

ACT 101

H.B. NO. 801

A Bill for an Act Relating to Taxation.

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

SECTION 1. The purpose of this Act is to clarify the department of taxation's subpoena authority for civil and criminal tax investigations.

SECTION 2. Section 231-7, Hawaii Revised Statutes, is amended to read as follows:

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

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

(c) The director of taxation or representative of the director duly authorized by the director, when conducting a civil audit, investigation, or hearing may subpoena witnesses and require the production of books, papers, documents, [and records pertinent to such inquiry.] other designated objects, or any other record however maintained, including those electronically stored, that are relevant or material to the civil audit, investigation, or hearing; provided that the director of taxation or deputy director of taxation shall give written approval for the issuance of a subpoena only after a review of the appropriateness of the issuance. A subpoena issued under this subsection:

- (1) Shall state that the subpoena is issued by the department and shall command each person to whom it is directed to attend and give testimony at the time and place specified, and may also command the person to whom the subpoena is directed to produce books, papers, documents, or other objects specifically designated;
- (2) May be served at any place within the State by an investigator appointed pursuant to section 231-4.3 or any other representative of the director duly authorized by the director;
- (3) Shall require attendance of the person only in the county wherein the person is served with the subpoena or at any other place as is agreed upon by the person and the department; provided that if the subpoena is served in a county other than that in which the person resides, is employed, or transacts the person's business in person, the

department shall bear the person's expenses for travel to and attendance at the place named in the subpoena to the same extent as provided by the rules of court other than the expenses of the taxpayer or the taxpayer's witnesses, officers, directors, agents, or employees: and

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

[(e)] If any person disobeys any process or, having appeared in obedience thereto, refuses to answer pertinent questions put to the person by the director or other person conducting the civil audit, investigation, or hearing, or to produce any books, papers, documents, objects, or records pursuant thereto, the director [or other person conducting the hearing] may apply to the circuit court of the circuit wherein the [inquiry or] civil audit, investigation, or hearing is being conducted, or to any judge of the court, setting forth the disobedience to process or refusal to answer, and the court or judge shall cite the person to appear before the court or judge to answer the questions or to produce the books, papers, documents, objects, or records[, and upon the person's refusal so to do]; provided that the court, upon a motion promptly made by the person, may quash or modify the subpoena if compliance would be unreasonable or oppressive or would violate any privilege the person would be entitled to exercise in a court proceeding. If the person fails or refuses to produce the subpoenaed books, papers, documents, objects, or record, the court shall institute a contempt proceeding against the person, at which time the court shall determine whether good cause is shown for the failure to obey the subpoena or the refusal to testify; provided that the court, on a motion promptly made, may quash or modify the subpoena if compliance would be unreasonable or oppressive or would violate any privilege the person would be entitled to exercise in a court proceeding. In the event that no good cause is shown, the court does not quash or modify the subpoena, and the person fails or refuses to comply with the subpoena, then the court shall commit 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 authorized in cases in the circuit courts, to be paid on vouchers of the department of taxation, from any moneys available for the expenses of the department.

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

- (1) Shall state that the subpoena is issued by the department and shall command each person to whom it is directed to attend and give testimony at the time and place specified, and may command the person to whom it is directed to produce books, papers, documents, or other objects specifically designated;
- (2) May be served at any place within the State by an investigator appointed pursuant to section 231-4.3 or any other law enforcement official with the powers of a police officer;

- (3) Shall require attendance of the person only in the county wherein the person is served with the subpoena or at any other place agreed upon by the person and the department; provided that if the subpoena is served in a county other than that in which the person resides, is employed, or transacts the person's business in person, the department shall bear the person's expenses for travel to and attendance at the place named in the subpoena to the same extent as provided by the rules of court; and
- (4) Shall contain a short, plain statement of the person's rights and the procedure for enforcing and contesting the subpoena.

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

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

- (1) The subpoena relates to the liability, audit, or 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.

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

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

~~[(e)]~~ (h) 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 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2011, and shall apply to any subpoena issued on or after the effective date of this Act.

(Approved June 9, 2011.)