

JAN 22 2021

A BILL FOR AN ACT

RELATING TO TAX PENALTIES.

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

1 SECTION 1. **Definitions.** As used in this Act:

2 "Accounts receivable" means an amount of state tax,
3 penalty, or interest that has been recorded as due and entered
4 into the account records or any ledger maintained in the
5 department or that a taxpayer should reasonably expect to become
6 due as a direct or indirect result of any pending or completed
7 audit or investigation that a taxpayer knows is being conducted
8 by the State.

9 "Department" means the department of taxation.

10 "Director" means the director of taxation.

11 "Final, due, and owing" means an assessment that has become
12 final and is owed to the State, due to either the expiration of
13 a taxpayer's appeal rights or the rendition of the final order
14 by the director or by any court of this State.

15 "Taxpayer" means any individual, partnership, joint
16 venture, association, corporation, receiver, trustee, guardian,
17 executor, administrator, fiduciary, or any other entity of any



1 kind subject to, or any person required to collect and remit to
2 the State, any tax under title 14, Hawaii Revised Statutes.

3 SECTION 2. Tax amnesty program; applicable time period.

4 (a) The director shall develop and administer a one-time tax
5 amnesty program as provided in this Act. The director, upon the
6 voluntary return and remission of taxes and interest owed by any
7 taxpayer, shall waive all penalties that are assessed or subject
8 to being assessed for outstanding liabilities for taxable
9 periods beginning on or transactions occurring on or after
10 January 1, 2010, through taxable periods ending on or
11 transactions occurring on December 31, 2020. The director shall
12 adopt rules, pursuant to chapter 91, Hawaii Revised Statutes,
13 necessary for the administration of this amnesty program and
14 shall further provide for necessary forms for the filing of
15 amnesty applications and returns.

16 (b) Notwithstanding any other law to the contrary, the tax
17 amnesty program shall begin no later than January 1, 2022, and
18 shall be completed no later than December 31, 2022, and shall
19 apply to all taxpayers owing taxes, penalties, or interest
20 administered by the director under title 14, Hawaii Revised
21 Statutes, except that the tax amnesty shall not apply to any



1 real property tax or any tax levied pursuant to chapters 237 or
2 249, Hawaii Revised Statutes.

3 SECTION 3. **Application; eligibility requirements.** (a)

4 This Act shall apply to any taxpayer who files an application
5 for amnesty within the time prescribed by the director and who:

6 (1) Files all returns as may be required by the director
7 for all years or tax reporting periods as stated on
8 this application;

9 (A) For which returns have not previously been filed;
10 and

11 (B) For which returns were filed by the tax liability
12 was underreported;

13 (2) Pays in full the taxes due for the years and tax
14 reporting periods stated on the application, at the
15 time the application is made or amnesty tax returns
16 are filed within the designated amnesty program
17 period; and

18 (3) Is a resident of the state of Hawaii who earns no more
19 than one hundred per cent of area median income.

20 In addition to the requirements set forth in paragraphs (1) and
21 (2), the director may impose, by rule, the further condition



1 that any eligible taxpayer pay in full, within the amnesty
2 period, all taxes previously assessed by the director that are
3 final, due, and owing at the time the application or amnesty tax
4 returns are filed.

5 (b) An eligible taxpayer may participate in the amnesty
6 program regardless of whether the taxpayer is under audit,
7 notwithstanding the fact that the amount due is included in a
8 proposed assessment or an assessment, bill, notice, or demand
9 for payment issued by the director and without regard to whether
10 the amount due is subject to a pending administrative or
11 judicial proceeding. Assessments that have been appealed shall
12 be final, due, and owing fifteen days after the last unappealed
13 or unappealable order sustaining the assessment or any part
14 thereof has become final. Assessments that have not been
15 appealed shall be final, due, and owing thirty days after
16 service of notice of assessment. An eligible taxpayer may
17 participate in the amnesty program to the extent of the
18 uncontested portion of any assessed liability. However,
19 participation in the program shall be conditioned upon the
20 taxpayer's agreement that the right to protest or initiate an
21 administrative or judicial proceeding or to claim any refund of



1 moneys paid under the program is barred with respect to the
2 amounts paid with the application or amnesty return.

3 (c) The director shall allow installment payment
4 agreements in cases of severe hardship in lieu of the complete
5 payment required under subsection (a). In those cases, twenty-
6 five per cent of the amount due shall be paid with the
7 application or amnesty return, with the balance to be paid in
8 monthly installments determined by the taxpayer and the
9 director. Failure of the taxpayer to make timely payments shall
10 void the terms of the amnesty. Installment payment agreements
11 and payments shall not include interest due and accruing during
12 the installment period.

13 SECTION 4. **Amnesty provisions.** (a) Amnesty shall be
14 granted for any taxpayer who meets the requirements of section 3
15 of this Act in accordance with the following:

16 (1) For taxes that are owed as a result of the
17 nonreporting or underreporting of tax liabilities or
18 the nonpayment of any accounts receivable owed by an
19 eligible taxpayer, the State shall waive criminal
20 prosecution and all civil penalties that may be
21 assessed under title 14, Hawaii Revised Statutes, for



1 the taxable years or periods for which the tax amnesty
2 is requested; and

3 (2) With the exception of instances in which the taxpayer
4 and director enter into an installment payment
5 agreement authorized under section 3(c) of this Act,
6 the failure to pay all taxes as shown on the
7 taxpayer's amnesty tax return shall invalidate any
8 amnesty granted pursuant to this Act.

9 (b) This Act shall not apply to any taxpayer who is on
10 notice, written or otherwise, that the taxpayer is the subject
11 of any criminal investigation or criminal prosecution for
12 nonpayment, delinquency, evasion, or fraud in relation to any
13 federal taxes or to any of the taxes to which this amnesty
14 program is applicable.

15 (c) No refund or credit shall be granted for any interest
16 or penalty paid prior to the time the taxpayer requests amnesty
17 pursuant to section 3 of this Act.

18 (d) Unless the director, in the director's discretion,
19 redetermines the amount of taxes and interest due, no refund or
20 credit shall be granted for any taxes or interest paid under the
21 amnesty program.



1 SECTION 5. **Public awareness.** The director shall adopt
2 rules pursuant to chapter 91, Hawaii Revised Statutes; issue
3 forms and instructions; and take all actions necessary to
4 implement this Act. The director shall publicize the tax
5 amnesty program in order to maximize the public awareness of,
6 and participation in, the program. For the purpose of
7 publicizing the tax amnesty program, the director may contract
8 with any advertising agency within or outside this State.

9 SECTION 6. **Separate accounting.** For purposes of
10 accounting for the revenues received pursuant to this Act, the
11 director shall maintain a separate accounting and reporting of
12 funds collected under the amnesty program. All funds collected
13 shall be remitted to the general fund.

14 SECTION 7. This Act shall take effect upon its approval.

15

INTRODUCED BY:





S.B. NO. 854

Report Title:

Taxation; Amnesty

Description:

Establishes a one-time amnesty program for liabilities for taxable years beginning on or transactions occurring on or after 01/01/2010 through taxable periods ending on or transactions occurring on 12/31/2020. Specifies that the amnesty period begins 01/01/2022 and completes no later than 12/31/2022.

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