9 to be shown as tax on the return five per cent of the
10 amount of the tax if the failure is for not more than
11 one month, with an additional five per cent for each
12 additional month or fraction thereof during which the
13 failure continues, not exceeding [~~twenty-five~~]
14 seventy-five per cent in the aggregate. For purposes
15 of this paragraph, the amount of tax required to be
16 shown on the return shall be reduced by the amount of
17 any part of the tax which is paid on or before the
18 date prescribed for payment of the tax and by the
19 amount of any credit against the tax which may be
20 claimed upon the return. This paragraph shall not
21 apply to any failure to file a declaration of
22 estimated tax required by section 235-97.

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- 1 (2) Failure to pay tax.
- 2 (A) If any part of any underpayment is due to
- 3 negligence or intentional disregard of rules (but
- 4 without intent to defraud), there shall be added
- 5 to the tax an amount up to twenty-five per cent
- 6 of the underpayment as determined by the
- 7 director.
- 8 (B) If any part of any underpayment of tax required
- 9 to be shown on a return is due to fraud, there
- 10 shall be added to the tax an amount up to fifty
- 11 per cent of the underpayment as determined by the
- 12 director.
- 13 (C) If any penalty is assessed under subparagraph(B)
- 14 (relating to fraud) for an underpayment of tax
- 15 which is required to be shown on a return, no
- 16 penalty under paragraph (1) (relating to failure
- 17 to file the return) shall be assessed with
- 18 respect to the same 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
- 22 not completely paid within sixty days of the

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1 prescribed filing date, there shall be added to the
2 unpaid tax an amount up to twenty per cent as
3 determined by the director.

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

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

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

20 (C) Interest prescribed under this paragraph on any
21 tax shall be paid upon notice and demand, and

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1 shall be assessed, collected, and paid in the
2 same manner as taxes.

3 (D) No interest under this paragraph shall be imposed
4 on interest provided by this paragraph.

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

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

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

18 (5) Informational returns with no tax owed. For persons
19 required to file information returns under sections
20 235-94, 235-95, 235-96, and 235-128, who fail to file
21 by the date prescribed therefor (determined with
22 regard to any extension of time for filing), unless it

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1 is shown that the failure is due to reasonable cause
2 and not due to neglect, there shall be assessed a
3 penalty of \$200 for each month or part of a month (for
4 a maximum of twelve months) the failure continues,
5 multiplied by the total number of persons who were
6 partners, shareholders, or beneficiaries during any
7 part of the tax year for which the return is due."

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

10 "**§232-24 Taxes paid pending appeal.** (a) The tax paid
11 upon the amount of any assessment, actually in dispute and in
12 excess of that admitted by the taxpayer, and covered by an
13 appeal to the tax appeal court duly taken, shall, pending the
14 final determination of the appeal, be paid by the director of
15 finance into the "litigated claims fund". If the final
16 determination is in whole or in part in favor of the appealing
17 taxpayer, the director of finance shall repay to the taxpayer
18 out of the fund, or if investment of the fund should result in a
19 deficit therein, out of the general fund of the State, the
20 amount of the tax paid upon the amount held by the court to have
21 been excessive or nontaxable, together with, from the date of
22 each payment into the litigated claims fund, the interest to be

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1 paid from the general fund of the State. [~~For purposes of this~~
2 ~~section, the rate of interest shall be computed by reference to~~
3 ~~section 6621(a), with respect to interest rate determination, of~~
4 ~~the Internal Revenue Code of 1986, as of January 1, 2010.~~] The
5 balance, if any, of the payment made by the appealing taxpayer,
6 or the whole of the payment, in case the decision is wholly in
7 favor of the assessor, shall, upon the final determination
8 become a realization under the tax law concerned.

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

11 (1) For corporations, whose overpayments are \$10,000 or
12 less, 3 per cent;

13 (2) For corporations whose overpayments exceed \$10,000,
14 1.5 per cent; and

15 (3) For all other taxpayers, 4 per cent.

16 [~~(b)~~] (c) In a case of an appeal to the taxation board of
17 review, the tax paid, if any, upon the amount of the assessment
18 actually in dispute and in excess of that admitted by the
19 taxpayer, shall, during the pendency of the appeal and until and
20 unless an appeal is taken to the tax appeal court, be held by
21 the director of finance in a special deposit. In the event of
22 final determination of the appeal in the taxation board of

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1 review, the director of finance shall repay to the appealing
2 taxpayer out of the deposit the amount of the tax paid upon the
3 amount held by the board to have been excessive or nontaxable,
4 if any, the balance, if any, or the whole of the deposit, in
5 case the decision is wholly in favor of the assessor, to become
6 a realization under the tax law concerned."

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

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

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1 requested by the department of taxation of each unit holder with
2 income sourced to the State.

3 (b) The amount required to be withheld under subsection
4 (a) shall be calculated and submitted to the department on a
5 calendar quarter basis. Payments shall be due on or before the
6 twentieth day of the month immediately following the end of the
7 quarter.

8 (c) All taxes withheld by any partnership, estate, or
9 trust under this section shall be held in trust for the State
10 and for the payment of the same to the collector in the manner
11 and at the time required by subsection (b). If any partnership,
12 estate, or trust fails, neglects, or refuses to deduct and
13 withhold from the taxpayer's distributive share, or to pay over,
14 the amount of tax required, the partnership, estate, or trust
15 shall be liable to pay to the State the amount of the tax.

16 A partnership, estate, or trust may recover from the
17 taxpayer any amount which the partnership, estate, or trust
18 should have withheld but did not withhold from the taxpayer's
19 distributive share, if the partnership, estate, or trust has
20 been required to pay and has paid the amount to the State out of
21 its own funds pursuant to this section.

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1 (d) For the purpose of this section, "taxpayer's
2 distributive share of income" means fifty per cent of the
3 partnership, estate, or trust's gross income attributable to the
4 State for the quarter multiplied by the percentage of ownership,
5 benefit or other interest that the nonresident taxpayer has in
6 the partnership, estate, or trust.

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

10 SECTION 8. If any provision of this Act, or the
11 application thereof to any person or circumstance, is held
12 invalid, the invalidity does not affect other provisions or
13 applications of this Act that can be given effect without the
14 invalid provision or application, and to this end the provisions
15 of this Act are severable.

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

18 SECTION 10. This Act, upon its approval, shall take effect
19 on January 1, 2023; provided that Section 1 shall take effect on
20 July 1, 2022.

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INTRODUCED BY: AM N. M.

BY REQUEST

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Report Title:

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

Description:

Allows the Department of Taxation to mandate the electronic filing of certain individual, partnership, S-corporation, general excise and transient accommodations tax returns. Requires certain tax return preparers to file returns electronically. Amends the rules for electronic funds transfer to remove 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 to charge for certified copies of tax clearances. Amends the statute that mandates tax clearances for liquor license holders. Increases the aggregate cap on late filing penalties from twenty-five per cent to seventy-five per cent. 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.

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO STATE TAX ADMINISTRATION.

PURPOSE: To amend and simplify chapters 231, 232, and 235, Hawaii Revised Statutes (HRS), relating to mandatory electronic filing, mandatory electronic payment, timeliness penalties, tax clearances, withholding, and interest rates.

MEANS: Amend sections 231-8.5, 231-9.9(a), (c), and (d), 231-10.8, 231-28, 231-39(b), 232-24, and 235-64.2 HRS.

JUSTIFICATION: The mandatory electronic filing requirement is expanded to partnerships and S-corporations whose gross receipts exceed \$250,000, individuals whose federal adjusted gross income exceeds \$100,000, and general excise and transient accommodations taxpayers whose tax liability exceeds \$2,000. The Department needs flexibility to determine the electronic filing penalty by administrative rule if no tax is shown on a return. A new requirement for tax return preparers to file electronically in some circumstances is imposed. The requirement applies only if an electronic filing method is available and the tax return preparer files more than ten returns of the same type in the calendar year. Tax return preparers who fail to meet the requirement are subject to a \$50 penalty per failure. The electronic funds transfer rules and penalties are out of date and must be updated. First, authorization to require electronic funds transfer is expanded to include taxpayers and tax return preparers who are subject to mandatory electronic filing. Next, the statute currently provides limited authority for requiring

electronic filing. There is now superseding authority giving much greater authority for requiring electronic filing. Additionally, the statute provides for the penalty based on the method of payment as well as the timing of the payment. Title 14 has other penalties for late payment, so the electric funds transfer penalty should be simplified to only apply to the method of payment. Finally, the amendment to the report on electronic funds transfer penalties and assessments clarifies the statute to reflect the information the Department provides to the Legislature.

The Department no longer offers certified copies of tax clearances so the statute authorizing the Department to charge for them is no longer necessary.

The statute that requires a tax clearance to be issued prior to issuing a liquor license must be updated to reflect current administrative processes.

The aggregate cap on monthly 5 percent penalty increases that can be imposed for failure to file tax returns is increased from 25 percent to 75 percent of the amount of tax. An additional penalty is imposed for certain taxpayers who fail to file their required informational returns where no tax is owed. This penalty is \$200 for each month or part of a month (for a maximum of 12 months) that the failure continues, multiplied by the total number of persons who were partners in the partnership during any part of the partnership's tax year for which the return is due.

The interest rate the State must pay to taxpayers who have paid into the litigated claims fund and are due a refund is not clear. The amendment clarifies that the interest rates are fixed, with two possible rates for corporations and a flat 4 percent rate for all other taxpayers.

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There is taxpayer confusion regarding a partnership/estate/trust's withholding liability for a nonresident taxpayer's distributive share of income. The amendment explicitly states that they are liable.

Impact on the public: There will be minimal impact on the general public. The only impact on the general public will be less exposure to penalties for failing to pay electronically, and additional possible penalties for taxpayers who are chronically late with their mandatory filings.

Impact on the department and other agencies: The State will benefit from a simplified electronic funds transfer penalty. The State will benefit from a clear and fixed rate of interest owed from the litigated claims fund. The State will also likely benefit from increased tax compliance due to expanded penalty enforcement.

GENERAL FUND: Indeterminate revenue gain.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval, provided that section 2 shall take effect on January 1, 2023.