
A BILL FOR AN ACT

RELATING TO TAX ENFORCEMENT.

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

1 SECTION 1. Section 231-7, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) The director of taxation, and any representative of
5 the director duly authorized by the director, may conduct any
6 civil audit or criminal investigation, investigation, or
7 hearing, relating to any tax, assessment, [~~or the amount of any~~
8 ~~tax,~~] or [~~the~~] collection of any delinquent tax, including any
9 audit or investigation into the financial resources of any
10 delinquent taxpayer or the collectability of any delinquent
11 tax."

12 2. By amending subsections (c) and (d) to read:

13 "(c) The director of taxation or representative of the
14 director duly authorized by the director, when conducting a
15 civil audit, investigation, or hearing may subpoena witnesses
16 and require the production of books, papers, documents, other
17 designated objects, or any other record however maintained,



1 including those electronically stored, that are relevant or
2 material to the civil audit, investigation, or hearing; provided
3 that the director of taxation or deputy director of taxation
4 shall give written approval for the issuance of a subpoena only
5 after a review of the appropriateness of the issuance. A
6 subpoena issued under this subsection:

7 (1) Shall state that the subpoena is issued by the
8 department and shall command each person to whom it is
9 directed to attend and give testimony at the time and
10 place specified, and may also command the person to
11 whom the subpoena is directed to produce books,
12 papers, documents, or other objects specifically
13 designated;

14 (2) May be served at any place within or without the State
15 by an investigator appointed pursuant to section 231-
16 4.3, or by any [~~other~~] representative of the director
17 duly authorized by the director;

18 (3) Shall require attendance of the person only in the
19 county wherein the person is served with the subpoena
20 or at any other place as is agreed upon by the person
21 and the department; provided that if the subpoena is



1 served in a county other than that in which the person
2 resides, is employed, or transacts the person's
3 business in person, the department shall bear the
4 person's expenses for travel to and attendance at the
5 place named in the subpoena to the same extent as
6 provided by the rules of court other than the expenses
7 of the taxpayer or the taxpayer's witnesses, officers,
8 directors, agents, or employees; and

9 (4) Shall contain a short, plain statement of the person's
10 rights and the procedure for enforcing and contesting
11 the subpoena.

12 If any person disobeys any process or, having appeared in
13 obedience thereto, refuses to answer pertinent questions put to
14 the person by the director or other person conducting the civil
15 audit, investigation, or hearing, or to produce any books,
16 papers, documents, objects, or records pursuant thereto, the
17 director may apply to the circuit court of the circuit wherein
18 the civil audit, investigation, or hearing is being conducted,
19 or to any judge of the court, setting forth the disobedience to
20 process or refusal to answer, and the court or judge shall cite
21 the person to appear before the court or judge to answer the



1 questions or to produce the books, papers, documents, objects,
2 or records; provided that the court, upon a motion promptly made
3 by the person, may quash or modify the subpoena if compliance
4 would be unreasonable or oppressive or would violate any
5 privilege the person would be entitled to exercise in a court
6 proceeding. If the person fails or refuses to produce the
7 subpoenaed books, papers, documents, objects, or record, the
8 court shall institute a contempt proceeding against the person,
9 at which time the court shall determine whether good cause is
10 shown for the failure to obey the subpoena or the refusal to
11 testify; provided that the court, on a motion promptly made, may
12 quash or modify the subpoena if compliance would be unreasonable
13 or oppressive or would violate any privilege the person would be
14 entitled to exercise in a court proceeding. In the event that
15 no good cause is shown, the court does not quash or modify the
16 subpoena, and the person fails or refuses to comply with the
17 subpoena, then the court shall commit the person to jail until
18 the person testifies, but not for a longer period than sixty
19 days. Notwithstanding the serving of the term of commitment by
20 any person, the director may proceed in all respects as if the
21 witness had not previously been called upon to testify.



1 Witnesses (other than the taxpayer or the taxpayer's officers,
2 directors, agents, and employees) shall be allowed their fees
3 and mileage as authorized in cases in the circuit courts, to be
4 paid on vouchers of the department of taxation, from any moneys
5 available for the expenses of the department.

6 (d) Subject to the privileges applicable to any witness in
7 this State, the director of taxation or any representative of
8 the director duly authorized by the director, when conducting a
9 criminal investigation, may subpoena witnesses, examine
10 witnesses under oath, and require the production of any books,
11 papers, documents, other designated objects, or any other record
12 however maintained, including those electronically stored, that
13 are relevant or material to the investigation; provided that the
14 director of taxation or deputy director of taxation shall give
15 written approval for the issuance of a subpoena only after a
16 review of the appropriateness of the issuance. A subpoena
17 issued under this subsection:

18 (1) Shall state that the subpoena is issued by the
19 department and shall command each person to whom it is
20 directed to attend and give testimony at the time and
21 place specified, and may command the person to whom it



1 is directed to produce books, papers, documents, or
2 other objects specifically designated;

3 (2) May be served at any place within or without the State
4 by an investigator appointed pursuant to section 231-
5 4.3, or by any [~~other~~] duly authorized law enforcement
6 official with the powers of a police officer;

7 (3) Shall require attendance of the person only in the
8 county wherein the person is served with the subpoena
9 or at any other place agreed upon by the person and
10 the department; provided that if the subpoena is
11 served in a county other than that in which the person
12 resides, is employed, or transacts the person's
13 business in person, the department shall bear the
14 person's expenses for travel to and attendance at the
15 place named in the subpoena to the same extent as
16 provided by the rules of court; and

17 (4) Shall contain a short, plain statement of the person's
18 rights and the procedure for enforcing and contesting
19 the subpoena.

20 Upon application by the director, a circuit court of the county
21 wherein the person resides or is found may compel obedience to



1 the subpoena; provided that the court, on a motion promptly
2 made, may quash or modify the subpoena if compliance would be
3 unreasonable or oppressive or would violate any privilege the
4 witness may be entitled to exercise in a court proceeding."

5 SECTION 2. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Tax Enforcement; Subpoena Powers

Description:

Authorizes the Department of Taxation to serve administrative subpoenas outside the State. (SD1)

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

