

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I  
TAX RETURN PREPARERS

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231-A Understatement of taxpayer’s liability by tax return preparer. (a)**

A tax return preparer who understates a person’s tax liability based upon unreasonable positions on a tax return or claim for tax refund shall pay a penalty of \$500 with respect to each such tax return or claim for tax refund.

(b) A tax return preparer who:

- (1) Wilfully understates a person’s tax liability; or
- (2) Recklessly disregards any tax law or rule in understating a person’s tax liability,

based upon unreasonable positions on a tax return or claim for tax refund shall pay a penalty of \$1,000, with respect to each such tax return or claim for tax refund.

(c) For purposes of subsections (a) and (b), understatements of liability using unreasonable positions occur when:

- (1) Any part of a tax return or claim for tax refund is based on a position that does not have substantial authority;
- (2) The tax return preparer who prepared the tax return or claim for tax refund knew or reasonably should have known of the unreasonable position; and
- (3) The unreasonable position was not a disclosed item as defined in subsection (h) or was frivolous.

(d) If within thirty days after the notice and demand of any penalty under subsection (a) or (b) is made, the tax return preparer:

- (1) Pays an amount that is not less than fifteen per cent of the penalty amount; and
- (2) Files a claim for refund of the amount so paid,

no action to levy or file a proceeding in court to collect the remainder of the penalty shall be commenced except in accordance with subsection (e).

(e) An action that is stayed pursuant to subsection (d) may be brought thirty days after either of the following events, whichever occurs first:

- (1) The tax return preparer fails to file an appeal to the tax appeal court within thirty days after the day on which the claim for refund of any partial payment of any penalty under subsection (a) or (b) is denied; or
- (2) The tax return preparer fails to file an appeal to the tax appeal court for the determination of the tax return preparer’s liability for the penalty assessed under subsection (a) or (b) within six months after the day on which the claim for refund was filed.

Nothing in this subsection shall be construed to prohibit any counterclaim for the remainder of the penalty in any proceeding.

(f) If there is a final administrative determination pursuant to section 231-F, or a final judicial decision that the penalty assessed under subsection (a) or (b) should not apply, then that portion of the penalty assessed shall be voided.

Any portion of the penalty that has been paid shall be refunded to the tax return preparer as an overpayment of tax without regard to any period of limitations that, but for this subsection, would apply to the making of the refund.

(g) At the request of the director of taxation, a civil action may be brought to enjoin a tax return preparer from further acting as a tax return preparer or from engaging in conduct prohibited under subsection (a) or (b) as follows:

- (1) Any action under this subsection may be brought in the circuit court of the circuit in which the tax return preparer resides or has a principal place of business, or in which the taxpayer with respect to whose tax return the action is brought resides;
- (2) The court may exercise its jurisdiction over the action separate and apart from any other action brought by the State against the tax return preparer or taxpayer;
- (3) If the court finds that a tax return preparer has engaged in conduct subject to penalty under subsection (a) or (b) and that injunctive relief is appropriate to prevent the recurrence of that conduct, the court may enjoin the preparer accordingly; and
- (4) If the court finds that a tax return preparer has continually or repeatedly engaged in conduct prohibited under subsection (a) or (b) and that an injunction prohibiting that conduct would not be sufficient to prevent the preparer's interference with the proper administration of this chapter, the court may enjoin the preparer from acting as a tax return preparer.

(h) For purposes of this section:

“Disclosed item” means any item where:

- (1) The relevant facts affecting the item's tax treatment are adequately disclosed in a tax return or in a statement attached to a tax return; and
- (2) There is a reasonable basis for the tax treatment of the item by the taxpayer.

“Substantial authority” means, in addition to any definition of substantial authority incorporated by subsection (j), that the following authority supports the tax treatment of an item:

- (1) Statutory provisions;
- (2) Proposed or final administrative rules;
- (3) Tax information releases or procedures;
- (4) Department of taxation announcements or official explanations;
- (5) Court cases;
- (6) Legislative intent reflected in committee reports and floor statements;
- (7) Private letter rulings, comfort letters, technical or advice letters, and written determinations to the extent they are valid and not overruled by other authority; or
- (8) Notices or other official pronouncements of the department of taxation.

“Tax return preparer” means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed under title 14 or any claim for refund of tax imposed under title 14. For purposes of this definition, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund.

A person shall not be a tax return preparer merely because the person:

- (1) Furnishes typing, reproducing, or other mechanical assistance;

- (2) Prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom the person is regularly and continuously employed;
- (3) Prepares as a fiduciary a return or claim for refund for any other person; or
- (4) Prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to the taxpayer or in response to any waiver of restriction after the commencement of an audit of the taxpayer, or of another taxpayer if a determination in the audit of the other taxpayer directly or indirectly affects the tax liability of the taxpayer.

“Understatement of liability” shall have the same meaning as stated in section 231-D(b). The determination of whether there is an understatement of liability may be made without regard to any administrative or judicial action involving the taxpayer.

(i) The penalty imposed by this section shall be in addition to any other penalty provided by law.

(j) This section shall be construed in accordance with regulations and judicial interpretations for Section 6694 of the Internal Revenue Code.”

## PART II FRAUDULENT TAX PRACTICES

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§231-B Promoting abusive tax shelters. (a) A person promotes an abusive tax shelter by:

- (1) Organizing or assisting in the organization of, or participating directly or indirectly in the sale of, an interest in:
  - (A) A partnership or other entity;
  - (B) Any investment plan or arrangement; or
  - (C) Any other plan or arrangement; and
- (2) In connection with any activity described under paragraph (1), making, furnishing, or causing another person to make or furnish a statement with respect to:
  - (A) Whether any deduction or credit is allowed;
  - (B) Whether any income may be excluded; or
  - (C) The securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement,

which the person knows or has reason to know is false or fraudulent or is a gross valuation overstatement as to any material matter.

(b) A person found promoting an abusive tax shelter shall pay, with respect to each activity described in subsection (a), a penalty of \$1,000 or, if the person establishes that the abusive tax shelter generated less than \$1,000 of gross income, then one hundred per cent of the gross income derived or to be derived by the person from the activity. For purposes of this section, any activity described in subsection (a)(1) shall be treated as a separate activity for each entity or arrangement. Participation in each sale described in subsection (a)(1) shall be treated as a separate activity for each entity or arrangement.

(c) At the request of the director of taxation, a civil action may be brought to enjoin any person described in subsection (a) from engaging in any conduct described in subsection (a). Any action under this section shall be brought in the circuit court of the circuit where the person in subsection (a) re-

sides or where the person's principal place of business is located. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the State against those persons described in subsection (a). If the court finds that a person described in subsection (a) has engaged in any conduct subject to penalty under subsection (b) and that injunctive relief is appropriate to prevent the recurrence of that conduct, the court may enjoin the person accordingly.

(d) The director may waive all or any part of the penalty provided by subsection (b) with respect to any gross valuation overstatement on a showing that there was a reasonable basis for the valuation and that the valuation was made in good faith.

(e) For purposes of this section, "gross valuation overstatement" means any statement of value for any property or services if:

- (1) The value so stated exceeds two hundred per cent of the amount determined to be the correct valuation; and
- (2) The value of the property or services is directly related to the amount of any deduction or credit allowable to any participant.

(f) The penalty imposed by this section shall be in addition to any other penalty provided by law.

(g) This section shall be construed in accordance with regulations and judicial interpretations given to Section 6700 of the Internal Revenue Code."

SECTION 3. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§231-C Erroneous claim for refund or credit.** (a) If a claim for refund or credit with respect to tax is made for an excessive amount, the person making the claim shall be liable for a penalty in an amount equal to twenty per cent of the excessive amount; provided that there shall be no penalty assessed where the penalty calculation under this section results in an amount of less than \$400.

(b) It shall be a defense to the penalty under this section that the claim for refund or credit had a reasonable basis. A person claiming the reasonable basis defense shall have the burden of proof to demonstrate the reasonableness of the claim.

(c) This section shall be construed in accordance with regulations and judicial interpretations given to Section 6676 of the Internal Revenue Code.

(d) For purposes of this section:

"Excessive amount" means the amount by which the amount of the claim for refund or credit for any taxable year exceeds the amount of the claim allowable for such taxable year.

"Reasonable basis" means a standard of care used in tax reporting that is significantly higher than not frivolous or not patently improper. A reasonable basis position will be more than arguable and based on at least one or more authorities of either state or federal tax administration. A position is considered to have a reasonable basis if a reasonable and well-informed analysis by a person knowledgeable in tax law would lead that person to conclude that the position has approximately a one-in-four, or greater, likelihood of being sustained on the merits. A reasonable basis includes innocent mistakes where the excessive amount is the result of inadvertence, mathematical error, or where otherwise defined as innocent by the director pursuant to a formal pronouncement issued without regard to chapter 91."

SECTION 4. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231-D Substantial understatements or misstatements of amounts; penalty.** (a) There shall be added to the tax an amount equal to twenty per cent of the portion of any underpayment that is attributable to any substantial understatement of any tax in a taxable year. The penalty under this section shall be in addition to any other penalty assessable by law.

(b) Except as provided under subsection (c), there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

- (1) Ten per cent of the tax required to be shown on the return for the taxable year; or
- (2) \$1,500.

(c) In the case of a corporation other than a corporation taxable under subchapter S of the Internal Revenue Code, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

- (1) Ten per cent of the tax required to be shown on the return for the taxable year; or
- (2) \$30,000.

(d) The amount of any understatement shall be reduced by that portion of the understatement that is attributable to:

- (1) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment; or
- (2) Any item if the relevant facts affecting the item’s tax treatment are adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis, as defined under section 231-C, for the tax treatment by the taxpayer.

The reduction in this subsection shall not apply to any item attributable to a tax shelter as described in section 231-B.

(e) This section shall be construed in accordance with regulations and judicial interpretations given to Section 6662 of the Internal Revenue Code.

(f) For purposes of this section, “understatement” means the excess of:

- (1) The amount of tax required to be shown on the return for the taxable year; over
- (2) The amount of tax imposed that is shown on the return, reduced by any rebate as that term is defined by Section 6211(b)(2) of the Internal Revenue Code.”

SECTION 5. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231-E Statute of limitations; extension for substantial omissions.** (a) Notwithstanding any other law to the contrary limiting the time for assessment of any tax, if a taxpayer omits an amount of:

- (1) Gross income or gross proceeds of sale;
- (2) Gross rental or gross rental proceeds;
- (3) Price, value, or consideration paid or received for any property;
- (4) Gross receipts; or
- (5) Gallonage, tonnage, cigarette count, day, or other weight or measure applicable to any tax,

properly includable therein that is in excess of twenty-five per cent of the amount stated in the return, the tax may be assessed or a proceeding in court with respect to the tax without assessment may be begun without assessment, at any time within six years after the return was filed.

(b) In determining any amount omitted, there shall not be taken into account any amount that is stated in the return if such amount is disclosed in the return or in a statement attached to the return in a manner adequate to apprise the department of taxation of the nature and amount of such item.

(c) This section shall be construed in accordance with regulations and judicial interpretations given to Section 6501 of the Internal Revenue Code.”

SECTION 6. Section 235-111, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) General rule. The amount of income taxes imposed by this chapter (also the amount of income taxes imposed by any preceding law of the State) and the liability of any employer in respect of wages, shall be assessed or levied and the overpayment, if any, shall be credited within three years after filing of the return for the taxable year, or within three years of the due date prescribed for the filing of the return, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state for a continuous period of at least six months; provided that if at the time of the taxpayer’s return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer’s return, the period shall not expire before the expiration of the six months.”

2. By amending subsection (c) to read:

“(c) Exceptions; fraudulent return or no return. In the case of a false or fraudulent return with intent to evade tax or liability, or of a failure to file return, the tax or liability may be assessed or levied at any time; provided that ~~in the case of a return claimed to be false or fraudulent with intent to evade tax or liability, the determination as to the claim shall first be made by a judge of the circuit court for or in the circuit within which the taxpayer or employer has the taxpayer’s or employer’s residence or principal place of business, or if none in the State then in the first circuit, upon petition filed by the department of taxation. The petition and other pleadings and proceedings in the matter shall be governed and conducted in accordance with statutory and other requirements relating to proceedings in equity, including all rights to appeal allowed in the proceedings. No assessment or levy of the tax or liability after the expiration of the three-year period shall be made unless so provided in the final decree entered in the proceedings.]~~ the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state.”

SECTION 7. Section 237-40, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) General rule. The amount of excise taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the<sup>1</sup> return, whichever is later, and no proceeding in court without assessment for the collection of any [sueh] of the taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer’s return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer’s return, the period shall not expire before the expiration of the six months.

(b) Exceptions. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time; ~~[however, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(e) which shall apply to the tax imposed by this chapter.]~~ provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state.”

SECTION 8. Section 237D-9, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Except as otherwise provided by this section, the amount of taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any [sueh] of the taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;

- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
  - (3) An offer in compromise under section 231-3(10) is pending; and
  - (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.
- (d) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time; [however, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(e) which shall apply to the tax imposed by this chapter.] provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state."

SECTION 9. Section 238-7, Hawaii Revised Statutes, is amended to read as follows:

**"§238-7 Audits; additional assessments; refunds.** (a) Sections 237-36 to 237-40 of the general excise tax law are hereby made applicable to the taxes imposed by this chapter, to the refunding of overpayments thereof, and to assessments, investigations, and audits in connection therewith, for which purpose any references therein to "gross income" or "gross proceeds of sale" shall be deemed to refer to the purchase price or value, as the case may be, subject to tax under this chapter, and any references to the "annual return" shall, if the taxpayer is not required to file an annual return under this chapter, be deemed to refer to the monthly return mentioned in the first paragraph of section 238-5.

(b) Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months."

SECTION 10. Section 243-14, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The amount of license taxes imposed by this chapter shall be assessed or levied, or the overpayment, if any, shall be credited within three years after filing of the monthly statement, or within three years of the due date prescribed for the filing of the statement, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall begin after the expiration of the ~~[three year]~~ three-year period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

As to all tax payments for which a refund or credit is not authorized by this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or by section 40-35 are exclusive.

(c) In the case of a false or fraudulent statement with intent to evade tax or liability, or of a failure to file a statement, the tax or liability may be assessed or levied at any time; provided that ~~[in the case of a statement claimed to be false or fraudulent with intent to evade tax or liability, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(e) which shall apply to the tax imposed by this chapter.]~~ the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state.”

SECTION 11. Section 247-6.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§247-6.5**~~]]~~ **Limitation period for assessment, levy, collection, or credit.** The amount of conveyance taxes imposed by this chapter shall be assessed or levied, and the overpayment, if any, shall be credited within three years after filing of the certificate prescribed by section 247-6. No proceeding in court without assessment for the collection of the taxes shall be begun after the expiration of the ~~[three year]~~ three-year period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

In the case of a false or fraudulent certificate filed with the intent to evade tax, or of a failure to file a certificate, the tax may be assessed or levied at any time."

SECTION 12. Section 251-8, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) Except as otherwise provided by this section, the amount of surcharge taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any such surcharge taxes shall begin after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

(d) In the case of a false or fraudulent return with intent to evade the surcharge tax, or of a failure to file the annual return, the surcharge tax may be assessed or levied at any time; [however, in the case of a return claimed to be false or fraudulent with intent to evade the surcharge tax, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(c) which shall apply to the surcharge tax imposed by this chapter.] provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the state."

SECTION 13. Section 346E-6, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Except as otherwise provided by this section, the amount of taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later. No proceeding in court without assessment for the collection of any such taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
  - (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
  - (3) An offer in compromise under section 231-3(10) is pending; and
  - (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer’s return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer’s return, the period shall not expire before the expiration of the six months.
- (d) In the case of a false or fraudulent return with intent to evade tax, or a failure to file the annual return, the tax may be assessed or levied at any time; provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the State.”

SECTION 14. Section 431:7-204.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The amount of insurance taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any [such] taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and

- (4) During which the taxpayer is outside the state if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the state the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

In the case of a false or fraudulent return with intent to evade the insurance taxes, or of a failure to file the annual return, the insurance taxes may be assessed or levied at any time; provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the State."

### PART III TAX ADMINISTRATION

SECTION 15. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§231-F Expedited appeals and dispute resolution program.** (a) The department shall be authorized to implement an administrative appeals and dispute resolution program that shall expeditiously resolve all tax, penalty, interest, fine, assessment, and other such disputes between the department and the taxpayer or return preparer. The director or the director's designee, who shall report directly and be answerable solely to the director, shall serve as an independent appeals officer and shall be authorized to compromise, settle, or otherwise resolve any dispute on any basis, including hazards and costs of litigation, considering equally the position of the taxpayer and the department on an impartial basis. The independent appeals officer shall not be influenced by any department tax compliance initiatives and policies, or loss of revenue to the State. Decisions of the independent appeals officer shall be in writing stating the facts, analysis, and conclusions in support, which shall be provided to the taxpayer and return preparer. Persons who currently serve or have served in the previous five years as an auditor, audit supervisor or manager, collector, collection supervisor or manager, district manager or supervisor, or tax compliance administrator, shall not be eligible to be the director's designee.

(b) Notwithstanding any other law to the contrary, including tax appeal procedures set forth under chapter 232, a taxpayer shall be eligible to petition the department once for participation in the administrative appeals and dispute resolution program after issuance of a notice of proposed assessment; provided that if a taxpayer has filed a tax appeal with the tax appeal court or other court, the taxpayer shall first be required to obtain the approval of the director and permission from the respective court prior to petitioning the department for participation. The director shall have the right to deny a petition for cause.

(c) The department shall adopt procedures to carry out the purposes of this section, including procedures relating to ex parte communications between the director or the director's designee and other department personnel to ensure that such communications do not compromise or appear to compromise the independence of the administrative appeals and dispute resolution program."

SECTION 16. Chapter 231, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

**"§231-G Rules or administrative guidance.** Rules, including temporary rules, providing examples and safe harbors shall be implemented to explain in clear and unambiguous terms the penalties and fines provided under any provi-

sion of title 14 that may be imposed against a return preparer or taxpayer for understatement of tax liabilities, promotion of abusive tax shelters, erroneous claims for refund or credit, or substantial understatements or misstatements of tax. Federal laws and administrative guidance may be used to interpret this section. Any such penalties or fines shall first be approved by the director before assessment.

**§231-H Disclosure of letter rulings, et al.** Notwithstanding any law to the contrary, any and all advice given or communications made by the department, including but not limited to letter rulings and determination letters, containing tax advice, shall be disclosed to the public under standards and procedures under Section 6110 of the federal Internal Revenue Code of 1986, as amended, the regulations thereunder, and federal court interpretations.

**§231-I Closing audit letters.** At the conclusion of a tax audit, the department shall provide to the taxpayer a closing audit letter that shall confirm in writing the department's position on each issue considered in the audit, and which shall provide guidance on how the taxpayer may report such issues for post audit years.

**§231-J Signature presumed authentic.** The fact that an individual's name is signed on a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by the individual.

**§231-K Temporary rulemaking authority for regulation of tax matters.** (a) Notwithstanding any other law in title 14, chapter 91, or chapter 201M to the contrary, the department is authorized to adopt any temporary rules as the department may deem proper as provided in this section. Temporary rules may include the adoption, amendment, or repeal of any rules concerning any matters which the department is authorized to regulate.

(b) Temporary rules shall take effect seven days after notice of the temporary rules is issued. Notice under this subsection shall require:

- (1) Making the temporary rules available on the department's and the lieutenant governor's websites;
  - (2) Making copies of the temporary rules available to the public for inspection at the department's offices or copying if any required fee is paid; and
  - (3) Providing public notice of the substance of the temporary rules at least once statewide.
- (c) Temporary rules shall be approved by the governor.
- (d) Any temporary rules issued by the department shall also be issued as proposed administrative rules that shall be subject to the procedural requirements of chapter 91.

(e) Temporary rules shall expire eighteen months from the date the temporary rules take effect.

(f) Temporary rules shall conspicuously provide the following information at the beginning of the temporary rules' text:

- (1) Notice stating the temporary nature of the rules;
- (2) The expiration date of the temporary rules; and
- (3) A statement advising that proposed administrative rules subject to chapter 91 are being simultaneously proposed for formal adoption.

(g) Temporary rules shall have the same force and effect as any other administrative rules."

SECTION 17. Section 231-7, Hawaii Revised Statutes, is amended to read as follows:

**“§231-7 Hearings and subpoenas.** (a) The director of taxation, and any representative of the director duly authorized by the director, may conduct any inquiry, investigation, or hearing, relating to any assessment, or the amount of any tax, or the collection of any delinquent tax, including any inquiry or investigation into the financial resources of any delinquent taxpayer or the ~~[collect-~~ibility] collectability of any delinquent tax.

(b) The director or other person conducting ~~[such hearing]~~ hearings may administer oaths and take testimony under oath relating to the matter of inquiry or investigation, and subpoena witnesses and require the production of books, papers, documents, and records pertinent to such inquiry.

(c) If any person disobeys ~~[such process,]~~ any process or, having appeared in obedience thereto, refuses to answer pertinent questions put to the person by the director or other person conducting ~~[such]~~ the hearing, or to produce any books, papers, documents, or records pursuant thereto, the director or other person conducting ~~[such]~~ the hearing may apply to the circuit court of the circuit wherein the inquiry or investigation is being conducted, or to any judge of ~~[such]~~ the court, setting forth ~~[such]~~ the disobedience to process or refusal to answer, and ~~[such]~~ the court or judge shall cite ~~[such]~~ the person to appear before ~~[such]~~ the court or judge to answer ~~[such]~~ the questions or to produce ~~[such]~~ the books, papers, documents, or records, and upon the person's refusal so to do commit ~~[such]~~ the person to jail until the person testifies but not for a longer period than sixty days. Notwithstanding the serving of the term of commitment by any person, the director may proceed in all respects as if the witness had not previously been called upon to testify. Witnesses (other than the taxpayer or the taxpayer's or its officers, directors, agents, and employees) shall be allowed their fees and mileage as in cases in the circuit courts, to be paid on vouchers of the department of taxation, from any moneys available for expenses of the department.

(d) Any subpoena issued under this section that does not identify the person with respect to whose liability or investigation the subpoena is issued may be served on any person only after a court proceeding in which the director or another person establishes that:

- (1) The subpoena relates to the investigation of a particular person or ascertainable group or class of persons;
- (2) There is a reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with any provision of title 14; and
- (3) The information sought to be obtained from the examination of records or testimony and the identity of the person or persons with respect to whose liability the subpoena is issued is not readily available from other sources.

(e) The provisions of this section are in addition to all other provisions of law, and apply to any tax within the jurisdiction of the department.”

SECTION 18. Section 232-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each board shall hold public meetings at some central location in its taxation district, commencing not later than April 9 of each year and shall hear, as speedily as possible, all appeals presented for each year. A taxpayer's identity and final documents submitted in support or opposition of an appeal shall be public information; provided that an individual taxpayer is authorized to redact all but the last four digits of the taxpayer's social security number from any ac-

accompanying tax return. Each board shall have the power and authority to decide all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer in the notice of appeal; provided that no board shall have power to determine or declare an assessment illegal or void. Without prejudice to the generality of the foregoing, each board shall have power to allow or disallow exemptions pursuant to law whether or not previously allowed or disallowed by the assessor and to increase or lower any assessment.”

SECTION 19. Section 232-16, Hawaii Revised Statutes, is amended to read as follows:

**“§232-16 Appeal to tax appeal court.** A taxpayer or county, in all cases, may appeal directly to the tax appeal court without appealing to a state board of review, or any equivalent administrative body established by county ordinance. An appeal to the tax appeal court is properly commenced by filing, on or before the date fixed by law for the taking of the appeal, a written notice of appeal in the office of the tax appeal court and by service of the notice of appeal on the director of taxation and, in the case of an appeal from a decision involving the county as a party, the real property assessment division of the county involved. An appealing taxpayer shall also pay the costs in the amount fixed by section 232-22.

The notice of appeal to the tax appeal court shall be sufficient if it meets the requirements prescribed for a notice of appeal to the board of review and may be amended at any time; provided that it sets forth the following additional information, to wit:

A brief description of the property involved in sufficient detail to identify the same and the valuation placed thereon by the assessor.

The notice of appeal shall be accompanied by a copy of the taxpayer’s return, if any has been filed[-]; provided that an individual taxpayer is authorized to redact all but the last four digits of the taxpayer’s social security number from any accompanying tax return.

An appeal to the tax appeal court shall be deemed to have been taken in time if the notice thereof and costs and the copy of the notice shall have been deposited in the mail, postage prepaid, properly addressed to the tax appeal court, the director of taxation, or the real property assessment division of the county involved, and to the taxpayer or taxpayers in the case of an appeal taken by a county, respectively, on or before the date fixed by law for the taking of the appeal.

An appeal to the tax appeal court shall bring up for review all questions of fact and all questions of law, including constitutional questions, necessary to the determination of the objections raised by the taxpayer or county in the notice of appeal.”

SECTION 20. Section 232-18, Hawaii Revised Statutes, is amended to read as follows:

**“§232-18 Certificate of appeal to tax appeal court.** Upon the perfecting of an appeal to the tax appeal court, the tax assessor of the district from which the appeal is taken shall immediately send up to the tax appeal court a certificate in which there shall be set forth the information required by section 232-16 to be set forth in the notice of appeal where an appeal is taken direct from the assessment to the tax appeal court.

The certificate shall be accompanied by the taxpayer's return, if any has been filed[.]; provided that the department of taxation is authorized to redact all but the last four digits of an individual taxpayer's social security number from an accompanying tax return, a copy of the notice of appeal to the state board of review, or equivalent administrative body established by county ordinance, and any amendments thereto, and the decision or action, if any, of the state board of review or equivalent administrative body. Failure of the assessor to comply herewith shall not prejudice or affect the taxpayer's, county's, or assessor's appeal and the certificate of appeal may be amended at any time up to the final determination of the appeal."

#### PART IV CRIMINAL TAX ENFORCEMENT

SECTION 21. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§231-L Wilful failure to collect and pay over tax.** Any person required to collect, account for, and pay over any tax imposed by title 14, who wilfully fails to collect or truthfully account for and pay over such tax shall be guilty of a class C felony, in addition to other penalties provided by law and, upon conviction, shall be subject to one or any combination of the following:

- (1) A fine of not more than \$100,000;
- (2) Imprisonment of not more than five years; or
- (3) Probation;

provided that a corporation shall be fined not more than \$500,000."

SECTION 22. Section 231-40, Hawaii Revised Statutes, is amended to read as follows:

**"[§231-40] Interpretation.** Sections 231-34, 231-35, [and] 231-36, and 231-F shall be construed in accordance with judicial interpretations given to similar provisions of Title 26 of the United States Code; consistent therewith, the term "wilfully" shall mean a voluntary, intentional violation of a known legal duty."

SECTION 23. Section 231-41, Hawaii Revised Statutes, is amended to read as follows:

**"[§231-41] Statute of limitation for criminal penalties.** Notwithstanding any laws to the contrary, prosecutions under sections 231-34, 231-35, [and] 231-36, and 231-F shall be commenced within seven years after the commission of the offense."

#### PART V MISCELLANEOUS

SECTION 24. Except as provided in section 27, this Act does not affect returns prepared and transactions promoted, rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 25. In codifying the new sections added by sections 1 through 5, section 15, section 16, and section 21, of this Act, the revisor of statutes shall

insert appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

**SECTION 26.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

**SECTION 27.** This Act shall take effect on July 1, 2009; provided that section 1 (relating to penalties for preparing returns with unreasonable positions), section 3 (relating to erroneous refund or credit claims), section 4 (relating to substantial understatements), section 5 (relating to the statute of limitations on substantial omissions), section 6 (relating to fraud assessments), section 7 (relating to fraud assessments), section 8 (relating to fraud assessments), section 10 (relating to fraud assessments), and section 11 (relating to fraud assessments) shall apply to any return prepared, refund claim, understatement, omission, or fraud contained in any return where the statute of limitations on assessment has not expired; provided that this Act shall not apply to any return prepared, refund claim, understatement, omission, or fraud in any return where an amended return is filed by October 1, 2009, to the extent the amended return cures, corrects, or eliminates any item constituting an unreasonable position, erroneous refund claim, substantial understatement, substantial omission, or fraud as provided in this Act.

(Approved July 1, 2009.)

**Notes**

1. Prior to amendment "said" appeared here.
2. Edited pursuant to HRS §23G-16.5.