HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 231
ADMINISTRATION OF TAXES

§18-231-1 "Last known address", defined. (a) As used in title 14, HRS, and this title, "last known address", "last known place of residence", "last known residence", or "address of the person last known" means the address that appears on the taxpayer's most recently filed and properly processed tax return, unless the department is subsequently given clear and concise notification of a different address.

(b) For purposes of this section, "clear and concise notification of a different address" shall mean an address provided by the taxpayer on the taxpayer's business application or a form prescribed by the department allowing for notification of change of address. Any other form of notification shall not be clear and concise for purposes of this section.

(c) If the address provided by the taxpayer pursuant to subsections (a) or (b) is invalid, the department may, but is not required to, use an address of the taxpayer obtained from any government agency or from public record." [Eff 2/3/19] (Auth: HRS §231-3(9)) (Imp: HRS §§231-9.8, 231-15.8, 231-17, 231-24, 231-33, 231-63, 232-7, 235-108, 235-114, 237-36, 243-14)

§18-231-2 to §18-231-3 (Reserved.)

HRS §231-3

§18-231-3-1.1 Request for Reconsideration of Assessment. (a) A request for reconsideration of assessment means the process by which a taxpayer requests the department to grant a reconsideration of assessment under section 18-231-3-1.2.

(b) A request for reconsideration of assessment is a purely administrative matter. A taxpayer's appeal rights are unaffected by a request for reconsideration of assessment, and a request for reconsideration of assessment does not constitute an appeal to the Board of Review or the Tax Appeal Court, or participation in the Expedited Appeals and Dispute Resolution Program described in section 231-7.5, HRS.

(c) The department may grant or deny any request for reconsideration of assessment in its sole discretion.

(d) A request for reconsideration of assessment shall be made by the taxpayer in writing to the auditor or tax return examiner listed on the Notice of Final Assessment or Denial Letter. The request for reconsideration of assessment shall be signed by the taxpayer and shall include:

(1) A detailed summary of facts and circumstances that the taxpayer believes would, if taken into consideration, result in a different assessment;

(2) A list of documentation, evidence, or other information not previously considered by the department that supports the taxpayer's position under paragraph (1); provided that if the department grants a request for reconsideration of assessment under subsection (g), the taxpayer shall provide all such listed documentation, evidence, or other information within thirty days unless otherwise specified by the department; and

(3) An explanation of why the taxpayer did not provide the facts, documentation, evidence, or information under paragraphs (1) and (2) during the audit or before the department issued the Notice of Final Assessment or Denial Letter.

(e) If the time for the taxpayer to appeal a Notice of Final Assessment or Denial Letter has elapsed, the department may require the taxpayer to pay no more than thirty per cent of the portion of the assessment in dispute prior to granting a request for reconsideration of assessment. The amount paid under this subsection shall be applied according to section 231-27, HRS, and shall not be considered a payment under protest under section 40-35, HRS.

(f) The granting of a request for reconsideration of assessment is merely an acknowledgment that the department will consider the additional documentation, evidence, or other information listed in the taxpayer's

request, and in no way ensures or indicates that the department will issue a new, modified, or amended Notice of Final Assessment or Denial Letter after such reconsideration.

(g) The department shall notify the taxpayer in writing of the grant or denial of a request for reconsideration of assessment. If the department elects to grant a request for reconsideration of assessment, the department shall notify the taxpayer in writing that:

(1) The department has granted the taxpayer's request for reconsideration of assessment; and

(2) Reconsideration of assessment does not affect the taxpayer's appeal rights and the taxpayer should take steps to ensure it perfects any appeal rights related to the existing Notice of Final Assessment or Denial Letter." [Eff 3/26/16] (Auth: HRS §231-3(9)) (Imp: HRS §231-3)

HRS §231-3

§18-231-3-1.2 Reconsideration of Assessment. (a) For purposes of this section, "reconsideration of assessment" means the process by which the department reevaluates the results of:

(1) A prior audit where tax was assessed and remains unpaid; or

(2) A prior denial of a taxpayer's claim of a refund or tax credit.

(b) Upon granting a request for reconsideration of assessment under section 18-231-3-1.1, the department may:

(1) Request additional substantiation, worksheets, spreadsheets, explanations and other documentation; and

(2) Amend or rescind existing assessments, issue new assessments, or let existing assessments stand in its sole discretion." [Eff 3/26/16] (Auth: HRS §231-3(9)) (Imp: HRS §231-3)

§18-231-1.3 to §18-231-3-9 (Reserved.)

HRS §231-3(10)

§18-231-3-10 Compromises. (a) In general.

(1) Authority. Pursuant to section 231-3(10), HRS, the director of the department of taxation may compromise any tax liability or interest or penalty thereon, arising under any tax law, the administration of which is within the scope of the department's duties, subject to approval of the governor.

(2) Basis for compromise. An offer to compromise a tax liability may be considered only if:

(A) There is doubt as to liability;

(B) There is doubt as to collectability; or

(C) The compromise promotes effective tax administration.

No liability shall be compromised if the liability is established by a valid judgment and there is no doubt as to the State's ability to collect the tax.

(b) Scope of compromise. In general, a compromise agreement may relate to civil or criminal liability with respect to taxes, interest, and penalties. Acceptance of an offer in compromise of civil liability shall not compromise criminal liability, nor shall acceptance of an offer in compromise of criminal liability compromise civil liability. Criminal liability may be compromised only if the liability results from violation of a regulatory provision or related statute, and the violation was not done deliberately or with an intent to defraud.

(c) Effect of compromise agreement. A compromise agreement shall relate to a taxpayer's entire liability, including taxes, interest, penalties, or any combination thereof, for the periods specified and as set forth in the compromise agreement. Upon acceptance and approval of a compromise agreement by the governor, neither the taxpayer nor the State may reopen the matter, unless:

(1) There was falsification or concealment of assets by the taxpayer,

(2) A mutual mistake of a material fact was made (sufficient enough to set aside or reform an agreement),

(3) The taxpayer is in breach of any collateral agreement entered into by the department of taxation and the taxpayer, or

(4) The taxpayer defaults on payments owed under the compromise agreement.

(d) Procedure.

(1) Submission of an offer. The taxpayer or the taxpayer's duly authorized agent shall submit an offer in compromise in writing to the director of the department of taxation. Any offer in compromise asserting doubt as to collectability shall be accompanied by a detailed statement of the taxpayer's financial condition.

(2) Remittance of compromise amount. Each offer in compromise shall be submitted with a remittance representing the amount of the compromise offer, or a substantial deposit, if the offer provides for installment payments.

(e) Stay of collection proceedings. The submission of an offer in compromise to the department of taxation shall not automatically stay the collection of any tax liability. However, the director of taxation may defer collection if the State's interest will not be jeopardized.

(f) Acceptance of an offer. An offer in compromise shall only be considered accepted when the taxpayer or the taxpayer's duly authorized agent receives notice of the acceptance in writing. As a condition to acceptance, the department of taxation may require the taxpayer to enter into collateral agreements, waive tax refunds, or post security to protect the State's interest.

(g) Withdrawal or rejection of an offer. An offer in compromise may be withdrawn by a taxpayer or the taxpayer's duly authorized agent at any time prior to its acceptance. If an offer is rejected, the taxpayer or the taxpayer's duly authorized agent shall be notified in writing. Frivolous offers or offers submitted for the purpose of delaying collection of tax liability shall be immediately rejected. If an offer in compromise is withdrawn or rejected, the amount remitted with the offer (including all installments paid), shall be refunded to the taxpayer without interest, unless the taxpayer agrees that the amount remitted may be applied to the liability with respect to which the offer was submitted.

(h) Release of lien. The department of taxation shall release any tax lien related to tax liability settled under a compromise agreement upon final payment. If final payment is contingent upon the simultaneous release of the tax lien (in whole or in part), payment shall be made in cash, by check (certified or cashier's), or money order.

(i) Records. Pursuant to section 231-3(10), HRS, a statement containing the following information shall be placed on file in the department of taxation:

(1) The taxpayer's name;
(2) The amount of tax assessed or proposed to be assessed;
(3) The amount of penalties and interest imposed or which could be imposed by law with respect to the tax, as computed by the department of taxation;
(4) The total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof; and
(5) The reasons for the compromise.

(j) Inspection of records. A copy of the statement on file with the department of taxation pursuant to section 231-3(10), HRS, shall be available for public inspection. Inspection may occur after an appointment is made with the collection division chief of the department of taxation. Upon request, copies of the statement on file pursuant to section 231-3(10) may be obtained at a cost of $1 a page.

(k) Statute of limitations. No offer in compromise shall be accepted unless the taxpayer waives the running of the statutory period of limitations on the assessment of tax liability for the taxable years specified in the pending offer or the period ending one year after receipt of final payment on a compromise agreement.

(l) Effective date. This section shall take effect upon the enactment of the law making information in subsection (i) available for public review or ten days after the filing of this section with the office of the Lieutenant Governor, whichever is later. [Eff 7/6/90; am 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-3(10))

§18-231-3-11 to §18-231-3-14 (Reserved.)

HRS §231-3(14)

§18-231-3-14.16 Cancellation of licenses; placement on inactive status. (a) As used in this section:

"Annual return" means a tax return required to be filed under section 237-33, 237D-7, or 251-6, HRS.

"License" means a license issued under chapter 237, HRS, or a certificate of registration issued under chapter 237D or 251, HRS.

"Licensee" means the person to whom a license has been issued.

"Periodic return" means a tax return required to be filed under section 237-30, 237D-4, or 251-3, HRS.

(b) Any person who goes out of business or otherwise ceases to engage in activity for which the person was licensed, or who transfers ownership of a business, shall notify the district tax office to which the person reports by cancelling the license on a form prescribed by the department not more than ten days after the transfer of ownership or the cessation of activity. As used in this section, a transfer of ownership means that the business is conducted by a different person or company. A transfer of ownership occurs, for example, if a sole proprietorship is changed to a partnership or corporation. A licensee shall return the license to the department with the notice of cancellation.

(c) A licensee that discontinues its business activity temporarily may request in writing that its license be placed on inactive status.

(1) Any request for inactive status shall include the licensee's agreement that the licensee must request reactivation of the license and file a periodic return if the licensee later derives any income from business activity.
(2) The director may grant the request for inactive status for a period not to exceed two years, and upon request may extend the inactive status of a license for additional periods of no more than two years each, if the director is satisfied that the interests of the State will not be jeopardized.

(3) If the request is granted, the director shall inform the licensee of the effective date. The director shall return a license on inactive status to active status upon a licensee's written request.

(d) Cancellation of a license, or placement of a license on inactive status, shall have no effect on liability for payment of taxes, fees, penalties, or interest incurred or imposed. [Eff 6/18/94] (Auth: HRS §§231-3(9)) (Imp: HRS §§231-3(14), 237-9, 237D-4, 251-3)

§18-231-3-14.17 Revocation of licenses because of abandonment. (a) The definitions in section 18-231-3-14.16(a) apply to this section.

(b) The director may revoke any license that has been abandoned.

(c) A license shall be deemed abandoned if, according to the records of the department, the licensee has failed to file both periodic and annual returns for a period of not less than five years excluding any periods in which the department has permitted the license to be placed on inactive status. For purposes of this section, the actual filing of a return showing no tax liability is not a failure to file.

(d) Before the director may revoke a license because of abandonment, the director shall give notice of intention to revoke the license by publishing the notice for a period of at least forty-five days on the department of taxation's website.

(e) If a licensee:

(1) Disputes that the license has been abandoned, or

(2) Claims that the department may not revoke the license because of a reason stated in section 237-9(d), 237D-4(f), or 251-3(c), HRS, or for any other valid reason,

the licensee shall petition the director in writing setting forth reasons why revocation should not occur, no later than forty-five days after the publication of the notice described in subsection (d).

(f) Revocation of a license shall have no effect on liability for payment of taxes, fees, penalties, or interest incurred or imposed. [Eff 6/18/94; am 3/17/2018; am 8/21/2021] (Auth: HRS §§231-3(9), 237-9(b), 237D-4(e), 251-3(b)) (Imp: HRS §§231-3(14), 237-9, 237D-4, 251-3)

HRS §231-3(14) **§18-231-3-14.18 Revocation of licenses because of death or dissolution.** (a) The definitions in section 18-231-3-14.16(a) apply to this section.

(b) The director may revoke any license if the department is presented with adequate proof that the licensee is deceased, has been dissolved, or otherwise has ceased to exist. Adequate proof includes:

(1) For an individual licensee, a photocopy of a death certificate or other adequate proof of death; and

(2) For a licensee other than an individual, a photocopy of a certificate of dissolution or other document showing that the licensee's existence has terminated.

(c) Revocation of a license shall have no effect on liability for payment of taxes, fees, penalties, or interest incurred or imposed. [Eff 6/18/94] (Auth: HRS §§231-3(9), 237-9(b), 237D-4(b), 251-3(b)) (Imp: HRS §§231-3(14), 237-9, 237D-4, 251-3)

§18-231-3-14.19 to §18-231-14.20 (Reserved.)

HRS §231-3(14) **§18-231-3-14.21 Scope of recordkeeping rules.** Sections 18-231-3-14.22 to 18-231-3-14.25 apply to every person liable for a tax imposed by chapter 237, 237D, 238, 243, 244D, 245, or 251, HRS. [Eff 8/18/94] (Auth: HRS §§231-3(9)) (Imp: HRS §§237-41, 237D-12, 238-9, 243-9, 244D-9, 245-8, 251-11)

HRS §231-3(14) **§18-231-3-14.22 General recordkeeping requirements.** (a) Every person who:

(1) Does business (within the meaning of section 237-2, HRS) in this State;

(2) Imports tangible personal property for use, sale, or consumption in this State; or

(3) Purchases tangible personal property for use, sale, or consumption in this State from a seller that is not licensed under chapter 237, HRS,

shall keep complete and adequate records from which the department may determine any tax for which that person may be liable.

(b) Unless the department authorizes an alternative method of recordkeeping in writing, these records shall show:

(1) Gross receipts from all activities engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect, including the fair market value of property or services received in barter or exchange transactions, whether the receipts are claimed to be taxable or nontaxable.

(2) The amounts of all deductions, exemptions, or credits claimed in filing any tax return.

(3) Total value, as defined in section 18-238-2(g)(2), of all tangible personal property purchased for sale, consumption, or lease in this State.

(c) The records shall include:

(1) The normal books of account ordinarily maintained by the prudent business person in the line or lines of business in which the person is engaged;

(2) All bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account;

(3) All schedules or working papers used in preparation of tax returns; and

(4) Any records that may be required under any specific tax chapter to which the taxpayer may be subject (such as those described in sections 243-9, 244D-9, or 245-8, HRS). [Eff 8/18/94] (Auth: HRS §§231-3(9)) (Imp: HRS §§237-41, 237D-12, 238-9, 243-9, 244D-9, 245-8, 251-11)

HRS §231-3(14)

§18-231-3-14.23 Microfilm, microfiche, and similar records. Records, including general books of account, such as cash books, journals, voucher registers, ledgers, and like documents may be maintained by microfilm, microfiche, computer imaging, or another method approved by the department in writing, if the following requirements are satisfied:

(1) Appropriate facilities shall be provided for preservation of the films or media for the periods required;

(2) Microfilm rolls, fiche, or other approved media shall be systematically filed, indexed, cross-referenced and labeled to show beginning and ending numbers or to show beginning and ending alphabetical listing of documents included;

(3) Taxpayer shall make available upon request of the department, at the examination site or other mutually agreeable location, facilities for the ready inspection and location of particular records, such as a reader, printer, projector, or terminal in good working order for viewing and copying the records;

(4) Taxpayer shall set forth in writing the procedures governing the establishment of its data storage and retrieval system and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the corporate board of directors, general partners, or owners;

(5) The data storage and retrieval system shall be complete and shall be used consistently in the regular conduct of the business;

(6) Taxpayer shall establish procedures with appropriate documentation so that an original document can be traced through the data storage and retrieval system;

(7) Taxpayer shall establish internal procedures for inspection and quality assurance of the data storage and retrieval system;

(8) Taxpayers shall be responsible for the effective identification, processing, storage, and preservation of microfilm, microfiche, or other approved media, making the media readily available for inspection or testing by the department as long as the contents may become material in the administration of any state tax law;

(9) Taxpayer shall keep a record identifying where, when, by whom, and on what equipment the microfilm, microfiche, or other approved media was produced;

(10) The material displayed, or reproduced on paper, by the data retrieval equipment shall exhibit a high degree of legibility and readability, where legible means the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals, and readability means the quality of a group of letters or numerals being recognizable as words or complete numbers; and

(11) The data storage and retrieval system, including processing duplication, quality control, storage, identification, and inspection shall meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards. [Eff 8/18/94] (Auth: HRS §§231-3(9)) (Imp: HRS §§237-41, 237D-12, 238-9, 243-9, 244D-9, 245-8, 251-11)

HRS §231-3(14)

§18-231-3-14.24 Records prepared by automated data processing systems. (a) An automatic data processing (ADP) tax accounting system may be used to provide the records required to verify tax liability. All ADP systems used for this purpose shall include a method of producing legible and readable records to verify tax liability, reporting, and payment. The following requirements apply to any taxpayer maintaining records on an ADP system:

(1) The ADP system shall be able to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are

processed, the system shall have the ability to reconstruct these transactions. The system shall be made available upon request to the department for inspection and testing.

(2) A general ledger, with source references, shall be prepared to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers also shall be prepared.

(3) The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the department upon request. The system shall be designed so that supporting documents, such as sales invoices, purchase invoices, and credit memoranda, are readily available.

(4) A description of the ADP portion of the accounting system shall be made available to the department upon request. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(A) The application being performed;

(B) The procedures employed in each application, which may be supported by flow charts, block diagrams, or other reasonable description of the input or output procedures; and

(C) The controls used to ensure accurate and reliable processing.

Changes in the ADP system, together with their effective dates, shall be noted.

(5) Adequate record retention facilities shall be used for storing tax information, printouts, and all supporting documents required by law.

(b) Compliance with standards promulgated by the Internal Revenue Service for ADP systems to be in compliance with section 6001 (with respect to records required to be kept by every person subject to any federal tax) of the Internal Revenue Code of 1986, as amended (such as Rev. Proc. 91-59, 1991-2 C.B. 841) shall be considered sufficient to comply with this section. [Eff 8/18/94] (Auth: HRS §§231-3(9)) (Imp: HRS §§237-41, 237D-12, 238-9, 243-9, 244D-9, 245-8, 251-11)

HRS §231-3(14) **§18-231-3-14.25 Records to be preserved for three years; penalties for failure to maintain records.** (a) The records described in section 18-231-3-14.22 shall be kept in the English language and preserved within the State for a period of not less than three years, and shall be kept and preserved for a longer period if so provided by statute. The records relating to any tax for a taxable period shall be preserved during the statutory period within which the tax may be assessed or levied, including any extensions of the statutory period agreed to between the department and the taxpayer.

(b) Those records shall be made available for examination on request by the department or the Multistate Tax Commission, or the authorized representatives of either.

(c) Upon failure by the taxpayer, without reasonable cause, to substantially comply with the requirements of sections 18-231-3-14.22 to 18-231-3-14.25, the department may:

(1) Disregard any records that have not been prepared and maintained in substantial compliance with the requirements of these rules;

(2) Treat the noncompliance with these rules as evidence of negligence or intent to evade the payment of taxes; and

(3) Revoke a taxpayer's general excise license, or certificate of registration, upon evidence of continued failure to comply with these rules. [Eff 8/18/94] (Auth: HRS §§231-3(9)) (Imp: HRS §§237-41, 237D-12, 238-9, 243-9, 244D-9, 245-8, 251-11)

HRS §231-3(14) **§18-231-3-14.26 Registration of representatives.** The department may require all persons who represent a taxpayer in any capacity before the department to register in the manner prescribed by the department. [Eff 3/17/2018] (Auth: HRS §§231-3(9)) (Imp: HRS §§231-3(14))

HRS §231-3.4 **§18-231-3.4-01 Cost recovery fees for published reports.** (a) The department shall charge cost recovery fees to any person requesting to receive a copy of a published report from the department.

(b) The department may waive the fee imposed under this section in cases of hardship as defined by section 18-231-25.5-01(g) and determined by all relevant facts and circumstances.

(c) For the purposes of this section "published report" means a report on:

(1) Hawaii income patterns for individuals, corporations, proprietorships, or partnerships; or

(2) Tax credits

prepared by the department's Tax Research and Planning Office. A published report may be in electronic forms defined by section 18-231-25.5-01 or any other physical form.

(d) The fee amounts charged under this section shall be determined by those amounts actually charged to and incurred by the department for the production and distribution of each published report. Each fee charged under

this section shall be separately imposed and more than one fee may apply. [Eff 3/03/97] (Auth: HRS §§231-3(9), 231-3.4(b)(1)) (Imp: HRS §231-3.4(b)(1), (Act 250, Section 2, SLH 1996))

§18-231-4 to §18-231-9 (Reserved.)

HRS §231-9.4 **§18-231-9.4-01 Payment of taxes by credit card and debit card.** Sections 18-231-9.4-01 to 18-231-9.4-09 implement section 231-9.4, HRS, relating to the payment of taxes administered by the department of taxation by credit card and debit card. Section 231-9.4, HRS, and these rules apply notwithstanding any contrary provision in title 14, HRS, relating to the payment of taxes. [Eff 08/04/2006] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

HRS §231-9.4 **§18-231-9.4-02 Payment of taxes by credit card and debit card; definitions.** As used in sections 18-231-9.4-01 to 18-231-9.4-09:

"Department" means the department of taxation

"Director" means the director of taxation.

"Payor" means the taxpayer, or a third party who tenders payment on behalf of a taxpayer at the taxpayer's request.

"Tax type" means a tax administered by the department and approved by the director for payment by credit card and debit card.

"Taxpayer" includes an individual, a trust, estate, partnership, association, company, or corporation; provided that an affiliated group of domestic corporations filing a consolidated return pursuant to section 235-92, HRS, shall be considered one taxpayer. [Eff 08/04/2006] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

HRS §231-9.4 **§18-231-9.4-03 Authority to receive.** (a) Payment on a tax type may be made by credit card or debit card as authorized by this section. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer. Only credit cards or debit cards approved by the Department may be used for this purpose and only in payment of the tax liabilities of the tax type specified by the Department may be paid by credit card or debit card. All such payments must be made in the manner and in accordance with the forms, instructions and procedures prescribed by the Department. All references in this section to tax also include interest, penalties, additional amounts, and additions to tax.

(b) Provisions relating to payments by electronic funds transfer other than payments by credit card and debit card are contained in section 231-9.9, HRS and the rules promulgated pursuant to section 231-9.9, HRS. [Eff 08/04/2006] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

HRS §231-9.4 **§18-231-9.4-04 When payment is deemed made.** A payment of tax by credit card or debit card shall be deemed made when the issuer of the credit card or debit card properly authorizes the transaction, provided that the payment is actually received by the Department in the ordinary course of business and is not returned pursuant to §18-231-9.4-06 of this section. [Eff 08/04/2006] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

HRS §231-9.4 **§18-231-9.4-05 Continuing liability of taxpayer.** (a) A taxpayer, who tenders payment of taxes, or, on whose behalf a third party tenders payment of taxes by credit card or debit card is not relieved of liability for such taxes until the payment is actually received by the Department and is not required to be returned pursuant to §18-231-9.4-06 of this section. This continuing liability of the taxpayer is in addition to, and not in lieu of, any liability of the issuer of the credit card or debit card or financial institution pursuant to §18-231-9.4-05(b) of this section.

(b) If a payor has tendered a payment of taxes by credit card or debit card, the credit card or debit card transaction has been guaranteed expressly by a financial institution, and the Department is not duly paid, then the Department shall have a lien for the guaranteed amount of the transaction upon all the assets of the institution making such guarantee. The unpaid amount shall be paid out of such assets in preference to any other claims whatsoever against such guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such institution. [Eff 08/04/2006] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

HRS §231-9.4 **§18-231-9.4-06 Resolution of errors relating to the credit card or debit card account.** (a) Payments of taxes by credit card or debit card shall be subject to the applicable error resolution procedures of section 161 of the Truth in Lending Act (15 U.S.C. 1666), section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or any similar provisions of state or local law, for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes or adjustments relating to the underlying tax liability.

(b) (1) The error resolution procedures of paragraph (a) of this section apply to the following types of errors–

(A) An incorrect amount posted to the taxpayer's account as a result of a computational error, numerical transposition, or similar mistake;

(B) An amount posted to the wrong taxpayer's account;

(C) A transaction posted to the taxpayer's account without the taxpayer's authorization; and

(D) Other similar types of errors that would be subject to resolution under section 161 of the Truth in Lending Act (15 U.S.C. 1666), section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or similar provisions of state or local law.

(2) An error described in paragraph (b) of this section may be resolved only through the procedures referred to in paragraph (a) of this section and cannot be a basis for any claim or defense in any administrative or court proceeding involving the Department or the State.

(c) Notwithstanding any contrary provision in title 14, HRS, relating to the refund of taxes paid, if a taxpayer is entitled to a return of funds pursuant to the error resolution procedures of paragraph (a) of this section, the Director may, in the Director's sole discretion, effect such return by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or any other financial institution or person that participated in the transaction in which the error occurred.

(d) The error resolution procedures of paragraph (a) of this section do not apply to any error, question, or dispute concerning the amount of tax owed by any person for any year. For example, these error resolution procedures do not apply to determine a taxpayer's entitlement to a refund of tax for any year for any reason, nor may they be used to pay a refund. All such matters shall be resolved through administrative and judicial procedures established pursuant to Title 14 and the rules and regulations thereunder.

(e) By submitting payment of taxes by credit card or debit card, the taxpayer expressly acknowledges that the transaction(s) are not subject to section 170 of the Truth in Lending Act (15 U.S.C. 1666i) or to any similar provision of state or local law. To the extent permissible, the term "creditor" as used in section 103(f) of the Truth in Lending Act (15 U.S.C. 1602 (f)) shall not include the Department with respect to credit card transactions in payment of any tax type. [Eff 08/04/2006] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

HRS §231-9.4 **§18-231-9.4-07 Fees or charges.** (a) The Department may not impose any fee or charge on persons making payment of taxes by debit card. This section does not prohibit the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction. The Department may not receive any part of any fees that may be charged by such institution(s).

(b) The Department may impose a processing fee or charge as authorized by section 40-35.5, HRS on persons making payment of taxes by credit card. This section does not prohibit the imposition of additional fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction. The Department may not receive any part of any fees that may be charged by such institution(s). [Eff 08/04/2006 (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

HRS §231-9.4 **§18-231-9.4-08 Authority to enter into contracts.** The Director may enter into contracts related to receiving payments of tax by credit card or debit card if such contracts are cost beneficial to the State. The determination of whether the contract is cost beneficial shall be based on an analysis appropriate for the contract at issue and at a level of detail appropriate to the size of the State's investment or interest. The Department may not pay any fee or charge or provide any other monetary consideration under such contracts for such payments. [Eff 08/04/2006] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

HRS §231-9.4 **§18-231-9.4-09 Use and disclosure of information relating to payment of taxes by credit card and debit card.** Any information or data obtained directly or indirectly by any person other than the taxpayer in connection with payment of taxes by a credit card or debit card shall be treated as confidential, whether such information is received from the Department or from any other person (including the taxpayer).

(a) No person other than the taxpayer shall use or disclose such information except as follows–

(1) Card issuers, financial institutions, or other persons participating in the credit card or debit card transaction may use or disclose such information for the purpose and in direct furtherance of servicing cardholder accounts, including the resolution of errors in accordance with §18-231-9.4-06. This authority includes the following:

(A) Processing the credit card or debit card transaction, in all of its stages through and including the crediting of the amount charged on account of tax to the State;

(B) Billing the taxpayer for the amount charged or debited with respect to payment of the tax liability;

(C) Collecting the amount charged or debited with respect to payment of the tax liability;
(D) Returning funds to the taxpayer in accordance with §18-231-9.4-06 of this section;
(E) Sending receipts or confirmation of a transaction to the taxpayer, including secured electronic transmissions and facsimiles; and
(F) Providing information necessary to make a payment to other state or local government agencies, as explicitly authorized by the taxpayer (e.g., name, address, taxpayer identification number).

(2) Card issuers, financial institutions or other persons participating in the credit card or debit card transaction may use and disclose such information for the purpose and in direct furtherance of any of the following activities—
(A) Assessment of statistical risk and profitability;
(B) Transfer of receivables or accounts or any interest therein;
(C) Audit of account information;
(D) Compliance with federal, state, or local law; and
(E) Cooperation in properly authorized civil, criminal, or regulatory investigations by federal, state, or local authorities.

(b) Notwithstanding the provisions of paragraph (a) of this section, use or disclosure of information relating to credit card and debit card transactions for purposes related to any of the following is not authorized—
(1) Sale of such information (or transfer of such information for consideration) separate from a sale of the underlying account or receivable (or transfer of the underlying account or receivable for consideration);
(2) Marketing for any purpose, such as, marketing tax-related products or services, or marketing any product or service that targets those who have used a credit card or debit card to pay taxes; and
(3) Furnishing such information to any credit reporting agency or credit bureau, except with respect to the aggregate amount of a cardholder's account, with the amount attributable to payment of taxes not separately identified.

(c) Use and disclosure of information other than as authorized by this rule may result in civil liability under sections 235-116, HRS, 237-34, HRS, 237D-13, HRS, 251-12, HRS, and IRC 7431(a)(2) and (h). [Eff 08/04/2006] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

HRS §231-9.9 **§18-231-9.9-01 Payment of taxes through electronic funds transfer; scope of rules.** Sections 18-231-9.9-01 to 18-231-9.9-11 implement section 231-9.9, HRS, relating to the payment of taxes by electronic funds transfer of taxes administered by the department of taxation. Section 231-9.9, HRS, and these rules apply notwithstanding any contrary provision in title 14, HRS, relating to the payment of taxes. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

HRS §231-9.9 **§18-231-9.9-02 Payment of taxes through electronic funds transfer; definitions.** As used in sections 18-231-9.9-01 to 18-231-9.9-11:

"ACH" or "Automated Clearing House" means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, which operates as a clearing house for transmitting or receiving entries between banks or bank accounts, and which authorizes an electronic transfer of funds between the banks or bank accounts.

"ACH credit" means a transaction in which the taxpayer, through its own bank, originates an ACH transaction crediting the department's bank account and debiting the taxpayer's bank account for the amount of a tax payment.

"ACH debit" means a transaction in which the department, through its designated depository bank, originates an ACH transaction debiting the taxpayer's bank account and crediting the department's bank account for the amount of a tax payment.

"Addenda record" means that information required by the department in an ACH credit transfer or wire transfer, in approved electronic format. The approved electronic format is the TXP Banking Convention, used in the free form field of the National Automated Clearing House Association (NACHA) CCD+ entry.

"Bank" includes any financial institution described in section 241-1, HRS, that accepts deposits.

"Call-in day" means the day on which a taxpayer communicates payment information to the Data Collection Center.

"Call-in period" means the time interval specified by the Data Collection Center in each call-in day during which EFT payment information received by the Data Collection Center is processed for transactions occurring on the next business day.

"Data Collection Center" means the unit within the department, or a third party vendor under contract with the department or its designated bank, which collects and processes EFT payment information from taxpayers.

"Department" means the department of taxation.

"Due date" means the date on or before which a payment is required to be made by a taxpayer under a tax law of this state.

"Electronic Funds Transfer" or "EFT" means any transfer of funds initiated through an electronic terminal, telephone instrument, computer, magnetic tape, or other means approved by the department, so as to order, instruct, or authorize a financial institution to debit or credit an account using the methods specified in these rules. EFT does not include transactions originated by checks, drafts, or similar paper instruments.

"Payment information" means the data which the department requires of a taxpayer making an EFT payment and which must be communicated to the Data Collection Center.

"Payor" means the taxpayer.

"Payor information number" means a confidential code assigned to each taxpayer which uniquely identifies the payor and allows the payor to communicate payment information to the Data Collection Center.

"Tax type" means a tax administered by the department which is subject to EFT. The tax types for which taxpayers will be required to pay by EFT are as follows:

(1) Net income tax under chapter 235, HRS, which includes estimated tax;
(2) Withholding tax on wages under chapter 235, HRS;
(3) General excise and use taxes under chapters 237 and 238, HRS;
(4) Transient accommodations tax under chapter 237D, HRS;
(5) Public service company tax under chapter 239, HRS;
(6) Franchise tax under chapter 241, HRS;
(7) Fuel tax under chapter 243, HRS;
(8) Liquor tax under chapter 244D, HRS;
(9) Tobacco tax under chapter 245, HRS; and
(10) Rental motor vehicle and tour vehicle surcharge tax under chapter 251, HRS.

"Taxpayer" includes an individual, a trust, estate, partnership, association, company, or corporation; provided that an affiliated group of domestic corporations filing a consolidated return pursuant to section 235-92, HRS, shall be considered one taxpayer.

"Threshold amount" means the amount a payment made by a taxpayer for a tax type must equal or exceed for the taxpayer to be required to use EFT when making payments for the tax type. The threshold amount is set forth in section 18-231-9.9-03(a).

"Trace number" means the verification code provided by the Data Collection Center upon receipt of all payment information from the payor which uniquely identifies the completed communication of payment information. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

HRS §231-9.9

§18-231-9.9-03 Taxpayers subject to the EFT program. (a) A taxpayer whose liability for any tax type was more than $100,000 in any one taxable year shall be required to participate in the EFT program upon notification by the department that the taxpayer is required to participate. A taxpayer who is required to participate shall participate for a minimum of one year.

(1) The department shall excuse from participation any taxpayer that demonstrates that it did not meet the liability threshold set forth in this subsection in its prior taxable year.
(2) The department may excuse from participation any taxpayer that demonstrates undue hardship from being required to participate in the EFT program. As used in this paragraph, undue hardship means more than an inconvenience to the taxpayer; it must appear that substantial financial loss will result.

(b) Any taxpayer that is not required to participate in the EFT program may apply to participate in the EFT program, and any taxpayer that is required to participate in the EFT program with respect to one or more tax types may apply to participate in the program with respect to any other tax types. A taxpayer who applies to participate and who is accepted by the department shall participate for a minimum of one year.

(1) Written requests for voluntary inclusion in the EFT program shall be filed with the department at least two months before the due date of the first payment to be made by EFT.
(2) A taxpayer may terminate voluntary participation by filing a written notice of termination with the department at least two months before the due date of the last EFT payment to be made.

(c) The department shall contact any taxpayer selected for the EFT program at its address on file with the department. Once selected for the EFT program with respect to a tax type, the taxpayer shall transmit all payments for that tax type by EFT. [Eff 12/16/95; am 3/17/2018] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

HRS §231-9.9 **§18-231-9.9-04 Payor information.** (a) A taxpayer selected to participate in the EFT program shall file an authorization for EFT using the ACH debit method, or shall apply for permission to use the ACH credit method or any other EFT method, on forms prescribed by the department. The forms shall be filed with the department at least two months before the due date of the first payment to be made by EFT.

(b) Upon receipt of payor information, the Data Collection Center shall assign a confidential payor identification number directly to the taxpayer to be used by the taxpayer when communicating payment information to the Data Collection Center. If the taxpayer's payor information is timely filed with the department under subsection (a), the payor identification number shall be provided to the taxpayer before the first required payment is due under the EFT program.

(c) A taxpayer shall provide at least one month written notice of any change of information required with the EFT authorization form by submitting a revised form to the department. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

§18-231-9.9-05 Methods of EFT. (a) A taxpayer participating in the EFT program shall utilize the ACH debit method unless the department permits the taxpayer to utilize another EFT method.

(b) A taxpayer desiring to use the ACH credit method or any other EFT method shall apply to the department for permission to do so, and the department may grant permission for good cause shown. A taxpayer who is already using the ACH credit method to pay vendors, or is already successfully using the ACH credit method to pay taxes to other states, shall be deemed to have shown good cause to use the ACH credit method.

(c) Permission to use the ACH credit method or other EFT method described in subsection (b) shall be conditioned upon the taxpayer's agreement to provide payment information to the Data Collection Center as provided in these rules, and to bear all costs of that method (including any receiving fee charged to the department or to the state treasury).

(d) The Department may require a taxpayer to use the ACH debit method, and may revoke any permission given to that taxpayer to use any other EFT method, if the taxpayer:

(1) Does not consistently transmit error-free payments;
(2) Substantially varies from the requirements and specifications of these rules;
(3) Repeatedly fails to make timely EFT payments or timely provide payment information; or
(4) Repeatedly fails to provide the required addenda record with the EFT payment. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

HRS §231-9.9 **§18-231-9.9-06 Communication with Data Collection Center.** A taxpayer participating in the EFT program shall communicate payment information to the Data Collection Center through:

(1) Operator-assisted communication of payment information made orally by rotary or touch-tone telephone;
(2) Communication of payment information by way of a computer with a modem; or
(3) Such other means of communication as the Data Collection Center may permit with the approval of the department. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

HRS §231-9.9 **§18-231-9.9-07 Payment transmission, errors and omissions; penalties.** (a) A taxpayer which transmits an incorrect payment amount to the Data Collection Center shall, on the nearest business day to the date on which the error is discovered, contact the department for specific instructions.

(1) If the taxpayer error involves an overpayment of tax, the taxpayer may either elect to have the overpayment applied against the liability for the next reporting period or apply for a refund under the provisions of the applicable tax law.
(2) If the taxpayer error involves an underpayment of tax, the taxpayer must make appropriate arrangements to initiate payment for the amount of the underpayment.

(b) If a taxpayer using the ACH debit method communicates payment information to the Data Collection Center after the call-in period on the business day before the due date, the payment shall be posted to the taxpayer's account on the next business day following the due date and shall constitute late payment.

(c) Except as otherwise provided in sections 18-231-9.9-01 to 18-231-9.9-11, failure to make a timely EFT payment shall result in assessment of appropriate penalties and interest, unless the failure is due to reasonable cause and not to neglect. See section 18-231-9.9-09 for examples of reasonable cause.

(d) If an EFT transfer is rejected by the taxpayer's financial institution, such as because of insufficient funds in the taxpayer's account, the department shall assess the processing fee authorized by section 40-35.5, HRS. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §§40-35.5, 231-9.9)

HRS §231-9.9 **§18-231-9.9-08 Procedures for payment by EFT.** (a) A taxpayer in the EFT program shall also file periodic and annual returns in the same manner as if the taxpayer were not in the EFT program. Instead of attaching a check or money order to the return, however, the taxpayer shall follow procedures established by the department to coordinate the EFT payment with the proper return. If a taxpayer participating in the EFT program desires to make a payment under protest within the meaning of section 40-35, HRS, the protest shall be filed with the tax return to which it applies, irrespective of when the EFT payment was authorized or made.

(b) The rules in this subsection apply to taxpayers using the ACH debit method.

(1) To assure the timely receipt of payment of tax, a taxpayer shall initiate the payment transaction with the Data Collection Center in time for the payment to be deposited to the state treasury on or before the appropriate due date. Thus, in general, the taxpayer shall report payment information to the Data Collection Center, by the approved means of communication, no later than the end of the call-in period on the business day before the due date of the payment.

(2) After establishing contact with the Data Collection Center, the taxpayer may communicate payment information for more than one tax type or tax period. However, the taxpayer must initiate payment information for each tax type and for each tax period for which a payment is due.

(3) A trace number will be issued at the conclusion of the communication of the payment information for each tax type and tax period. This number provides a means of verifying the accuracy of the recorded tax payment and serves as a receipt for the transaction.

(4) The department shall bear the costs of processing ACH debit method payments through the Data Collection Center.

Example: A taxpayer uses the ACH debit method to remit the March, 1996 payment of general excise and use tax. The taxpayer first determines that the total amount of tax due is $12,345. Before the end of the call-in period on April 29, 1996, the taxpayer shall contact the Data Collection Center. After establishing contact, the taxpayer shall communicate to the Data Collection Center its payor identification number, tax type (general excise and use tax), document type (monthly return), payment amount ($12,345), and tax period (March, 1996). At the end of the communication, the taxpayer will receive a trace number which will verify the accuracy of the recorded tax payment and serve as a receipt for the transaction. Payment information involving the ACH debit transfer will be electronically transmitted to the department on April 29, 1996, shortly after the expiration of the call-in period. The actual tax payment of $12,345, however, will not be transferred to the state treasury until the following day, April 30, 1996. The taxpayer shall also file its monthly return in the normal manner, except that the taxpayer shall follow procedures established by the department to coordinate the EFT payment with the proper return, instead of attaching a check or money order to the return.

(c) The rules in this subsection apply to taxpayers using the ACH credit method or any other EFT method.

(1) Taxpayers who have been granted permission to use the ACH credit method or any other EFT method shall contact their own financial institutions and make arrangements to transfer the tax payment to the state treasury.

(2) The department shall not bear the costs for taxpayers to use the ACH credit method or any EFT method other than the ACH debit method.

(3) To assure the timely receipt of payment of tax, a taxpayer shall initiate the payment transaction with its financial institution in time for the payment to be deposited to the state treasury on or before the appropriate due date.

(4) Any ACH credit transfer or any other EFT must be accompanied by an addenda record, in the format specified by the department, which includes all of the information required by the department.

(5) If a taxpayer repeatedly fails to provide the department with the required addenda record, the department may require the taxpayer to use the ACH debit method.

Example: A taxpayer uses the ACH credit method to remit the March, 1996 payment of general excise and use tax. The taxpayer first determines that the total amount of tax due is $12,345. At a time arranged between the taxpayer and the taxpayer's financial

institution, the taxpayer provides the financial institution with the information necessary to initiate a transfer of the March, 1996 tax payment and an accompanying addenda record that will be posted to the state treasury on April 30, 1996. To be timely, the ACH credit transfer of March, 1996 general excise and use tax must be deposited to the state treasury as collected funds on or before April 30, 1996. The taxpayer shall also file its monthly return in the normal manner, except that the taxpayer shall follow procedures established by the department to coordinate the EFT payment with the proper return, instead of attaching a check or money order to the return. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

HRS §231-9.9

§18-231-9.9-09 Due date for EFT payment; reasonable cause for untimely payment. (a) Taxpayers participating in the EFT program must initiate the transfer so that the amount due is deposited to the state treasury on or before the due date under the appropriate tax law. If the due date prescribed under the tax law falls on a Saturday, Sunday, or Hawaii state holiday, the payment shall be due on the next day that is not a Saturday, Sunday, or Hawaii state holiday. The occurrence of a federal holiday that is not a Hawaii state holiday, or a holiday observed by the state in which the taxpayer's financial institution is located, shall not be considered reasonable cause for untimely payment.

Example 1: X, a taxpayer participating in the EFT program for withholding taxes, is required to remit a payment of withholding taxes on or before May 10, 1997. X authorizes the EFT before the end of the call-in period on May 9, 1997. May 10, 1997 is a Saturday, so the transfer of funds is made on Monday, May 12, 1997. Because the payment is due on Monday, May 12, 1997, the EFT payment is timely.

Example 2: X, a taxpayer participating in the EFT program for withholding taxes, is required to remit a payment of withholding taxes on or before November 10, 1997. X authorizes the EFT before the end of the call-in period on November 10, 1997, because November 9, 1997, is a Sunday. The transfer of funds is made on Tuesday, November 11, 1997. Because the payment is due on Monday, November 10, 1997, the EFT payment is late.

Example 3: X, a taxpayer participating in the EFT program for withholding taxes, is required to remit a payment of withholding taxes on or before June 10, 1997. X authorizes the EFT before the end of the call-in period on June 9, 1997, a Monday. However, X's financial institution is closed on June 9, 1997, because it is a holiday in the state in which that financial institution is located. Furthermore, June 11, 1997, is Kamehameha Day, a legal holiday observed in Hawaii. As a result, the transfer of funds is not made until Thursday, June 12, 1997. Because the payment is due on Tuesday, June 10, 1997, the EFT payment is late.

(b) The following shall be considered reasonable cause for failure to make a timely EFT payment:

(1) The inability to access the EFT system on the required date because of a system failure beyond the reasonable control of the taxpayer;

(2) The failure of the EFT system to properly apply a payment;

(3) The failure of the EFT system to issue proper verification of receipt of payment information; or

(4) The failure to make a timely payment was caused by an error made by the Data Collection Center, the state treasury, or the department.

(c) During the first six-month period a taxpayer is required to remit tax by EFT, the department may waive otherwise applicable penalties if the taxpayer demonstrates that:

(1) A good faith effort to comply was made;

(2) Circumstances beyond the taxpayer's reasonable control prevented compliance by the required date; or

(3) A mistake or inadvertence prevented timely payment when the taxpayer attempted to correctly and timely initiate an EFT transaction. In determining whether to grant a waiver of penalties under this subsection, the department may consider the taxpayer's payment history, experience with EFT payments in this and other jurisdictions, and the taxpayer's prior compliance with these rules. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §§231-21, 231-9.9, 231-39)

HRS §231-9.9 **§18-231-9.9-10 Penalties for use of an unauthorized payment method.** (Reserved) [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

HRS §231-9.9 **§18-231-9.9-11 Confidentiality agreement with Data Collection Center.** Before being authorized by the department to undertake official duties as set forth in sections 18-231-9.9-01 to 18-231-9.9-11, the Data Collection Center shall agree that it shall be subject to the same laws regarding confidentiality of tax returns and tax return information that apply to employees of the department, including sections 235-116, 237-34, 237D-13, 238-13, 239-7, 241-6, 244D-13, 245-11, and 251-12, HRS. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

§18-231-10 (Reserved.)

§18-231-10.6-01 Administrative guidance applicable to certain penalties and fines; general intent in application of provisions. (a) Section 231-10.6, HRS, requires the department to provide taxpayers and tax return preparers with guidance on the application of penalties or fines that may be imposed by the following provisions:

(1) Understatement of tax liabilities by tax return preparers under section 231-36.5, HRS (Internal Revenue Code section 6694);
(2) Substantial understatements or misstatements of tax under section 231-36.6 (Internal Revenue Code section 6662), HRS;
(3) Promoting abusive tax shelters under section 231-36.7, HRS (Internal Revenue Code section 6700);
(4) Erroneous claims for refund or credit under section 231-36.8, HRS (Internal Revenue Code section 6676).

Each of the foregoing penalties references the federal statutory counterpart contained in the Internal Revenue Code and requires the construction of these penalties to be made in accordance with federal regulatory and judicial guidance.

(b) Section 231-10.6, HRS, allows the department to utilize federal laws and administrative guidance in carrying out the purpose of that section.

(c) In addition to the regulatory guidance requirement of section 231-10.6, HRS, section 235-2.5, HRS, authorizes the department to conform to any administrative provision of the Internal Revenue Code, title 26, United States Code (subtitle F, sections 6001 to 7873), not in conflict with or similar to provisions contained in chapters 231, 232, or 235, HRS. The department is authorized to adopt these provisions by reference or by setting them forth in full.

(d) The purpose of this section and sections 18-231-36.5- 01 through 18-231-36.8-01, HAR, is to carry out the intent of sections 231-10.6 and 235-2.5, HRS, by providing relevant guidance in a manner that conforms to the greatest extent practicable under the circumstances to the administrative provisions of the Internal Revenue Code referenced in subsection (a). In order to ensure optimal conformance, the relevant similar provisions of the Internal Revenue Code will be interpreted and administered as provided by adopting the rules and regulations promulgated by the United States Secretary of Treasury, or a delegate of the Secretary, by reference.

(e) For purposes of this section and sections 18-231-36.5- 01 through 18-231-36.8-01, HAR, the provisions of the rules and regulations promulgated by the United States Secretary of Treasury implementing provisions of the Internal Revenue Code, which are adopted by reference, shall be made operative as set forth in this chapter and be incorporated by reference, except where expressly inconsistent with the statutory provisions of title 14, HRS, in which case the statutory provision of the HRS shall control. The treasury rules and regulations shall be applied using changes in nomenclature and other language, including the omission of inapplicable or irrelevant language, where necessary to effectuate the intent of this section.

(f) Where treasury regulations include references to temporary or proposed treasury regulations that are inconsistent with final treasury regulations, the treasury regulations most consistent with the statutory provisions of the relevant sections of the HRS set forth in subsection (a), whether proposed, temporary, or final treasury regulations, shall control.

For example, the penalty set forth under section 231-36.5, HRS, which provides a penalty for understatements of tax liability by tax return preparers similar to section 6694 of the Internal Revenue Code, assesses a penalty for taking "unreasonable positions" that were not disclosed on a tax return. Prior to enactment of section 231-36.5, HRS, the federal counterpart (section 6694 of the Internal Revenue Code) assessed a penalty for taking "unrealistic positions" and also included treasury regulations interpreting this phrase. Congress subsequently amended this section to increase the standard required in taking an undisclosed position on a tax return. The Secretary of Treasury provided guidance on the increased standard through issuance of proposed regulations. Soon thereafter, Congress amended the standard again to which section 231-36.5, HRS, now conforms. As a result of repeated statutory changes by Congress, there are conflicting treasury regulations discussing the current standard. In application of the conflicting regulation standards, the final regulations will control to the extent not in conflict

with section 231-36.5, HRS. Furthermore, proposed regulations will control to the extent the proposed regulations expand upon principles not discussed in the final regulations and which are not in conflict with section 231-36.5, HRS.

(g) The director may clarify specific provisions of treasury regulations adopted by reference under sections 18-231-36.5-01 through 18-231-36.8-01, HAR, by Tax Information Release or other formal pronouncement.

(h) With regard to the penalties set forth in subsection (a), the director shall approve assessed penalties prior to assessment, as required by section 231-10.6, HRS.

(i) The purpose and intent of this section is applicable to sections 18-231-36.5-01 through 18-231-36.8-01, HAR.

(j) Nothing contained in this section shall limit the department's ability to provide guidance, examples, and safe harbors in addition to those provided by treasury regulations. [Eff 11/18/2010] (Auth: HRS §§ 231-3(9), 235-2.5(b), 231-10.6, 235-118) (Imp: HRS §§ 231-10.6)

§18-231-11 to §18-231-19 (Reserved)

HRS §231-19.5

§18-231-19.5-01 Disclosure of written opinions by the department; definitions. As used in sections 18-231-19.5-01 to 18-231-19.5-14:

"Audit or examination of a tax return" means all activities undertaken by the department in order to determine either (1) the correctness of the tax liability shown in any person's tax return, or (2) whether any person failed to file any tax return.

"Collection activities" mean all activities undertaken by the department, or by any collection agency described in section 231-13, HRS, to enforce the payment of any person's tax liability.

"Communication in connection with collection activities" means all communication undertaken by the department of this nature, including any inquiry into the financial resources of any person liable for tax; any levy, lien, garnishment, or seizure of any taxpayer's property; any certificate of discharge of a levy, lien, garnishment, or seizure of any taxpayer's property; and any certification of the absence of delinquent tax liability, including a tax clearance or a bulk sale certificate. A communication in connection with collection activities may be to any person and need not relate to the tax return of the person to whom the communication is addressed. A communication in connection with collection activities does not constitute a written opinion for purposes of section 231-19.5, HRS.

Example: T purchased all of the assets of B, a corporation. The department sends a letter to T proposing to collect B's delinquent tax liability from T because the general lien in favor of the State under section 231-33, HRS, attached to the assets. The letter is a communication in connection with collection activities.

"Communication in connection with the audit or examination of a tax return" means all communication undertaken by the department of this nature, including any subpoena or request for production of books and records under section 231-7, HRS; any assessment of any tax; any notice of proposed assessment of any tax; and any determination of jeopardy under section 231-24(a), HRS. A communication in connection with the audit or examination of a tax return may be to any person and need not relate to the tax return of the person to whom the communication is addressed. A communication in connection with the audit or examination of a tax return does not constitute a written opinion for purposes of section 231-19.5, HRS.

Example: H and W divorced in 1989. H filed a separate tax return for the calendar year 1989. The department sends a letter to H asking about a tax return W filed for calendar year 1989 because W claims that it is a joint tax return. Although the letter does not propose or suggest any adjustment to H's tax liability, the letter is a communication in connection with the audit or examination of a tax return.

"Department" means the department of taxation.

"Determination letter" means a written statement issued by the department that applies a well-established interpretation or principle of tax law to a specific set of facts. A determination letter includes the grant or denial of consent, permission, exemption, or registration; or routine correspondence in response to taxpayer inquiries. A determination letter does not constitute a written opinion for purposes of section 231-19.5, HRS.

"Information letter" means a written statement issued by the department that provides general information by calling attention to a well-established interpretation or principle of tax law, whether or not it applies to a specific set of facts. An information letter does not constitute a written opinion for purposes of section 231-19.5, HRS.

"Person" includes every individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, trustee in bankruptcy, or other entity, whether such persons are acting for themselves or in a fiduciary capacity, and whether the individuals are residents or nonresidents of the State, and whether the corporation or other association is created or organized under the laws of the State or of another jurisdiction.

"Person to whom the written opinion pertains" means:

(1) A taxpayer who requests the written opinion;

(2) Any successor or assign of the taxpayer with respect to the transaction that is the subject of the written opinion, if the department is informed of the successor or assign in the request for the written opinion, or in subsequent correspondence to the department's technical review office; or

(3) Another person authorized by law to act for or on behalf of the taxpayer, but only in that person's representative capacity.

"Person who has a material interest in maintaining the confidentiality of a written opinion or portion thereof" means a person who would be specially, personally, and adversely affected by the disclosure of a written opinion or a portion of it, as the case may be.

"Successor or assign of a taxpayer" means a person who acquires the rights and assumes the liabilities of a taxpayer.

"Taxpayer" means any person subject to any tax administered by the department under title 14, HRS, or any person seeking advice about whether that person is subject to any tax administered by the department under title 14, HRS.

"Well-established interpretation or principle of tax law" means an interpretation or principle of tax law stated in:

(1) The United States Constitution;

(2) The Hawaii Constitution;

(3) The Hawaii Revised Statutes;

(4) The Hawaii Administrative Rules;

(5) The Internal Revenue Code of 1986, as amended, to the extent incorporated in the Hawaii Revised Statutes or in the Hawaii Administrative Rules;

(6) The Treasury Regulations (title 26, Code of Federal Regulations), as amended, to the extent incorporated in the Hawaii Revised Statutes or in the Hawaii Administrative Rules;

(7) Federal legislation or treaties that are binding upon this State;

(8) Published opinions in final decisions of the Hawaii appellate courts, or of federal appellate courts applying Hawaii law;

(9) Final decisions of the Hawaii tax appeal court;

(10) Opinions of the Supreme Court of the United States interpreting any provision described in paragraphs (1) to (7);

(11) Opinions of the department of attorney general that are filed under section 28-3, HRS;

(12) Published determinations of the department such as tax information releases and tax memoranda (but not including tax forms, instructions, and informational pamphlets); or

(13) Written opinions that have been disclosed to the public.

"Written opinion" means a written statement issued by the department to a taxpayer, or to the taxpayer's authorized representative on behalf of the taxpayer, that interprets and applies any provision in title 14 administered by the department to a specific set of facts. A written opinion provides guidance to taxpayers in areas where the interpretation of the tax law is unclear, in order to enhance correct reporting, as where the written opinion:

(1) Establishes, alters, modifies, or clarifies an interpretation or principle of tax law;

(2) Calls attention to an interpretation or principle of tax law, whether or not it is a well-established interpretation or principle of tax law, that appears to have been generally overlooked; or

(3) Addresses a legal or factual issue of unique public interest or substantial public importance.

A written opinion shall not include a communication in connection with the examination or audit of a tax return, a communication in connection with collection activities, an information letter, or a determination letter. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5

§18-231-19.5-02 Determination letters. (a) The following communications are determination letters:

(1) A communication from the department to any person granting or denying permission to change that person's method of accounting, taxable year, or annual accounting period, under section 442 or 446 of the Internal Revenue Code of 1986, as amended, as operative under chapter 235, 239, or 241, HRS;

(2) An approval or denial of a withholding certificate under section 235-68, HRS;
(3) An approval or denial of an application for exemption from general excise tax under section 237-23(b), HRS;
(4) An approval or denial of an exemption from conveyance tax under section 247-3, HRS; and
(5) An approval or denial of an extension of the time to file any tax return, under section 235-62, 235-98, 237-33, 237D-7, or 251-6, HRS.

(b) Determination letters also include any class of communication that is:
(1) A grant or denial of consent, permission, exemption, or registration, or other routine communication; and
(2) Designated as a determination letter in a published tax information release that sets forth the well-established interpretation or principle of tax law governing the class of communication.

(c) In any determination letter other than one described in subsection (a) or (b), the department shall:
(1) State that the letter is a determination letter; and
(2) Set forth the well-established interpretations or principles of tax law that are being applied, including citations to the sources of the interpretations or principles that are being applied.

[Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-03 Written opinions.** (a) The department's decision as to what constitutes a written opinion shall be final and shall not be reviewable.

(b) In each written opinion, the department shall:
(1) State the relevant facts (as understood by the department), state the applicable provisions of law, and apply the law to the facts;
(2) Segregate information as provided in section 18-231-19.5-04;
(3) Prepare a notice of intention to disclose pursuant to section 18-231-19.5-05; and
(4) Separately set forth the information to be indexed under section 18-231-19.5-11.

(c) Written opinions may be incorporated into tax information releases or other guidance published by the department.

(d) A written opinion may be modified or revoked by the department. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-04 Written opinions; segregation of information not to be disclosed.** (a) The department shall segregate the following information from the text of any written opinion open to public inspection:
(1) Confidential, commercial, or financial information, as defined in subsection (b);
(2) Identifying details, as defined in subsection (c);
(3) Personal privacy information, as defined in subsection (d); and
(4) Trade secrets, as defined in subsection (e).

(b) "Confidential, commercial, or financial information" means:
(1) Any information that is made confidential under applicable law, other than a law making tax return information confidential;
(2) Any information that would be privileged from disclosure under article V of the Hawaii Rules of Evidence (with respect to privileges), section 626-1, HRS; and
(3) Any information the disclosure of which, considering that identifying numbers and identifying details are segregated, would nevertheless cause substantial harm to the competitive position of any person.

Confidential, commercial, or financial information does not include information that has been previously disclosed to the public, such as financial information contained in the published annual reports of widely held public corporations.

(c) "Identifying details" mean:
(1) Names, addresses, and identifying numbers (including telephone, license, social security, employer identification, general excise/use identification, credit card, and selective service numbers) of any person mentioned in the written opinion; and
(2) Any other information that would permit a person generally knowledgeable about the appropriate community to identify any person mentioned in the written opinion.
(A) "Appropriate community", as used in this paragraph, means that group of persons who would be able to associate a particular person with a category of transactions one of which is described in the written opinion. The appropriate community may vary according to the nature of the transaction that is the subject of the written opinion.

Example: If a sugar mill proposes to enter a transaction involving the purchase and installation of boilers, the appropriate community may include all sugar millers and

boiler manufacturers in Hawaii, but if the installation process is a unique process of which everyone in national industry is aware, the appropriate community also might include the national industrial community. On the other hand, if the sugar mill proposes to enter a transaction involving the purchase of land on which to construct a building to house the boilers, the appropriate community also may include those residing or doing business within the geographical locale of the land to be purchased.

(B) In determining whether information would permit a person to identify any person mentioned in the written opinion, the department shall consider:
(i) Information available to the public at the time the written opinion is made open or subject to inspection; and
(ii) Information that will later become available; provided the department is made aware of that information and the potential that the information may identify any person.

(d) "Personal privacy information" means any information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(1) A clearly unwarranted invasion of personal privacy exists if from analysis of information submitted in support of the request for the written opinion it is determined that the public interest purpose for requiring disclosure is outweighed by the potential harm attributable to the invasion of personal privacy.
(2) Personal privacy information includes embarrassing or sensitive information that a reasonable person would not reveal to the public under ordinary circumstances, details of a pending divorce, medical treatment for physical or mental disease or injury, adoption of a child, the amount of a gift, and political preferences.
(3) Personal privacy information does not include any information that has been previously disclosed to the public.

(e) "Trade secret" means any formula, pattern, device, or compilation of information that is used in a person's business, and that gives the person an opportunity to obtain an advantage over competitors who do not know or use it.
(1) "Formula, pattern, device, or compilation of information", as used in this subsection, includes a formula for a chemical compound; a process of manufacturing, treating, or preserving materials; a pattern for a machine or other device; or a list of customers.
(2) The subject of a trade secret must not be of public knowledge, or of general knowledge in the trade or business.

(f) Whenever information is segregated from the text of a written opinion, non-identifying information shall be substituted in a manner the department deems appropriate. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §§92F-13, 231-19.5)

HRS §231-19.5 **§18-231-19.5-05 Written opinions; notice of intention to disclose.** (a) At the time of issuing any written opinion, the department shall mail a notice of intention to disclose to any person to whom the written opinion pertains. The notice shall:
(1) State that the department intends to make all or part of the written opinion available for public inspection and copying;
(2) Notify the recipients of when the written opinion will become public, and of the administrative remedies that are available under section 18-231-19.5-07; and
(3) Prominently indicate the date on which the notice was mailed.

(b) Notwithstanding subsection (a), the department shall not be required to mail a notice of intention to disclose to:
(1) All shareholders of a widely held corporation, all employees of a business entity that may be involved in a plan, individual members of an unincorporated association, or similar persons whose interests would be fairly and adequately represented by an entity;
(2) Any person at an address other than that specified in the request for the written opinion, or in subsequent correspondence to the department's technical review office; or
(3) Any person not identified by name and address in the request for the written opinion. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-06 Written opinions; time for and manner of disclosure, inspection, and copying.** (a) A written opinion shall be made available for inspection and copying no earlier than seventy-five days,

and no later than ninety days, after the notice of intention to disclose described in section 18-231-19.5-05 is mailed, except as otherwise provided in this section.

(b) A person to whom the written opinion pertains may request an extension of the period set forth in subsection (a) during which the written opinion shall not be disclosed. This request shall be made in writing, addressed to the department's technical review office. The department may grant such extension as it may deem advisable for good cause shown, but in no event shall an extension be given in excess of one-hundred-eighty days from the date the notice of intention to disclose was mailed. The department shall notify the person requesting the extension of its grant or denial of the extension. An extension granted under this subsection does not affect the period within which to appeal any decision of the department.

(c) If a person to whom the written opinion pertains has filed a petition for further segregation with the department under section 18-231-19.5-07, the department shall not disclose the written opinion until its decision on the petition has become final, which includes the expiration of any applicable appeal period. If one-hundred-eighty days have elapsed after the mailing of the notice of intention to disclose and no appeal from the department's decision has been properly taken, the department shall disclose the written opinion.

(d) If a person has filed a petition for further disclosure with the department under section 18-231-19.5-08, the department shall not disclose the written opinion until its decision on the petition has become final, which includes the expiration of any applicable appeal period. If ninety days, plus any extension of the ninety-day period granted under subsection (b), have elapsed, the department shall disclose the written opinion.

(e) If an appeal has been properly taken to the office of information practices or to a court as specified in section 231-19.5(f), HRS, the written opinion shall not be disclosed until the decision in the case has become final, which includes the expiration of any applicable appeal period. The department and all parties to whom the notice of intention to disclose was mailed shall be bound by any decision in the appeal that has become final.

Example: A written opinion is issued on March 1, 1995, and a notice of intention to disclose is mailed on that date. The disclosure decision is properly appealed to the office of information practices, which issues a decision on August 1, 1995. No appeal is taken to the circuit court. The decision is considered to have become final on September 1, 1995, when the applicable appeal period of 30 days expired. On that date, the decision of the office of information practices shall be treated as binding upon the department and all persons to whom the notice of intention to disclose was mailed.

(f) Written opinions of the department that are available for public inspection and copying shall be made available at the department's technical review office, 830 Punchbowl Street, Honolulu, Hawaii, and may be made available at other places designated by the department. Inspection and copying shall be permitted in the presence of a department employee during regular business hours. Records shall not be removed from the technical review office by persons other than authorized employees of the department. Persons copying any written opinion or the annual index of written opinions shall pay the fees prescribed by section 231-19.5(i), HRS. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5

§18-231-19.5-07 Written opinions; petition for further segregation. (a) A person to whom a written opinion pertains may petition the department for further segregation of some or all of the information in the written opinion that the department proposes to disclose. The petition shall be submitted in writing to the department's technical review office within thirty days after the notice of intention to disclose is mailed.

(b) The petition shall contain:

(1) Information identifying the written opinion for which additional segregation is sought;

(2) An indication of the information the department did not segregate but the petitioner believes should be segregated; and

(3) For each item of information described in paragraph (2), an explanation of why the petitioner believes that the item of information should be segregated.

(c) No special form shall be required for the petition. A letter addressed to the technical review office, department of taxation, shall be a sufficient petition under this section if the letter complies with subsections (a) and (b).

(d) The thirty-day period in subsection (a) may be extended by the department for good cause shown. The department may refuse to extend the thirty-day period if the extension would leave the department an unreasonably short time to consider the petition before the written opinion must be disclosed under section 18-231-19.5-06(b) (one-hundred-eighty days from the date the notice of intention to disclose was mailed).

(e) Within thirty days after receiving the petition, but not more than one-hundred-eighty days from the date the notice of intention to disclose was mailed, the department shall mail its final determination to the petitioner.

(f) A petition for further segregation shall be denied, in whole or in part, if the department determines that the petitioner does not have a material interest in maintaining the confidentiality of the disputed information.

Example: Taxpayer Kimo Arnold is a shareholder of Rosie's Inc., a corporation. Rosie's Inc. has two other shareholders, Rose Machado and Louis Michel. Mr. Arnold requests, on his own behalf and not on behalf of either Rosie's Inc. or any other shareholder, a written opinion from the department regarding a partial redemption of his stock in Rosie's Inc. The written opinion, as the department proposes to disclose it, begins, "Corporation C has one class of stock which is owned as follows: T, with 100 shares; U, with 400 shares; and V, with 150 shares." The part of the written opinion that the department proposes to segregate identifies Mr. Arnold as T, Ms. Machado as U, Mr. Michel as V, and Rosie's Inc. as C. Mr. Arnold petitions for further segregation of the numbers "400" and "150" in the sentence quoted above, only on the ground that those numbers are personal privacy information as defined in section 18-231-19.5-04(d). Because the numbers "400" and "150" represent the holdings of people other than Mr. Arnold, the department may determine that Mr. Arnold would not be specially, personally, and adversely affected by the disclosure of the numbers "400" and "150" in the written opinion, and thus may deny his petition because he does not have a material interest in maintaining the confidentiality of that portion of the opinion sought to be segregated.

(g) If the determination of the department under this section is partly or wholly adverse to the petitioner, the department shall notify the petitioner of the appeal rights under section 231-19.5(f), HRS, at the same time it notifies the petitioner of its determination on the petition. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-08 Written opinions; petition for further disclosure.** (a) Any person may petition the department to obtain additional disclosure of information contained in any written opinion that has been made open or subject to public inspection. The petition shall be submitted in writing to the department's technical review office.

(b) The petition shall contain:

(1) Information identifying the written opinion for which additional disclosure is sought;

(2) An indication of the information the department segregated but which the petitioner believes should be disclosed; and

(3) For each item of information described in paragraph (2), an explanation of why the petitioner believes that the item of information should be disclosed.

(c) No special form shall be required for the petition. A letter addressed to the technical review office, department of taxation, shall be a sufficient petition under this section if the letter complies with subsections (a) and (b).

(d) If the department receives the petition more than eighteen months after the notice of intention to disclose was mailed, the department shall deny the petition and shall promptly notify the petitioner of the denial.

(e) If the petition is not denied under subsection (d), the department shall notify all persons to whom the written opinion pertains of the substance of the petition, except that the department shall have no duty to notify the persons described in section 18-231-19.5-05(b). The notice shall request the recipient of the notice to reply in writing within twenty days by submitting a statement of whether the recipient agrees to the requested disclosure or any portion of it.

(1) If all persons to whom the notice in this subsection is sent agree in writing to the requested disclosure or any portion of it, the written opinion shall be revised to disclose the information with respect to which an agreement to disclose has been reached, and the petitioner shall be so informed.

(2) The department within a reasonable time, but not more than one-hundred-eighty days from the date it received the petition, shall deny the petition, and shall so notify the petitioner, if:

(A) One or more persons to whom the notice in this subsection is sent do not agree to the additional disclosure requested;

(B) One or more persons to whom the notice in this subsection is sent do not respond to the notice; or

(C) The department is unable to notify one or more persons to whom the notice in this subsection is required to be sent, because of inability to locate the person, destruction of the department's records in accord with normal procedure, or similar causes.

(f) If the determination of the department under this section is partly or wholly adverse to the petitioner, the department shall notify the petitioner of the appeal rights under section 231-19.5(f), HRS, at the same time it notifies the petitioner of its determination on the petition. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-09 Appellate review of petition for further segregation or petition for further disclosure.** (a) No appeal to the office of information practices, or to any court, shall be entertained unless:

(1) The person desiring to take the appeal has submitted a petition for further segregation or petition for further disclosure to the department;
(2) The department has issued its determination on the petition; and
(3) The appeal is filed not more than sixty days after the date the department issues its determination;

provided that if more than forty-five days have elapsed after the date the department received the petition, and the department has not mailed a determination on the petition to the petitioner, then the petitioner may take an appeal as if the department had denied the petition.

(b) Neither the department, the office of information practices, nor any court to which an appeal has been taken under section 231-19.5(f), HRS, regarding any petition to the department, shall consider:

(1) The segregation of any information if the petitioner has not proposed that it be segregated; or
(2) The disclosure of any information if the petitioner has not proposed that it be disclosed.

(c) The department, the office of information practices, or a court to which appeal has been taken may consider any deletion or disclosure that is fairly encompassed by the petition.

Example: Taxpayer P, a meat packing company, requests and receives a written opinion from the department. After receiving the notice of intention to disclose, P petitions for further segregation of the words "meat packing company" on page 1 of the opinion, because it is the only meat packing company in the State and may be identified readily. P, however, overlooks the phrase "P and other meat packers" on page 3. If the department grants P's petition, the department may segregate the phrase on page 3 because the segregation is fairly encompassed by the petition.

(d) A petition, or any appeal taken from the department's decision on a petition, shall be denied to the extent that the petition or appeal is determined to be:

(1) Frivolous, or
(2) Made for any improper purpose, such as to harass or to cause unnecessary delay.

Example 1: T, a taxpayer, requests and obtains a written opinion from the department. T then petitions the department, contending that no part of the written opinion should be disclosed because "all of the disclosed facts in the written opinion, when taken together, would identify" T. T refuses to elaborate upon T's reasons or concerns. The department may deny the petition because it is frivolous.

Example 2: T, a taxpayer, claims that E, T's employer, has committed sexual harassment. In a closed arbitration proceeding, T recovers an award from E. T then requests and obtains a written opinion from the department holding that T's recovery is not subject to general excise tax. T petitions the department to disclose several identifying details about E, among other things. The department determines that T's motive for that part of the petition is to publicize the arbitration proceeding and in that way subject E to public scorn and ridicule. The department may deny the petition, insofar as it relates to identifying details about E, because it is being made for an improper purpose. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-10 Written opinions; reliance by taxpayers.** A taxpayer may rely upon a written opinion issued to another taxpayer to the extent, and only to the extent, that the taxpayer's facts and circumstances are the same as those in the written opinion. A written opinion, however, may not be used or cited as precedent in any court. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-11 Annual index of written opinions.** The department annually shall compile a cumulative index of the written opinions it has issued. The index shall contain the following information about each written opinion:

(1) A number uniquely identifying each written opinion;
(2) The date on which the written opinion was issued;
(3) Sufficient information to identify the contents of the written opinion; and

(4) A list of section numbers of the Hawaii Revised Statutes and the Hawaii Administrative Rules that the opinion analyzes, explains, or interprets. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-12 Exclusivity of disclosure provisions.** Section 231-19.5, HRS, is the exclusive law governing the public inspection of written opinions. It shall be applied notwithstanding chapter 92F, HRS, and any law regarding the confidentiality of tax return information. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-13 Confidentiality of segregated information and written communications that are not written opinions; communications to which section 231-19.5, HRS, does not apply.** (a) Information segregated from a written opinion under section 18-231-19.5-04 shall be considered confidential whether or not the law relating to any tax involved provides that tax return information is confidential.

(b) The following communications shall be considered tax return information and shall be confidential when the law relating to the tax or taxes involved provides that tax return information is confidential:

(1) A communication in connection with the examination or audit of a tax return;
(2) A communication in connection with collection activities;
(3) A determination letter;
(4) An information letter;
(5) A written opinion dated on or before December 31, 1994; or
(6) A communication from a taxpayer to the department:
(A) In connection with a request for a written opinion, determination letter, or information letter;
(B) In connection with the audit or examination of a tax return; or
(C) In connection with collection activities,
including documents or other material submitted with any such communication.

(c) Notwithstanding subsection (b), a document that is publicly recorded or filed, such as a recorded certificate of tax lien, shall not be confidential.

(d) Section 231-19.5, HRS, does not apply to the following communications:

(1) A recommendation for legislation within the meaning of section 231-3(7), HRS;
(2) A report to the governor under section 231-3(8), HRS;
(3) An agreement in compromise within the meaning of section 231-3(10), HRS;
(4) A remission of penalty or interest within the meaning of section 231-3(12), HRS;
(5) A closing agreement within the meaning of section 231-3(13), HRS; and
(6) A notification to any taxpayer of setoff against any tax refund under section 231-53, HRS. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-14 Narrow construction of section.** The disclosure provided by section 231-19.5, HRS, is a narrow exception to the well-established principle that tax return information, which includes written opinions, is confidential. The purpose of section 231-19.5, HRS, is to enhance correct reporting by issuing guidance to taxpayers in areas where the interpretation of the tax laws is unclear, and is not to open to public inspection the voluminous routine correspondence to taxpayers concerning well-established interpretations or principles of tax law. To protect the integrity of the tax system which depends upon voluntary compliance and reporting, any doubts about whether information should be publicly disclosed shall be resolved in favor of nondisclosure. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

§18-231-20 to §18-231-25 (Reserved)

HRS §231-25.5 **§18-231-25.5-01 Cost recovery fees; in general.** (a) The department may charge cost recovery fees as provided in sections 18-231-25.5-01 to 18-231-25.5-05, unless waived under subsection (b).

(b) The director may waive any cost recovery fee in cases of hardship to be determined by all relevant facts and circumstances.

(c) A cost recovery fee that is due and unpaid is a debt due the State of Hawaii and constitutes a lien in favor of the State within the meaning of section 231-33(b), HRS.

(d) Whenever a person liable for a cost recovery fee and for taxes assessed makes a partial payment, the payment shall be credited first to the amount of cost recovery fees due and unpaid, and the remainder, if any, shall be credited as set forth in section 231-27, HRS.

(e) Penalties and interest imposed in accordance with section 231-39, HRS, shall not apply to the fees set forth by this section.

(f) All cost recovery fees collected shall be state realizations.

(g) As used in sections 18-231-25.5-01 to 18-231- 25.5-05:

"Collection action" means any action by the department undertaken for the purpose of enforcing the collection of delinquent taxes.

"Cost recovery fee" means any fee set forth in sections 18-231-25.5-02 to 18-231-25.5-05.

"Electronic form" includes magnetic media, CD-ROM (compact disk, read-only memory), video and other machine-readable forms that store information which may be retrieved via computer or other electronic equipment.

"Hardship," unless otherwise indicated, means the inability to pay a cost recovery fee due to economic privation or an immediate and heavy financial burden.

"Immediate and heavy financial burden" includes, but is not limited to, the following situation: a person must pay for the funeral expenses of a family member and consequently cannot afford to pay the fee imposed.

"Person" or "company" includes every individual, partnership, limited liability partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, limited liability corporation, trustee, personal representative, trust estate, decedent's estate, trust, trustee in bankruptcy, or other entity, whether such persons are doing business for themselves or in a fiduciary capacity, and whether the individuals are residents or nonresidents of the State, and whether the corporation or other association is created or organized under the laws of the State or of another jurisdiction. [Eff 12/15/95; am and ren §18-231-25.5-01 3/03/97] (Auth: HRS §§231-3(9), 231-25.5(e)) (Imp: HRS §231- 25.5)

HRS §231-25.5

§18-231-25.5-02 Cost recovery fees for collection actions. (a) The department may charge cost recovery fees for collection actions as provided by this section, unless waived under section 18-231- 25.5-01(b).

(b) For the purpose of collection action fees, to establish "hardship" under section 18- 231-25.5-01(b), a person must show that the failure to pay taxes which led to the collection action was an "excusable failure" as the term is used in section 231- 3(12), HRS.

(c) Fees imposed under this section may be charged after the department has mailed written notice to a taxpayer demanding payment of delinquent taxes and advising that continued failure to pay the amount due may result in collection action, including the imposition of fees under this section. The notice shall be mailed to the taxpayer's last known address or place of business on file with the department in accordance with section 231-17, HRS, and may be mailed by first class or air mail.

(d) The written notice in subsection (c) shall contain a deadline date, no earlier than ten calendar days after the date of mailing, before which no fee set forth in this section may be charged.

(e) If the department determines that a collection of tax is in jeopardy as defined in section 231-24(a), HRS, the department may charge a fee set forth in this section for any collection action undertaken after the written notice in subsection (c) is given. In this instance, subsection (d) shall not apply.

(f) The fees that may be charged under this section are:

(1) For processing a delinquent taxpayer's account, $50 shall be charged at the close of business on the deadline date specified in subsection (d) if the debt or any part of the debt remains unpaid;

(2) For handling a foreclosure action, $50 shall be charged upon the completion of the detailed statement of taxes (prepared in connection with the filing of the department's court complaint or affirmative statement of claim), plus any costs including court costs or recording fees (such as a fee for recording the interlocutory decree of foreclosure) that are actually charged to and incurred by the department;

(3) For garnishment, levy, or other seizures of a delinquent taxpayer's wages, property or rights to property, $15 upon each service, including service by mail, of official notice upon the payor or custodian of the asset levied, or physical seizure of the asset levied, plus any court costs, recording fees, or related costs (such as a fee paid to a United States marshal for seizure of a vessel or bank charges for honoring a levy) that are actually charged to and incurred by the department;

(4) For any collection action requiring the services of collection agencies or attorneys, any reasonable fees charged by those attorneys or collection agencies that are actually incurred by the department;

(5) For recording a certificate of tax lien or a release of tax lien, $25 for recording at the Bureau of Conveyances, plus any other recording fees that are actually charged to and incurred by the department for recording with other agencies (such as with a county director of finance);

(6) For serving a subpoena in connection with a collection effort, $25 shall be charged, plus any other fees that are actually incurred by the department; and

(7) For collection actions other than that set forth in paragraph (1) to (6), any fees or costs that are actually charged to and incurred by the department.

(g) Each fee under subsection (f) shall be separately imposed, and a single delinquency may cause the imposition of several fees. [Eff 12/15/95; am and ren §18-231-25.5-01 3/03/97] (Auth: HRS §§231-3(9), 231-17, 231-25.5(e)) (Imp: HRS §231-25.5)

HRS §231-25.5 **§18-231-25.5-03 Cost recovery fees for educational seminars and materials.** (a) The department may charge cost recovery fees for educational seminars and materials as provided in this section unless waived under section 18-231-25.5-01(b).

(b) As used in this section:

"Educational material" means informative material in electronic form or any other physical form which is disseminated by the department in connection with its seminars or workshops.

"Seminar or workshop" means any meeting, class, course, session, or presentation sponsored by the department for the purpose of informing practitioners, taxpayers, or any other person about the tax laws or the administration of the tax laws.

(c) The fees that may be charged under this section are:

(1) For a department-sponsored seminar or workshop, a fee shall be determined by the cost of labor, rent, travel, advertisement, postage and other costs incurred by the department in organizing and hosting the seminar or workshop. The fee shall be charged for each individual registered with the department for attendance at a seminar or workshop. Refunds of fees shall not be allowed regardless of whether or not the individual actually attends except when the individual gives forty-eight hours notice to the department. A $5 surcharge for walk-ins or late registration may also be added to the original fee amount. Payment is due before the seminar or workshop.

(2) For educational materials, any fees or costs that are actually charged to and incurred by the department for the production and distribution of the materials.

(d) No fee shall be charged to State or county employees attending seminars or workshops within the scope of their employment duties.

(e) Each fee under subsection (c) shall be separately imposed and more than one fee may apply. The fee for educational materials, however, may be included in the total cost of the seminar or workshop and need not be separately stated. [Eff 3/03/97] (Auth: HRS §§231-3(9), 231-25.5(d)) (Imp: HRS §231-25.5(a)(2))

HRS §231-25.5 **§18-231-25.5-04 Cost recovery fees for research and reference materials.** (a) The department may charge cost recovery fees to any person requesting to receive a copy of a research or reference material as provided in this section, unless waived under section 18-231-25.5-01(b).

(b) As used in this section:

"Research material" means a study, report, or other information prepared or compiled by the department in electronic form or any other physical form for distribution to the public.

"Reference material" means a source of information prepared for dissemination by the department in electronic form or any other physical form, but not necessarily written or compiled by the department.

(c) The amount of fees imposed by this section will be determined by those amounts actually charged to and incurred by the department for the production and distribution of each research or reference material. Each fee charged under this section is separately imposed and more than one fee may apply. [Eff 3/03/97] (Auth: HRS §§231-3(9), 231-25.5(d)) (Imp: HRS §231-25.5(a)(2))

HRS §231-25.5 **§18-231-25.5-05 Cost recovery fees for the reissuance of refund checks.** (a) The department may charge a cost recovery fee for the reissuance of refund checks as provided in this section, unless waived by section 18-231-25.5-01(b) or by subsection (b).

(b) The fee provided by this section shall not be imposed if the amount of the refund check is less than the fee.

(c) A fee of $14.00 may be charged under this section for each reissuance of a refund check. [Eff 3/03/97] (Auth: HRS §§231-3(9), 231-25.5(d)) (Imp: HRS §231-25.5(a)(4))

§18-231-26 to §18-231-36 (Reserved)

HRS §231-36.5 **§18-231-36.5-01-6694 Guidance, understatement of taxpayer liability by tax return preparer; conformity to treasury regulations related to Internal Revenue Code section 6694.** (a) In administering the penalty set forth under section 231-36.5, HRS, relating to imposition of a penalty for understatements of taxpayer liability by a tax return preparer, the following treasury regulations shall be operative:

(1) Title 26, code of federal regulations, section 1.6694-1;

(2) Title 26, code of federal regulations, section 1.6694-2;

(3) Title 26, code of federal regulations, section 1.6694-3;

(4) Title 26, code of federal regulations, section 1.6694-4.

(b) The director may prescribe a list of positions that the director believes do not meet the substantial authority standard. Such list (and any revisions thereof) shall be published and made public by Tax Information Release.

(c) The director may provide additional administrative guidance pursuant to Tax Information Release.

(d) Action to enjoin a tax return preparer. Section 231-36.5(g), HRS, authorizes the director to seek an injunction from a court enjoining a tax return preparer from preparing tax returns in certain circumstances. A civil action to enjoin a tax preparer shall be subject to the following procedures:

(1) A civil action to enjoin a tax return preparer may be brought by the attorney general at the director's request.

(2) The civil action to enjoin a tax return preparer shall be based upon facts alleging conduct by the tax return preparer that is prohibited under sections 231-36.5(a) or (b), or both.

(3) The civil action shall be brought in the circuit court where the tax return preparer resides, has a principal place of business, or where the taxpayer with respect to whose tax return the action is brought resides, at the election of the director.

(4) Where a court finds that a tax return preparer has continually or repeatedly engaged in conduct prohibited under sections 231-36.5(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 chapter 231, which is applicable to all of title 14, HRS, the court may enjoin the preparer from acting as a tax return preparer in any capacity. [Eff 11/18/2010] (Auth: HRS §§ 231-3(9), 235-2.5(b), 231-10.6, 235-118) (Imp: HRS §§ 231-36.5)

HRS §231-36.6 **§18-231-36.6-01-6662 Guidance; substantial understatements or misstatements of amounts; conformity to treasury regulations related to Internal Revenue Code section 6662.** (a) In administering the penalty set forth under section 231-36.6, HRS, relating to imposition of a penalty for substantial understatements or misstatements of amounts, the treasury regulations adopted under title 26, code of federal regulations, section 1.6662-4, shall be operative.

(b) The director may prescribe a list of positions that the director believes do not meet the substantial authority standard. Such list (and any revisions thereof) shall be published and made public pursuant to Tax Information Release.

(c) The director may provide additional administrative guidance pursuant to Tax Information Release. [Eff 11/18/2010] (Auth: HRS §§ 231-3(9), 235-2.5(b), 231-10.6, 235-118) (Imp: HRS §§ 231-36.6)

HRS §231-36.7 **§18-231-36.7-01-6700 Guidance, promoting abusive tax shelters; conformity to treasury regulations related to Internal Revenue Code section 6700.** (a) In administering the penalty set forth under section 231-36.7, HRS, relating to imposition of a penalty for promoting abusive tax shelters, any proposed, temporary, or final treasury regulations providing guidance in application of section 6700 of the Internal Revenue Code shall be operative.

(b) The director may provide additional administrative guidance pursuant to Tax Information Release.

(c) The director may maintain a list of transactions considered by the department to be abusive tax shelters. This list shall be maintained by Tax Information Release and shall be updated from time to time, as is necessary.

(d) Safe harbor. A person who promotes a tax shelter that may or may not be considered abusive by the department will not be assessed the penalty under section 231-36.7, HRS, if the promoter first makes application with the department for a letter ruling pursuant to Tax Information Release 2009-1, and who thereafter receives a favorable ruling from the department. A ruling will not be considered a favorable ruling within the meaning of this safe harbor unless all partnership agreements, operating agreements, investment plan documents, and other relevant information discussing the organization of the plan are acknowledged in the ruling as having been disclosed and considered by the department in drawing its conclusion.

(e) Action to enjoin a tax shelter promoter. Section 231-36.7 (c), HRS, authorizes the director to seek an injunction from a court enjoining a tax shelter promoter from engaging in any conduct described under section 231-36.7 (a), HRS. A civil action to enjoin a tax shelter promoter shall be subject to the following procedures:

(1) A civil action to enjoin a tax shelter promoter may be brought by the attorney general at the director's request.

(2) The civil action to enjoin a tax shelter promoter shall be based upon facts alleging the person is a tax shelter promoter, as defined in section 231-36.7 (a), HRS, and that person has engaged in any conduct that is prohibited under section 231-36.7 (a).

(3) The civil action shall be brought in the circuit court where the tax shelter promoter resides or has a principal place of business, at the election of the director. [Eff 11/18/2010] (Auth: HRS §§ 231-3(9), 235-2.5(b), 231-10.6, 235-118) (Imp: HRS §§ 231-36.7)

HRS §231-36.8 **§18-231-36.8-01-6676 Guidance, erroneous claim for refund or credit; conformity to treasury regulations related Internal Revenue Code section 6676.** (a) In administering the penalty set forth under section 231-36.8, HRS, relating to imposition of a penalty for erroneous claims for refund or credit, any proposed, temporary, or final treasury regulations providing guidance in application of section 6676 of the Internal Revenue Code shall be operative.

(b) The director may provide additional administrative guidance pursuant to Tax Information Release.

(c) Excessive amount. Section 231-36.8, HRS, assesses a penalty equal to twenty per cent of the claimed refund or credit amount found to be erroneous, which is called the "excessive amount." The excessive amount is the difference between the amount of refund or credit claimed for any taxable year and the amount of refund or credit allowable for the same taxable year.

(d) Section 18-231-36.8-01-6676(c), HAR, is illustrated as follows:

EXAMPLE: Taxpayer made a return for the 2008 taxable year claiming $10,000 in refundable credit on its 2008 tax return. All of Taxpayer's income was offset by allowable operating losses for the same taxable year, which resulted in a credit refund claim calculation of $10,000. Upon audit, it was determined that Taxpayer was entitled to a $6,000 credit and $4,000 in claimed credit was disallowed. The department further assessed the erroneous refund penalty under section 231-36.8, HRS. The "excessive amount" for purposes of the penalty under section 231-36.8, HRS, is $4,000, which is the difference between the amount of credit that was claimed and the amount of credit allowable. The twenty per cent penalty will be applicable to the $4,000 base amount, which results in a penalty of $800.

(e) $400 minimum penalty. Section 231-36.8, HRS, provides an exclusion from the twenty per cent penalty where the penalty calculation results in an amount of less than $400. Therefore, where the excessive amount, which serves as the base for the credit calculation, results in a penalty of less than $400, no penalty will be assessed. In dollar figures, where the excessive amount is less than $2,000 in claimed refund or credit, no penalty will be assessed pursuant to section 231-36.8, HRS. The $400 minimum penalty calculation does not take into account any interest accruable on the disallowed amount.

(f) Section 18-231-36.8-01-6676(e) is illustrated as follows:

EXAMPLE: Assume the same facts as the Example in subsection (d), except that upon audit it was determined that the taxpayer was entitled to $9,000 in credit and was disallowed $1,000 in claimed credit. Assume further that there was no reasonable basis for the excessive $1,000 credit claim. In this case, the "excessive amount" for purposes of calculating the penalty under section 231-36.8, HRS, is $1,000. Applying the twenty per cent penalty to the $1,000 excessive base amount results in a penalty of $200. Pursuant to the express terms of section 231-36.8, HRS, no penalty will be assessed under these facts because the penalty is less than $400.

(g) Reasonable basis defense. Section 231-36.8, HRS, provides for a defense against the erroneous refund penalty where the taxpayer has a reasonable basis for claiming the credit or refund. The burden of proof is on the person claiming the position taken on the return had a reasonable basis.

The reasonable basis standard is higher than frivolous or not patently improper. The reasonable basis standard is considered a one-in-four, or greater, likelihood of success on the merits of the claim after a person knowledgeable in the tax law makes a reasonable analysis. The director may prescribe a list of positions that the director believes do not meet the reasonable basis standard. Such list (and any revisions thereof) shall be published and made public pursuant to Tax Information Release.

Reasonable basis expressly includes innocent mistakes related to the refund or credit claim, which are errors on a return due to inadvertence or mathematical mistakes.

(h) Section 18-231-36.8-01-6676(g) is illustrated as follows:

EXAMPLE 1: XYZ Corporation conducted qualified research in Hawaii and further incurred qualified research expenses that generated a credit claim under section 235-110.91, HRS. In making its credit calculation, XYZ Corporation inadvertently added a line item invoice for research expenses twice, thus creating a larger base amount for determining its credit. Upon audit, the double calculation was discovered and the second claim for the same cost was disallowed. Under the facts of this example, XYZ Corporation's excessive amount for purposes of the penalty under section 231-36.8, HRS, was due to an inadvertent calculation error and therefore had a reasonable basis in making its excessive claim. The claim for the excessive amount is

rightfully disallowed; however, no penalty under section 231-36.8, HRS, should be assessed in this circumstance.

EXAMPLE 2: Assume the same facts as in Example 1; however rather than an inadvertent calculating error, XYZ Corporation knowingly included travel expenses unrelated to the qualified research activity, which were charged to a particular research project journal account for accounting purposes and knowingly included in the research tax credit claim. Rather than remove the disqualified expenditure from the credit claim, XYZ Corporation made the claim for the whole project account knowing the travel costs did not qualify. Upon audit, the claim for the travel expenses unrelated to qualified research activity was disallowed. Upon inquiry, XYZ Corporation said the disqualified travel was included out of convenience in its accounting practice. Under the facts of this example, XYZ Corporation's excessive amount included a claim for credit for which there was no basis. XYZ Corporation knowingly included the amount, which was unrelated to qualified research. Such claims are not allowed pursuant to a plain reading of section 231-110.91, HRS, which eliminates any reasonable basis for making the claim. Because XYZ Corporation's excessive amount had no reasonable basis under these facts, a penalty under section 231-36.8, HRS, would be warranted and is assessable in the discretion of the auditor; provided the director approves of the assessment pursuant to sections 231-36.8 and 18-231-10.6-01(h). [Eff 11/18/2010] (Auth: HRS §§ 231-3(9), 235-2.5(b), 231-10.6, 235-118) (Imp: HRS §§ 231-36.8)

§18-231-37 to §18-231-59 (Reserved.)

HRS §231-91

§18-231-91-01 Procedures; scope and purpose. (a) Sections 18-231-91-01 to 18-231-100-01, implement section 231-91, HRS through section 231-100, HRS, relating to Cash Economy Enforcement; Citations, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the general enforcement of taxes.

(b) A cease and desist citation pursuant to section 231-91, HRS, may include a monetary fine for any infraction under title 14, HRS, including but not limited to the following monetary fines:

(1) Failure to produce license upon demand, section 231-94, HRS;
(2) Failure to keep adequate books and records, section 231-95, HRS;
(3) Failure to record transaction, section 231-96, HRS;
(4) (Reserved);
(5) Tax avoidance price fixing, section 231-98, HRS;
(6) Possession of currency for tax avoidance purposes, section 231-99, HRS;
(7) Interference with a tax official, section 231-100, HRS;

(c) The administrative rules contained herein govern the practice and procedure in all cease and desist citations issued by the special enforcement section, including the imposition of any monetary fines, and any subsequent rights of review.

(d) An agency appeal of a cease and desist citation under section 231-91(e), HRS, shall be conducted as a contested case under chapter 91, HRS. The procedures for contested cases in chapter 91, HRS (including sections 91-8.5 through 91-15, HRS), shall apply to agency appeals.

(e) The administrative rules contained in sections 18-231-91-01 through 18-231-91-100-01 shall be construed to secure the just and speedy determination of every cease and desist citation issued.

(f) Should any section, paragraph, sentence, clause, phrase, or application of this subchapter be declared unconstitutional or invalid for any reason, the remainder of any other application of said chapter shall not be affected thereby. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-91)

HRS §231-91

§18-231-91-02 Definitions. As used in sections 18-231-91-01 through 18-231-100-01:

"Agency appeal" means an appeal of a cease and desist citation to the director or the director's designee pursuant to section 231-91(e), HRS.

"Department" means the department of taxation.

"Director" means the director of taxation.

"Hearing" means a contested case hearing in accordance with chapter 91, HRS, to determine an agency appeal.

"Person" means one or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity, and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity,

who as such officer, employee, partner, trustee, fiduciary, member or principal is under a duty to perform and is principally responsible for performing the act in respect of which the violation occurs.

"Presiding officer" means the director or presiding officer who will be conducting the hearing.

"Respondent" means the person to whom the cease and desist citation is addressed.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-91)

HRS §231-91 **§18-231-91-03 Cease and desist citation; requirements.** (a) A cease and desist citation must be issued on the forms prescribed by the department.

(b) A cease and desist citation shall include the following in its contents:

(1) The name and address of the respondent;

(2) The location of where the offense is about to occur, is occurring, or has occurred. If the location is a vehicle, the vehicle must be specifically identified, including its location at the time of the infraction;

(3) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder which constitute cause for the issuance of the cease and desist citation, including (if applicable) any allegation that the person is a cash-based business as defined in section 231-93, HRS;

(4) A signature of the special enforcement section employee or other Department employee authorized to issue the citation. By signing the cease and desist citation, the issuer certifies that the statements contained in the citation are true and correct, to the best of his or her knowledge. A citation that has not been signed by a duly authorized employee of the Department shall be void *ab initio*;

(5) If applicable, the amount of the monetary fine imposed against the respondent;

(6) A space for the respondent, or the respondent's agent or representative, to acknowledge receipt of the citation by signature. If the respondent or respondent's agent or representative refuses to sign or if for some other reason the special enforcement section employee is unable to acquire a signature to acknowledge receipt, the citation may indicate "refused to sign," "unavailable," "no signature for safety reasons," or other language explaining the lack of signature by the respondent or the respondent's agent or representative. The lack of the signature of the respondent or the respondent's agent or representative shall not affect the validity of the citation;

(7) Information regarding respondent's appeal rights, including the requirement that the citation must be returned to the special enforcement section within thirty days from the date of the citation, respondent's right to a hearing before the director or the director's designee, and contact information for where the respondent may obtain further information. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-91)

HRS §231-91 **§18-231-91-04 Issuance of a cease and desist citation.** (a) A cease and desist citation is both a notice of violation and an offer to settle an administrative case involving any violation of title 14, HRS, or any of the administrative rules adopted thereunder and may include a monetary fine where permitted under the applicable statutes and rules.

(b) Any duly authorized employee of the department who is assigned to the special enforcement section may issue a cease and desist citation to a person if there is reason to believe the person has violated, is violating, or is about to violate any provision of title 14, HRS, or any administrative rule adopted thereunder.

(c) A cease and desist citation may be served by:

(1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;

(2) Service by certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or

(3) If service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry, the cease and desist citation may be served by publication at least once in each of two successive weeks in a newspaper of general circulation.

(d) The date on which the citation is served on the respondent shall constitute the date of issuance. If the citation is served by publication under subsection (c)(3), the date of service of the citation is the last date of publication in the second successive week. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-91)

HRS §231-91 **§18-231-91-05 Response to cease and desist citation.** (a) A respondent must respond to a cease and desist citation within thirty days from the date of its issuance:

(1) By paying to the special enforcement section the stated amount of the monetary fine, which shall constitute acknowledgement of the violation and a waiver of further rights of review, provided that if the tendered payment is dishonored for any reason not the fault of the department, the respondent will be deemed not to have answered the citation; or

(2) By appealing the citation by making a written request to the special enforcement section for a contested case hearing in accordance with these rules and Chapter 91, HRS, including but not limited to section 18-231-91-08. Written requests for contested case hearings may be indicated on the citation itself.

(b) If the respondent fails to respond to the cease and desist citation within thirty days from the date the citation is issued:

(1) The failure is an acknowledgement that the allegations contained in the citation are true, and that the relief sought in the citation, including any monetary fines, is appropriate; and

(2) The department may collect any overdue monetary fines and enforce any overdue non-monetary sanctions as set forth in section 18-231-91-25(b).

(c) The hearing of an agency appeal shall be limited solely to the allegations contained in the citation. No other matter may be considered, including, but not limited to, any disputes relating to any tax liability. [Eff 11/30/14; am 4/3/16] (Auth: HRS §231-3(9)) (Imp: HRS §231-91)

HRS §231-91 **§18-231-91-06 Venue.** Venue of the hearing of an agency appeal is proper in the taxation district in which the alleged violation is said to have occurred, is occurring, or is about to occur, or such other location as the parties to the hearing may mutually agree. Any party may participate in the hearing by telephone, provided that the presiding officer receives written notice of such intent at least five days before the hearing. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-91)

HRS §231-91 **§18-231-91-07 Docket.** The director or the director's representative shall maintain a docket of all agency appeals and each agency appeal shall be assigned a number. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-08 Hearing; request for and scheduling.** (a) Upon receipt of an agency appeal request, the special enforcement section shall notify the director of the appeal and the director or the director's designee shall schedule a hearing.

(b) A written request for an agency appeal shall contain a concise statement of the basic facts, the issues contested, and the relief the respondent is requesting. The department may prepare departmental forms that may be substituted for any written request for an agency appeal which may be required for any authorized proceedings pursuant to law or rules.

(c) No hearing shall be held until due notice is given to all parties as provided in sections 91-9 and 91-9.5, HRS, or their successor laws. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9), 231-7) (Imp: HRS §§91-9, 91-9.5, 231-91)

HRS §231-91 **§18-231-91-09 Presiding officer of hearings; duties and powers; substitute presiding officers.** (a) The director shall conduct the hearings on an appeal, shall render the decision, and shall issue such orders and take such actions as may be required; provided that the director may designate a representative, who shall be the presiding officer, to conduct the hearings, and make recommendations in writing to the director, which recommendations shall include recommendations as to findings of fact and conclusions of law. If the presiding officer's recommendation is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation. The person contesting the citation shall thereafter have ten calendar days from the date the recommendation is mailed to file exceptions to the recommendation and to present arguments to the director in writing. The director shall then personally consider the whole record or such portion thereof as may be cited by the parties, shall render the decisions as to findings of fact and conclusions of law in writing, and shall issue such orders and take such actions as may be further required.

(b) In all hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify to official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals, and perform such other duties necessary for the proper conduct of the hearings.

(c) The presiding officer may subpoena witnesses and books, papers, documents, other designated objects, or any other record, however maintained, pursuant to section 231-7, HRS.

(d) Any of these rules of practice and procedure may be suspended or waived by stipulation of all the parties.

(e) The presiding officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of the evidence presented at any hearing if requested for purposes of rehearing or court review. The party making the request shall be responsible for the fees for the transcript. If a verbatim record is taken, any other party may request a certified transcript of the proceedings at that party's cost.

(f) If a presiding officer is absent from a scheduled hearing or is incapacitated from performance of duty, the director may designate another representative to serve as a substitute presiding officer without abatement of the proceedings. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-10 Disqualification of presiding officers.** (a) A presiding officer shall be disqualified from deciding an agency appeal if the presiding officer:

(1) Has a substantial financial interest, as defined by section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the agency appeal;

(2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;

(3) Has participated in the investigation preceding the institution of the agency appeal proceedings or has participated in the development of the evidence to be introduced in the hearing; or

(4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

(b) A presiding officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the presiding officer need not voluntarily withdraw and the party seeking the disqualification may file a motion to disqualify the presiding officer. The motion shall be filed and decided before the evidentiary portion of the hearing on the agency appeal. If a presiding officer is disqualified, the director shall designate another representative to serve as the presiding officer. If the disqualified presiding officer is the director, the director shall designate a representative to serve as the presiding officer whose findings of fact, conclusions of law, and decision and order shall be final and binding. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-11 Communications with the director or presiding officers.** (a) No person shall communicate with the director or presiding officer regarding matters to be decided by the director or presiding officer in any agency appeal with the intent, or the appearance of the intent, to influence the decision of the director or presiding officer, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the director or presiding officer.

(b) If a communication is made privately with the presiding officer in violation of subsection (a), the presiding officer shall disclose the communication to all parties on the record of the proceedings and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte communication. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-12 Computation of time.** In computing any time period under these rules, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, state holiday, or state government furlough day. Intermediate Saturdays, Sundays, legal holidays, or government furlough days shall be included. Intermediate Saturdays, Sundays, state holidays, or state government furlough days shall be excluded in the computation when the period of time prescribed or allowed is less than seven days. Whenever an act required to be performed under these rules may be accomplished by mail, the act shall be deemed to have been performed on the date the items are actually received by the recipient. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-13 Filing of documents; amendment; dismissal; retention.** (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any agency appeal shall be filed with the director or as instructed by the director or presiding officer. Such papers may be sent electronically, by facsimile transmission, by United States mail, postage prepaid, or by hand-delivery to the department, within the time limit, if any, as set forth in any statute or rule, for such filing. The date on which the papers are actually received by the department or at the hearing shall be deemed to be the date of filing.

(b) Filing electronically means emailing the filing in pdf format or other format as instructed by the director or presiding officer to an email address designated by the director or presiding officer. The email shall include

a subject line identifying the appeal number, the respondent, and the hearing date and a description of the papers being filed.

(c) All papers filed with the department, other than papers filed electronically or by facsimile, shall be written in ink, typewritten, or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached. Papers filed electronically or by facsimile must be transmitted in a form that can be legibly and understandably printed to 8-1/2 by 11 inch paper or 8-1/2 by 17 inch paper.

(d) All papers must be signed in ink by the party or a duly authorized agent or attorney. The presentation to the director (whether by signing, filing, submitting, or later advocating) of any paper shall constitute a certification that the party in interest has read the document; that to the best of the party's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

(e) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed. Papers sent electronically or by facsimile transmission shall not require any copies. However, the original must be presented to the Department upon request.

(f) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

(g) All papers filed in an agency appeal shall be served on all other parties to the hearing by the filing party. Service may be accomplished by:

(1) Personal service on the party, party's officer or director, or party's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;

(2) Service by certified mail, restricted delivery, sent to the party's last known business or residence address or the address of party's registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or

(3) If service by certified mail is not made because of refusal to accept service or because it has not been possible to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry, the papers may be served by publication at least once in each of two successive weeks in a newspaper of general circulation.

(h) If any document initiating or filed in an agency appeal is not in substantial conformity with the applicable rules of the department as to the document's contents, or is otherwise insufficient, the presiding officer, on his or her own motion, or on motion of any party, may strike the document, or require its amendment. The document initiating the agency appeal may not be stricken, but may be subject to required amendments. If amendments are required, the document with amendments shall be effective as of the date of the original filing.

(i) All documents filed in an agency appeal shall be retained in the files of the presiding officer, except that the presiding officer may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-14 Filed documents available for public inspection; exceptions.** (a) Unless otherwise provided by statute, rule, or order of the presiding officer, all information contained in any document filed in an agency appeal shall be available for inspection by the public after final decision.

(b) Confidential treatment may be requested where authorized by statute. For good cause shown, the presiding officer shall grant such a request.

(c) When permitted or authorized, matters of public record may be inspected in the appropriate offices of the department during regular office hours. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-15 Appearances in agency appeal.** (a) An individual may appear in the individual's own behalf; a general partner may represent a partnership; and a bona fide officer or employee of an entity may represent the entity in any hearing.

(b) A person may be represented by an attorney or attorneys-at-law qualified to practice before the supreme court of Hawaii in any hearing under these rules.

(c) A person shall not be represented in any hearing except as stated in subsections (a) and (b).

(d) Any person appearing at a hearing in a representative capacity on behalf of a respondent shall submit a notice of appearance and a power of attorney at least seven days prior to the date of the hearing. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-16 Substitution of parties.** Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in the case of a death of a party, substitution may be ordered without the filing of a motion. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-17 Consolidation; separate hearings.** (a) The presiding officer, upon his or her own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if the presiding officer finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of the business of the department and to the ends of justice and will not unduly delay the proceedings.

(b) The presiding officer, upon his or her own initiative or upon motion, may separate any issue, appeal, or other matter for hearing or for other purposes if the director or presiding officer finds that the separation will be conducive to the proper dispatch of business of the department and to the ends of justice. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-18 Intervention.** Applications to intervene in a proceeding shall comply with section 18-231-91-13 and shall be served on all parties. Applications for intervention will be granted or denied at the discretion of the presiding officer. As a general policy, such applications shall be denied unless the petitioner shows that it has an interest in a question of law or fact involved in the contested matter. [Eff 11/30/14; am 4/3/16] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-19 Prehearing conferences; exchange of exhibits; briefs.** (a) The presiding officer may hold or cause to be held prehearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging of names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to the brief. A brief of more than twenty pages shall contain a subject index and table of authorities. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-20 Motions.** (a) All motions other than those made during a hearing shall be made in writing to the presiding officer, shall state the relief sought, and shall be accompanied by an affidavit or memorandum setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing memoranda, if any.

(b) The moving party shall serve a copy of all motions on all other parties at least fourteen calendar days prior to the hearing on the motion. Service shall be in accordance with the rules of service of papers under section 18-231-91-13(g).

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than seven calendar days prior to the hearing. Service shall be in accordance with the rules of service of papers under section 18-231-91-13(g).

(d) Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion. [Eff 11/30/14; am 4/3/16] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-21 Evidence.** (a) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence with a view to doing substantial justice.

(b) Evidence shall generally consist of the cease and desist citation, any applicable reports, or other written statements submitted by either party.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all counsel parties. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(f) If any matter contained in a document on file as a public record with the department is offered in evidence, unless otherwise directed by the presiding officer, the document need not be produced and may be received in evidence by reference.

(g) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(h) Exhibits shall be prepared in the same format as that required for the filing of documents under section 18-231-91-13, unless otherwise directed or permitted by the presiding officer.

(i) At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time. [Eff 11/30/14; am 4/3/16] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-10, 231-91)

HRS §231-91 **§18-231-91-22 Continuances or extensions of time.** Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter for an agency appeal, the presiding officer may (1) before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-23 Service of decisions.** All final orders, opinions, or rulings entered in an agency appeal shall be served in accordance with section 91-12, HRS. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-12, 231-91)

HRS §231-91 **§18-231-91-24 Correction of transcript.** Motions to correct the transcript shall be made within five days after the receipt of the transcript and shall be acted upon by the presiding officer. [Eff 11/30/14] (Auth: HRS §§91-2, 231-3(9)) (Imp: HRS §§91-9, 231-91)

HRS §231-91 **§18-231-91-25 Enforcement and stay.** (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions may be stayed by the reviewing court under section 91-14, HRS.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-91)

§18-231-92-01 (Reserved.)

§18-231-93-01 (Reserved.)

HRS §231-94 **§18-231-94-01 Fine for failure to produce license.** (a) A person required to be licensed or permitted under title 14, HRS (whether or not so licensed or permitted), and who fails to produce the license or permit upon demand by the special enforcement section shall be fined as follows:

(1) For a first offense, a fine of $250;

(2) For second and subsequent offenses, a fine of $500; provided that if the person is a cash-based business, the fine shall be $1,000.

(b) A person may produce the original of the license or permit, a copy of the license or permit, a print out from the department showing that such person holds a license or permit, a completed application to the department for a license or permit along with proof of payment of any applicable license or permit fees, or a general excise tax return not older than one year along with evidence of payment of any taxes shown on such return, provided that a return that shows no taxes owing shall not be acceptable.

(c) Only one citation for a violation of this section may be issued to the person in any thirty day period Every citation issued under this section shall be considered as a separate violation.

(d) For purposes of this section, a person who sells at a swap meet, flea market, garage sale, farmers market, open market, trade show, or similar event shall be deemed to be engaging in business if the person sells goods and/or services of any kind in the State at more than three separate events in any taxable year, regardless of the location

or amount of the sales activity, unless such person can demonstrate to the department's satisfaction that all sales occurring at one or more of such events were casual sales as defined under section 237-1, HRS. Each day that a person sells at a swap meet, flea market, garage sale, farmers market, open market or similar event shall be considered as a separate event.

(e) It is an absolute defense to this section if the person produces a license or permit number on file with the department and the department confirms that the person is associated with that number and the number is valid for the purpose of that person's activities. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-94)

HRS §231-95

§18-231-95-01 Fine for failure to keep adequate books and records. (a) A person required to keep adequate books and records but who fails to produce such books and records upon demand by the special enforcement section shall be fined as follows:

(1) For the first offense, a fine of $500;

(2) For second and subsequent offenses, a fine of $1,000; provided that if the person is a cash-based business, the fine shall be $2,000.

(b) A person shall not be required to keep books and records in any particular format, provided that the books and records fairly reflect the financial matters of the business, including (but not limited to) the revenue and expenses of the business.

(c) The special enforcement section shall demand the production of books and records in writing that shall state:

(1) That if the person was unable to produce the books and records while the special enforcement section officer was present, the person must make an appointment with the special enforcement section officer to deliver the books and records to that officer or another officer of the special enforcement section at a state tax office within fourteen days; and

(2) What period of books and records the person must produce.

(d) Where a person's business records are not in his or her possession due to transient business location, the special enforcement section will allow the person to produce the books and records at a state tax office. A person may agree to produce books and records outside a state tax office, or agree to produce books and records in a period of time shorter than fourteen days, at his or her discretion and upon agreement with a special enforcement section officer.

(e) Only one citation may be issued to the person in any thirty day period for any demand of any period of books and records. Following the expiration of the thirty day period, a citation may be issued for failure to produce the same books and records demanded in connection with any previous citation, or for failure to produce books and records for a different period. Every citation issued under this section shall be considered as a separate violation. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-95)

HRS §231-96

§18-231-96-01 Fine for failure to record transaction. (a) A person who conducts taxable business transactions in cash and who fails to offer a receipt or other record of the transaction and who fails to maintain a contemporaneously generated record of all business transactions conducted each day, shall be fined as follows:

(1) For a first offense, a fine of $500;

(2) For second and subsequent offenses, a fine of $1,000; provided that if the person is a cash-based business, the fine shall be $2,000.

(b) For purposes of this section, a transaction is a business transaction if the activity of the person would require the person to hold a license or permit in accordance with any provision of title 14, HRS, or the rules adopted thereunder.

(c) For purposes of this section, the following methods will satisfy the requirements of this section:

(1) Cash register receipt (either by a manually operated register or by an electronic register), provided that the cash register tabulates and maintains records of total daily sales;

(2) Point of sale, scanner, or other computerized method, provided that the system tabulates and maintains records of total daily sales;

(3) Pre-numbered receipt book with at least an original and copy, provided that the receipts are used in numerical order, the receipt numbers are not reused, and at least one copy of all receipts is retained; or

(4) Contemporaneous log maintained by the person setting forth a general description of the goods and/or services sold, as well as the total gross proceeds of each transaction, as well as a statement advising the customer of the right to obtain a receipt. For purposes of this subsection, a prominently displayed sign in the immediate vicinity of where the goods and/or services are paid for noting that a receipt will be given upon request shall suffice to satisfy such notice requirement, provided that such sign is clearly legible and visible.

(d) If the person is otherwise in compliance with title 14, HRS, at the time a fine for violation of section 231-96, HRS, is issued, the fine shall be commensurate with the violation as follows:

(1) For the first fine issued for a first offense under subsection (a)(1), the fine, or a portion thereof, may be waived at the discretion of the special enforcement section employee or other authorized department employee who issued the citation; and

(2) For second and subsequent fines under subsection (a)(2), such fines shall not be waived.

(e) For purposes of this section, "cash" shall include legal tender of any country, currency in whatever form, and negotiable instruments in whatever form, but shall not include charge card or debit card payments.

(f) For purposes of this section, a transaction is deemed to have occurred at the time that a customer pays for the goods and/or services and the person accepts the payment, notwithstanding any rights of return or refund that the customer may have.

(g) Only one citation may be issued to the person per day. Every citation issued under this section shall be considered as a separate violation. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-96)

§18-231-97-01 (Reserved.)

HRS §231-98

§18-231-98-01 Fine for tax avoidance price fixing. (a) A person who sells, offers to sell, or otherwise conducts business offering a lower price to complete the transaction when paid for in cash than by any other payment means shall be fined $2,000; provided that if the person is a cash-based business, the fine shall be $3,000.

(b) It shall not be an offense under this section if the person can establish a legitimate business purpose for such differentiation. For example, a legitimate business purpose exists if some fee or cost that is associated with the alternative means of payment (including, but not limited to, credit or debit card merchant fees) is not present when payment is made in cash, provided that the discount offered does not exceed the amount of such fee or cost.

(c) For purposes of this section, "cash" shall include legal tender of any country, currency in whatever form, and negotiable instruments in whatever form, but shall not include charge card or debit card payments.

(d) Only one citation may be issued to the person in any thirty day period, and only one citation may be issued per incidence of sale or offer in violation of this section. Every citation issued under this section shall be considered as a separate violation. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-98)

§18-231-99-01 (Reserved.)

HRS §231-100

§18-231-100-01 Fine for interference with a tax official. (a) A person who intentionally interferes with, hinders, obstructs, prevents, or impedes any investigator, auditor, collector, or other employee of the department from obtaining license information, books, records, articles, or items of business transacted, or other information or property rightfully entitled to the department shall be subject to a fine of $2,000.

(b) No citation shall issue for any conduct that is constitutionally protected.

(c) In any proceeding under this section, it shall be an absolute defense that the person acted with good cause. For purposes of this section, good cause shall mean a situation where:

(1) The person's intent was to comply with the law;

(2) The person acted in a reasonable manner; and

(3) There was a significant mitigating factor such as, but not limited to, the person not knowing he or she was interfering with, hindering, obstructing, preventing, or impeding the investigator, auditor, collector or other employee of the department.

(d) A citation may be issued to the person for each incident that constitutes intentionally interfering with, hindering, obstructing, preventing, or impeding of any investigator, auditor, collector, or other employee of the department which prevents such investigator, auditor, collector, or other employee of the department from obtaining license information, books, records, articles, or items of business transacted, or other information or property to which the department was rightfully entitled. Every citation issued under this section shall be considered as a separate violation. [Eff 11/30/14] (Auth: HRS §231-3(9)) (Imp: HRS §231-100)

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