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 whose tax

4 is unpaid. However, there is no clear process for adjudicating

5 disputes between the department of taxation and a person

6 allegedly responsible for the tax. The department of taxation

7 has taken the position that the disputed tax must be paid under

8 protest for there to be any judicial review. However, this may

9 not be a viable alternative for a taxpayer alleged to have

10 personal liability because of a minuscule interest in a company

11 with a large amount of unpaid taxes.

12   Therefore, the purpose of this Act is to apply the normal

13 tax dispute resolution processes to a responsible person

14 determination, thereby affording an alleged responsible person

15 the same due process provided to others who are assessed taxes.

1   SECTION 2.   Section 237-41.5, Hawaii Revised Statutes, is

2   amended to read as follows:

3   "§237-41.5 **Certain amounts held in trust; liability of key**

4   **individuals.** (a)   There shall be personal liability for the

5   taxes imposed under this chapter as provided in this section for

6   the following amounts of gross income or gross proceeds:

7   (1)   Any amount collected as a recovery of the taxpayer's

8   liability under this chapter, where the amount is

9   passed on as the tax owed by the taxpayer under this

10   chapter for the transaction and is separately stated

11   or accounted for in a receipt, contract, invoice,

12   billing, or other evidence of the business activity;

13   or

14   (2)   An amount equal to the tax liability under this

15   chapter on a transaction where a taxpayer does not

16   separately state or account for the amount as a tax

17   recovery as provided in paragraph (1). For purposes

18   of this paragraph, the amount of the imputed tax

19   liability is the result of multiplying the gross

20   income or gross proceeds received in the transaction

21   by the tax rate.

1   The amounts under paragraphs (1) and (2) shall be held in trust

2   for the benefit of the State and for payment to the State in the

3   manner and at the time required by this chapter.

4   (b) The personal liability under this section applies to

5   any officer, member, manager, or other person having control or

6   supervision over amounts of gross proceeds or gross income

7   collected to pay the general excise tax and held in trust under

8   subsection (a), or who is charged with the responsibility for

9   the filing of returns or the payment of general excise tax on

10   gross income or gross proceeds collected and held in trust under

11   subsection (a). The person shall be personally liable for any

12   unpaid taxes and interest and penalties on those taxes, if such

13   officer or other person wilfully fails to pay or to cause to be

14   paid any taxes due from the taxpayer pursuant to this chapter.

15   This subsection shall not apply to any officer, manager, or

16   other person having control or supervision over amounts of gross

17   proceeds or gross income collected to pay the general excise tax

18   and held in trust under subsection (a), or who is charged with

19   the responsibility for the filing of returns or the payment of

20   general excise tax on gross income or gross proceeds collected

1 and held in trust under subsection (a) for a nonprofit

2 organization.

3   For purposes of this subsection:

4   "Nonprofit organization" means a corporate entity,

5 association, or other duly chartered entity that is registered

6 with the State and is exempt from the application of this

7 chapter pursuant to section 237-23(a)(3), (4), (5), (6), or (7).

8   "Wilfully fails to pay or to cause to be paid" shall be

9 construed in accordance with judicial interpretations given to

10 similar provisions of the Internal Revenue Code; consistent

11 therewith, the term "wilfully" shall mean a voluntary,

12 intentional violation of a known legal duty.

13   (c) An officer, member, manager, or other responsible

14 person shall be liable only for general excise taxes on gross

15 income or gross proceeds collected, plus interest and penalties

16 on those taxes, that became due during the period the person had

17 control, supervision, responsibility, or a duty to act for the

18 taxpayer as described in subsection (b) of this section.

19   (d) Persons liable under subsection (b) [are] shall be

20 exempt from liability when nonpayment of the general excise tax

1 on gross income or gross proceeds held in trust is for good

2 cause as determined by the director.

3   (e) The voluntary or involuntary dissolution of the

4 taxpayer or the withdrawal or surrender of its right to engage

5 in business in this State shall not discharge the liability

6 hereby imposed.

7   (f) A determination that a person is liable for the unpaid

8 taxes of another under this section shall be an assessment to

9 which section 237-36 shall apply and from which a person

10 aggrieved may appeal under section 237-42; provided that any

11 appeal of an assessment made pursuant to this section shall be

12 limited to a determination that the person is an officer,

13 member, manager, or other person described in subsection (b),

14 and that the person wilfully failed to pay or caused to be paid

15 any taxes due from the taxpayer pursuant to this chapter."

16   SECTION 3. Statutory material to be repealed is bracketed

17 and stricken. New statutory material is underscored.

18   SECTION 4. This Act shall take effect on July 1, 3000.

Report Title:
General Excise Tax; Personal Liability; Due Process; Appeals

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. Effective 7/1/3000. (HD1)

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