

JAN 30 2026

A BILL FOR AN ACT

RELATING TO DUE PROCESS FOR ESTABLISHING PERSONAL LIABILITY FOR
TAX.

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

1 SECTION 1. The legislature finds that under the general
2 excise tax law, the State may collect unpaid liability for tax
3 against responsible persons associated with an entity for which
4 tax is unpaid. However, there is no clear process for
5 adjudicating disputes between the department of taxation and a
6 person allegedly responsible for the tax. The department of
7 taxation has taken the position that the disputed tax must be
8 paid under protest for there to be any judicial review.

9 The legislature recognizes that this may not be a viable
10 alternative for a taxpayer alleged to have personal liability
11 due to a minuscule interest in a company for which a large
12 amount of tax remains unpaid.

13 Accordingly, the purpose of this Act is to apply the normal
14 tax dispute resolution processes to a determination of personal
15 liability and thereby give an allegedly responsible person the



1 same due process that is provided to others who are assessed
2 taxes.

3 SECTION 2. Section 237-41.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§237-41.5 Certain amounts held in trust; liability of key**
6 **individuals.** (a) There shall be personal liability for the
7 taxes imposed under this chapter as provided in this section for
8 the following amounts of gross income or gross proceeds:

9 (1) Any amount collected as a recovery of the taxpayer's
10 liability under this chapter, where the amount is
11 passed on as the tax owed by the taxpayer under this
12 chapter for the transaction and is separately stated
13 or accounted for in a receipt, contract, invoice,
14 billing, or other evidence of the business activity;
15 or

16 (2) An amount equal to the tax liability under this
17 chapter on a transaction where a taxpayer does not
18 separately state or account for the amount as a tax
19 recovery as provided in paragraph (1). For purposes
20 of this paragraph, the amount of the imputed tax
21 liability is the result of multiplying the gross



1 income or gross proceeds received in the transaction
2 by the tax rate.

3 The amounts under paragraphs (1) and (2) shall be held in trust
4 for the benefit of the State and for payment to the State in the
5 manner and at the time required by this chapter.

6 (b) The personal liability under this section applies to
7 any officer, member, manager, or other person having control or
8 supervision over amounts of gross proceeds or gross income
9 collected to pay the general excise tax and held in trust under
10 subsection (a), or who is charged with the responsibility for
11 the filing of returns or the payment of general excise tax on
12 gross income or gross proceeds collected and held in trust under
13 subsection (a). The person shall be personally liable for any
14 unpaid taxes and interest and penalties on those taxes, if
15 ~~such~~ the officer or other person wilfully fails to pay or to
16 cause to be paid any taxes due from the taxpayer pursuant to
17 this chapter.

18 This subsection shall not apply to any officer, manager, or
19 other person having control or supervision over amounts of gross
20 proceeds or gross income collected to pay the general excise tax
21 and held in trust under subsection (a), or who is charged with



1 the responsibility for the filing of returns or the payment of
2 general excise tax on gross income or gross proceeds collected
3 and held in trust under subsection (a) for a nonprofit
4 organization.

5 For purposes of this subsection:

6 "Nonprofit organization" means a corporate entity,
7 association, or other duly chartered entity that is registered
8 with the State and is exempt from the application of this
9 chapter pursuant to section 237-23(a)(3), (4), (5), (6), or (7).

10 "Wilfully fails to pay or to cause to be paid" shall be
11 construed in accordance with judicial interpretations given to
12 similar provisions of the Internal Revenue Code; consistent
13 therewith, the term "wilfully" shall mean a voluntary,
14 intentional violation of a known legal duty.

15 (c) An officer, member, manager, or other responsible
16 person shall be liable only for general excise taxes on gross
17 income or gross proceeds collected, plus interest and penalties
18 on those taxes, that became due during the period the person had
19 control, supervision, responsibility, or a duty to act for the
20 taxpayer as described in subsection (b) of this section.



1 (d) Persons liable under subsection (b) are exempt from
2 liability when nonpayment of the general excise tax on gross
3 income or gross proceeds held in trust is for good cause as
4 determined by the director.

5 (e) The voluntary or involuntary dissolution of the
6 taxpayer or the withdrawal or surrender of its right to engage
7 in business in this State shall not discharge the liability
8 hereby imposed.

9 (f) A determination that a person is liable for the unpaid
10 taxes of another person under this section shall be an
11 assessment for which the rules of section 237-36 shall apply and
12 from which a person aggrieved may appeal under section 237-42."

13 SECTION 3. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 4. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval.

19
INTRODUCED BY:

Wesley J. Miller

By Request



S.B. NO. 3277

Report Title:

General Excise Tax; Personal Liability

Description:

Provides that a determination of personal liability for another person's unpaid general excise taxes is an assessment subject to the due process procedures and appeals available for other assessments.

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