
A BILL FOR AN ACT

RELATING TO TAX ENFORCEMENT.

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

1 SECTION 1. Section 235-107, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§235-107 Procedure upon failure to file return.** If any
4 taxpayer or employer liable to make and file a return under this
5 chapter fails, neglects, or refuses to make and file a return as
6 required within the time prescribed, or declines to authenticate
7 a return if made, the department of taxation shall make a return
8 for the taxpayer or employer from the best information
9 obtainable and shall levy and assess against the taxpayer or
10 employer the tax upon the amount of taxable income, or the tax
11 required to be withheld from wages and paid over, as shown by
12 such return, to which shall be added the penalties and interest
13 provided by section 231-39. The assessment shall be presumed to
14 be correct until and unless, upon an appeal duly taken as
15 provided in this chapter, the contrary shall be clearly proved
16 by the taxpayer or employer and the burden of proof upon appeal
17 shall be upon the taxpayer or employer to disprove the



1 correctness of the assessment. Notice of the assessment shall
2 be given, and an appeal therefrom may be taken, in the manner
3 and within the time provided in section ~~[235-108(b)]~~ 235-108(c)
4 and section 235-114."

5 SECTION 2. Section 235-108, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§235-108 Audit of return; procedure; additional taxes.**

8 (a) Audit. The director of taxation or a responsible person
9 designated by the director to act in the premises for the
10 purpose of verification or audit of a return made by the
11 taxpayer or employer, or for the purpose of making a return
12 where none has been made, ~~[is authorized and empowered to]~~ may
13 examine all account books, bank books, bank statements, records,
14 vouchers, copies of federal tax returns, and any and all other
15 documents and ~~[evidences having any relevancy]~~ evidence relevant
16 to the determination of the income or wages as required to be
17 returned under this chapter, and the director may employ the
18 director's powers under section 231-7 for ~~[such]~~ those purposes.

19 (b) Any person liable for any tax imposed under this
20 chapter or for the collection or deduction thereof at the source
21 shall produce all account books, bank books, bank statements,



1 records, vouchers, copies of federal tax returns, and any and
2 all other documents and evidence relevant to the determination
3 of the income or wages as required to be returned under this
4 chapter within thirty business days after a written demand is
5 mailed to that person by the department, or as soon thereafter
6 as the director may deem reasonable under the circumstances.
7 Any person who fails to produce documents or evidence as
8 provided in this subsection shall be prohibited from introducing
9 the documents or matters in evidence, or otherwise relying upon
10 or utilizing said documents or matters, in any tax appeal or
11 action under section 40-35 arising from the audit in which the
12 documents or matters were demanded, unless it is shown that the
13 failure is due to reasonable cause and not neglect or refusal.

14 ~~(b)~~ (c) Additional taxes. If the department of taxation
15 discovers from the examination of the return or otherwise that
16 income, or the liability of an employer in respect of wages, or
17 any portion thereof, has not been assessed, it may assess the
18 same and give notice to the taxpayer or employer of the
19 assessment, and the taxpayer or employer shall thereupon have an
20 opportunity within thirty days to confer with the department as
21 to the proposed assessment. After the expiration of thirty days



1 from [~~such~~] the notification, the department shall assess the
2 income of the taxpayer, or the liability of the employer in
3 respect of wages, or any portion thereof [~~which~~] that it
4 believes has not heretofore been assessed, and shall give notice
5 to the taxpayer or employer of the amount of the tax and
6 interest and penalties if any, and the amount thereof shall be
7 paid within twenty days after the date the notice was mailed,
8 properly addressed to the taxpayer or employer at the taxpayer's
9 or employer's last known address or place of business."

10 SECTION 3. Section 235-110, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) This section [~~does~~] shall not apply in the case of a
13 payment made pursuant to an assessment by the department of
14 taxation under section 235-107 or [~~235-108(b)~~] 235-108(c). No
15 refund or overpayment credit [~~may~~] shall be had under this
16 section in any event unless the original payment of the tax was
17 due to the law having been interpreted or applied in respect of
18 the taxpayer concerned differently than in respect of the
19 taxpayers generally. As to all tax payments for which a refund
20 or credit is not authorized by this section (including without
21 prejudice to the generality of the foregoing cases of



1 unconstitutional) the remedies provided by appeal or under
2 section 40-35 are exclusive. However, nothing in this
3 subsection shall be deemed applicable to a credit or refund
4 authorized by sections 235-55, 235-66, or 235-71, or resulting
5 from the tax as returned being less than the tax as estimated;
6 in any of these cases a credit or refund [~~is~~] shall be
7 authorized even though the tax for the taxable year remains
8 subject to determination by the department and assessment as
9 provided by law."

10 SECTION 4. Section 236E-18.5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[+]§236E-18.5[+] **Audit of return; procedure upon failure**
13 **to file return; additional taxes; limitation period.** (a) The
14 director of taxation, or the director's designee, [~~is authorized~~
15 ~~and empowered to~~] may examine all account books, bank books,
16 bank statements, records, vouchers, copies of federal tax
17 returns, and any and all other documents and evidence [~~having~~
18 ~~any relevance~~] relevant to the determination of any amount
19 relevant to the Hawaii transfer tax, as required to be returned
20 under this chapter, and the director may employ the director's
21 powers under section 231-7 for these purposes.



1 (b) Any person liable for any tax imposed under this
2 chapter shall produce all account books, bank books, bank
3 statements, records, vouchers, copies of federal tax returns,
4 and any and all other documents and evidence relevant to the
5 determination of the income as required to be returned under
6 this chapter within thirty business days after a written demand
7 is mailed to that person by the department, or as soon
8 thereafter as the director may deem reasonable under the
9 circumstances. Any person who fails to produce documents or
10 evidence as provided in this subsection shall be prohibited from
11 introducing the documents or matters in evidence, or otherwise
12 relying upon or utilizing said documents or matters, in any tax
13 appeal or action under section 40-35 arising from the audit in
14 which the documents or matters were demanded, unless it is shown
15 that the failure is due to reasonable cause and not neglect or
16 refusal.

17 [~~(b)~~] (c) If the department discovers from the examination
18 of the return or otherwise that any amount has not been assessed
19 or otherwise properly included in determining any amount
20 relevant to the Hawaii transfer tax, it may assess those
21 amounts.



1 ~~(e)~~ (d) If the person required to file the return
2 required under this chapter fails to file the return or declines
3 to authenticate a return, the department shall make a return for
4 the person based upon the best information obtainable and shall
5 levy and assess against the person the tax as shown on the
6 return.

7 ~~(d)~~ (e) For the purposes of this section, the department
8 shall give notice of the assessment to the person required to
9 file the return required under this chapter. The person put on
10 notice shall have thirty days to confer with the department as
11 to the proposed assessment. After the expiration of thirty days
12 from the notification, the department shall finalize the
13 assessment and give notice to the person of the tax and interest
14 and penalties, if any. The amount shall be paid within twenty
15 days after the date the notice, properly addressed to the person
16 required to file the return required to be filed under this
17 chapter, is mailed to the person's last known address.

18 ~~(e)~~ (f) In the case of an audit commenced under this
19 section, the amount of Hawaii transfer tax imposed by this
20 chapter shall be assessed or levied within three years after the
21 return was filed, or within three years of the due date



1 prescribed for the filing of that return, whichever is later.
2 In the case of a false or fraudulent return with intent to evade
3 tax, or of a failure to file a return, the tax may be assessed
4 or levied at any time; provided that the burden of proof with
5 respect to the issues of falsity or intent to evade tax shall be
6 upon the State. The limitation period shall be suspended if the
7 person required to file the return agrees to suspend the
8 period."

9 SECTION 5. Section 237-39, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§237-39 Audits; procedure, penalties.** (a) For the
12 purpose of verification or audit of a return made by the
13 taxpayer, or where there is reasonable ground to believe that
14 any return made is so deficient as not to form the basis of a
15 satisfactory assessment of the tax, or for the purpose of making
16 an assessment where no return has been made, the department of
17 taxation or the Multistate Tax Commission pursuant to chapter
18 255, or the authorized representative thereof, may examine all
19 account books, bank books, bank statements, records, vouchers,
20 taxpayer's copies of federal tax returns, and any and all other
21 documents and evidence [~~having any relevancy~~] relevant to the



1 determination of the gross income or gross proceeds of sales of
2 any taxpayer as required to be returned under this chapter and
3 may summon or require the attendance of the person by or for
4 whom the return, if any, has been made or whose tax is being
5 assessed, and any employee of the person, and may summon or
6 require the attendance of any person having knowledge in the
7 premises, naming the time and place in the summons, and may
8 require the production of any books, statements, or other
9 evidence open to examination, and may take testimony in
10 reference to any matter relevant to the gross income or gross
11 proceeds of sales of the taxpayer for the period under
12 consideration, with power to require that the person so called
13 and appearing shall be interrogated under oath and to administer
14 the oath.

15 (b) Any person liable for any tax imposed under this
16 chapter or for the collection or deduction thereof at the source
17 shall produce all account books, bank books, bank statements,
18 records, vouchers, taxpayer's copies of federal tax returns, and
19 any and all other documents and evidence relevant to the
20 determination of the gross income or gross proceeds of sales as
21 required to be returned under this chapter within thirty



1 business days after a written demand is mailed to that person by
2 the department, or as soon thereafter as the director may deem
3 reasonable under the circumstances. Any person who fails to
4 produce documents or evidence as provided in this subsection
5 shall be prohibited from introducing the documents or matters in
6 evidence, or otherwise relying upon or utilizing said documents
7 or matters, in any tax appeal or action under section 40-35
8 arising from the audit in which the documents or matters were
9 demanded, unless it is shown that the failure is due to
10 reasonable cause and not neglect or refusal.

11 [~~(b)~~] (c) If the department determines that any gross
12 income or gross proceeds of sales liable to the tax have not
13 been assessed, the department may assess the same as provided in
14 sections 237-36 and 237-38.

15 [~~(e)~~] (d) Any individual knowingly giving false testimony
16 under oath at any hearing before the department shall be guilty
17 of perjury and shall be punished as provided by law.

18 [~~(d)~~] (e) Any person refusing or neglecting to obey any
19 summons issued by the department, and any individual appearing
20 and refusing to testify under oath, shall be fined \$50 for the
21 first offense and \$100 for each succeeding offense."



1 SECTION 6. Section 244D-8, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) If it should appear upon [~~such~~] the examination or
4 thereafter within five years after the filing of the return, or
5 at any time if no return has been filed, as a result of [~~such~~]
6 the examination or as a result of any examination of the records
7 of the taxpayer or of any other inquiry or investigation, that
8 the correct amount of the tax is greater than that shown on the
9 return, or that any tax imposed by the chapter has not been
10 paid, an assessment of such tax may be made in the manner
11 provided in section [~~235-108(b).~~] 235-108(c). The amount of the
12 tax for the period covered by the assessment shall not be
13 reduced below the amount determined by an assessment so made,
14 except upon appeal or in a proceeding brought pursuant to
15 section 40-35."

16 SECTION 7. Section 245-7, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) If it should appear upon the examination or within
19 five years after the filing of the return, or at any time if no
20 return has been filed, as a result of the examination, or as a
21 result of any examination of the records of the wholesaler or



1 dealer, or of any other inquiry or investigation, that the
2 correct amount of the taxes is greater than that shown on the
3 return, or that any taxes imposed by this chapter have not been
4 paid, an assessment of the taxes may be made in the manner
5 provided in section [~~235-108(b)~~] 235-108(c). The amount of the
6 taxes for the period covered by the assessment shall not be
7 reduced below the amount determined by an assessment so made,
8 except upon appeal or in a proceeding brought pursuant to
9 section 40-35."

10 SECTION 8. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect on July 1, 3000;
13 provided that:

- 14 (1) Sections 2 and 5 shall apply to taxable years
15 beginning after December 31, 2023; and
16 (2) Section 4 shall apply to decedents dying and taxable
17 transfers occurring after December 31, 2023.



Report Title:

Tax Enforcement; Audits; Time to Respond; Failure to Respond;
Appeals

Description:

Provides deadlines for taxpayers under audit to comply with demands to produce documents and evidence. Requires the Tax Appeal Court to preclude documents or evidence not produced pursuant to a demand from being introduced in evidence in a tax appeal or action unless the failure was due to reasonable cause. Effective 7/1/3000. (HD1)

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

