
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 to read as follows:

3 "**§231-7 Audits, investigations, hearings, and subpoenas.**

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

11 (b) The director of taxation or other person conducting
12 hearings may administer oaths and take testimony under oath
13 relating to the matter of audit, investigation, or hearing.

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



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

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

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

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



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

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

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



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



1 witness had not previously been called upon to testify.
2 Witnesses (other than the taxpayer or the taxpayer's officers,
3 directors, agents, and employees) shall be allowed their fees
4 and mileage as authorized in cases in the circuit courts, to be
5 paid on vouchers of the department of taxation, from any moneys
6 available for the expenses of the department.

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

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



- 1 place specified, and may command the person to whom it
2 is directed to produce books, papers, documents, or
3 other objects specifically designated;
- 4 (2) May be served at any place within or without the State
5 by an investigator appointed pursuant to section
6 231-4.3, or by any [~~other~~] duly authorized law
7 enforcement official with the powers of a police
8 officer;
- 9 (3) Shall require attendance of the person only in the
10 county wherein the person is served with the subpoena
11 or at any other place agreed upon by the person and
12 the department; provided that if the subpoena is
13 served in a county other than that in which the person
14 resides, is employed, or transacts the person's
15 business in person, the department shall bear the
16 person's expenses for travel to and attendance at the
17 place named in the subpoena to the same extent as
18 provided by the rules of court; and
- 19 (4) Shall contain a short, plain statement of the person's
20 rights and the procedure for enforcing and contesting
21 the subpoena.



1 Upon application by the director, a circuit court of the county
2 wherein the person resides or is found may compel obedience to
3 the subpoena; provided that the court, on a motion promptly
4 made, may quash or modify the subpoena if compliance would be
5 unreasonable or oppressive or would violate any privilege the
6 witness may be entitled to exercise in a court proceeding.

7 (e) Any subpoena issued under this section that does not
8 identify the person with respect to whose liability, audit, or
9 investigation the subpoena is issued may be served on the
10 intended recipient only after a court proceeding in which the
11 director or another person establishes that:

12 (1) The subpoena relates to the liability, audit, or
13 investigation of a particular person or ascertainable
14 group or class of persons;

15 (2) There is a reasonable basis for believing that the
16 person or group or class of persons may fail or may
17 have failed to comply with any provision of title 14;
18 and

19 (3) The information sought to be obtained from the
20 examination of records or testimony and the identity
21 of the person or persons with respect to whose



1 liability the subpoena is issued is not readily
2 available from other sources.

3 (f) The department shall pay to a financial institution
4 that is served a subpoena issued under this section a fee for
5 reimbursement of the institution's costs as are necessary and
6 that have been directly incurred by or on behalf of the
7 institution in searching for, reproducing, or transporting
8 books, papers, documents, or other objects designated in the
9 subpoena. Reimbursement shall be paid at the rate of \$15 per
10 hour for research and 50 cents per page for reproduction.

11 (g) A person or entity that is compelled to testify or
12 produce documents, information, or other items by a subpoena
13 issued pursuant to an audit, investigation, or hearing
14 pertaining to another person or entity shall not be liable for
15 damages arising from compliance with the subpoena.

16 (h) The provisions of this section are in addition to all
17 other provisions of law, and apply to any tax within the
18 jurisdiction of the department."

19 SECTION 2. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. 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.

