

# ADMINISTRATION OF TAXES

## CHAPTER 231 ADMINISTRATION OF TAXES

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This is an unofficial compilation of the Hawaii Revised Statutes.

#### Note

Performance-based contracts to acquire automated tax systems. L 1996, c 273.

#### Law Journals and Reviews

Hawaii's General Excise Tax Law: A Comprehensive Review of the Decisions. II HBJ No. 13, at pg. 1.

Taxes in Hawaii Since January 1973: A Tax System Evolves, Arthur B. Reinwald, 13 HBJ No. 2 Summer 1977, pg. 3.

## GENERAL PROVISIONS

**§231-1 Definitions.** Whenever used in chapters of the law under title 14 administered by the department: “Assessor” or “assistant assessor” means the assessor or an assistant assessor appointed for the taxation district concerned. Whenever there is more than one assessor for the first district, with respect to that district “assessor” or “assistant assessor” means the assessor or assistant assessor for a particular tax.

“Comptroller” means the comptroller of the State.

“Department” means the department of taxation, unless the context clearly indicates otherwise.

“Electronic funds transfer” means any transfer of funds that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account but shall not include any transfer originated by check, draft, or similar paper instrument.

“Person” includes one or more individuals, a company, 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.

“Property” or “real property” has the meaning defined herein, and, to the extent applicable to other chapters of the law under title 14 administered by the department includes other subjects or measures of tax. “Real property” includes all land and appurtenances thereof and the buildings, structures, fences, and improvements erected on or affixed to the land, and any fixture which is erected on or affixed to the land, buildings, structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use is necessary to the utility of the land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to the land, buildings, structures, fences, and improvements, excluding, however, any growing crops. [L 1932 2d, c 40, pt of §§1 and 17; am L Sp 1933, c 9, §14; RL 1935, pt of §§1900 and 1906; am L 1935, c 153, pt of §1; RL 1945, pt of §§5101 and 5103; am L 1945, c 79, §1; RL 1955, §115-1; am L 1957, c 152, §1; am L Sp 1959 2d, c 1, §16; am L 1967, c 37, §1; HRS §231-1; am L 1983, c 217, §2; am L Sp 1984 1st, c 1, §4; am L 1989, c 14, §4(1); am L 1991, c 263, §2; am L 1995, c 66, §1 and c 121, §2; am L 1996, c 54, §1; am L 2009, c 134, §4; am L 2013, c 58, §1]

## Cross Reference

[Tax Information Release No. 90-14, “Withholding of Tax on the Disposition of Real Property by Nonresident Persons”](#) **Superseded in part by TIR 97-1**

## Case notes

Commissioner may exercise the right to appeal given the assessor by §232-19, 44 H. 584, 358 P.2d 539.

**[§231-1.5] Confidentiality privileges relating to taxpayer communications.** Section 7525 (with respect to confidentiality privileges relating to taxpayer communications) of the Internal Revenue Code shall be operative for the purposes of this title. All references to Internal Revenue Code sections within section 7525 shall be operative for purposes of this section. The term “Internal Revenue Service” as used in section 7525(a)(2)(A) means the department; the term “federal court” as used in section 7525(a)(2)(B) means state court; and the term “United States” as used in section 7525(a)(2)(B) means State. [L 2001, c 45, §1]

**[§231-1.6] Personnel security program; criminal history record checks.** (a) The department shall establish a personnel security program that ensures a background investigation is completed at the appropriate level designated by the federal government for any person, including any authorized contractor, to have access to federal tax information. This program shall include criminal history record checks in accordance with section 846-2.7. Information obtained pursuant to this subsection shall be used exclusively by the department for the purpose of determining whether the person is suitable for accessing federal tax information in accordance with applicable federal laws.

(b) The department may terminate or deny employment to any employee or applicant, or terminate or refuse to secure the services of any contractor, if the department finds by reason of the background investigation conducted under subsection (a) that the employee or applicant, or employee or agent of the contractor, poses a risk to the security of federal tax information. Termination or denial of employment, or termination or refusal to secure the services of any contractor, under this subsection shall only occur after appropriate notification to the employee, applicant, or employee or agent of the contractor, of the findings of the background investigation, and after the employee, applicant, or employee or agent of the contractor is given an opportunity to meet and rebut the findings. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 and 89, or administrative rules of the department.

(c) The department shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91. [L 2017, c 132, §2]

**§231-2 Taxation districts.** For the purpose of taxation, the State is divided into the following four districts:

- (1) The city and county of Honolulu, to be called the first district;
- (2) The counties of Maui and Kalawao, to be called the second district;
- (3) The county of Hawaii, to be called the third district;
- (4) The county of Kauai, to be called the fourth district. [L 1932 2d, c 40, §2; RL 1935, §1901; RL 1945, §5102; RL 1955, §115-2; am L 1967, c 37, §1; HRS §231-2; am L 2017, c 12, §31]

#### Cross References

Districts, generally, see chapter 4.

#### Case Notes

Cited: 33 H. 515, 530.

**18-231-3-1.1 §231-3 Department, general duties and powers.** The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) Assessment: To make any assessment by law required to be made by the department;
- (2) Collections: To be responsible for the collection of all taxes imposed under title 14, except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the department's duties, whenever requested by any officer acting under those laws, or by an interested person;
- (4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of the attorney general's deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws administered by the department;
- (5) Forms: To prescribe forms to be used in or in connection with any assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;
- (6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) Recommendations for legislation: To recommend to the governor any amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of taxes;
- (8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and any other matters of information concerning taxation as may be deemed of general interest;
- (9) Rules: To adopt such rules as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;
- (10) Compromises: With the approval of the governor, to compromise any claim where the tax exceeds \$50,000 (exclusive of penalties and interest) arising under any tax law the administration of which is within the scope of the department's duties, and to compromise any tax claim where the tax is \$50,000 or less (exclusive of penalties and interest) without seeking the approval of the governor; provided that the director shall have the discretion to seek the approval of the governor to compromise any tax claim where the director deems it appropriate; and in each case the department shall post each proposed compromise, as set forth in subparagraphs (A) to (D), on the department's Internet website for five calendar days before the director signs the compromise, and there shall be placed on file in the department's office a statement of:
  - (A) The name of the taxpayer and the amount and type of tax assessed, or proposed to be assessed;
  - (B) The amount of penalties and interest imposed or which could have been imposed by law with respect to the amount of tax assessed, as computed by the department;
  - (C) The total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof; and
  - (D) The reasons for the compromise.

Notwithstanding the provisions of any law making unlawful the disclosure of tax returns or return information, statements on file and included in the department's Internet website in respect of compromises shall be open to public inspection;

- (11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, rule, or construction of the tax laws, of general application, shall be applied without retroactive effect;
- (12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in that case there shall be placed on file in the department's office a statement showing the name of the person receiving the remission, the principal amount of the tax, and the year or period involved;
- (13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of the taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; the agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:
- (A) The matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State; and
- (B) In any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
- 18-231-3-14 (14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in other chapters of the law under title 14 administered by the department for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, receiving, and enforcing payment of the taxes imposed under the authority of those chapters as far as the provisions are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner. [L 1932 2d, c 40, §§18, 20, 57, 58; RL 1935, §1907; RL 1945, §5104; am L 1945, c 79, §2 and c 196, §1; am L 1951, c 133, §1; am L 1953, c 125, §1 and c 223, §2; RL 1955, §115-4; am L Sp 1959 2d, c 1, §16; HRS §231-3; am L 1983, c 217, §3; am imp L 1984, c 90, §1; gen ch 1985; am L 1985, c 16, §2; am L 1986, c 340, §2; am L 1989, c 14, §4(2); am L 1990, c 320, §2; am L 1991, c 263, §3; am L 1995, c 66, §2; am L 2003, c 136, §3]

#### Cross References

Generally, see §26-10.

Annual reports, due dates, see §93-12.

#### Law Journals and Reviews

Rule of Strict construction in Tax Cases, a Question of Classification or Exemption, Arthur B. Reinwald, 11 HBJ 98.

#### Case Notes

Require information return, 33 H. 766.

Commissioner may exercise the right to appeal given the assessor by §232-19. 44 H. 584, 358 P.2d 539.

Economy in administration is a proper factor for consideration in assessment of taxes. 56 H. 321, 536 P.2d 91.

**[§231-3.1] Consideration paid not indicative of fair market value.** Where sales are made by a taxpayer, taxable under title 14, to other affiliated companies or persons, or under other circumstances where the relation between the taxpayer and the buyer is such that the consideration paid, if any, is not indicative of the fair market value, the taxpayer shall pay the taxes imposed under title 14, measured by the fair market value, corresponding as nearly as possible to the gross proceeds of sales of like quality and character by other persons, where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar. If no such comparable sales exist between nonaffiliated buyers and sellers, the department may prescribe equitable and uniform rules for ascertaining the fair market value of the sale.

As used in this section, "affiliated companies or persons" means two or more organizations, trades, or businesses (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests, including companies or persons described in section 237-23.5. [L 2002, c 153, §2]

**§231-3.2 REPEALED.** L 2007, c 9, §21.

**[§231-3.3] Auditor access to tax records or other information for reviews of exemptions, exclusions, credits, and deductions.** (a) Notwithstanding any other law to the contrary, the department shall provide to the auditor any tax records and other information maintained by the department that are requested by the auditor for the reviews of:

- (1) Exemptions, exclusions, and credits under the general excise and use taxes, public service company tax, and insurance premium tax, as provided by chapter 23, part VI; and
- (2) Credits, exclusions, and deductions under the income tax and financial institutions tax, as provided by chapter 23, part VII.

Any information provided to the auditor under this section marked confidential by the department shall be kept confidential by the auditor, except as provided in subsection (b).

(b) Notwithstanding any other law to the contrary, the auditor may include in a report of a review that is submitted to the legislature data that:

- (1) The auditor deems necessary and relevant for the purpose of legislative review, including information received from the department of taxation pursuant to subsection (a); and
- (2) Does not explicitly identify any specific taxpayer or beneficiary of a tax exemption, exclusion, credit, or deduction;

provided that any information marked confidential by the department shall be kept confidential by the legislature. [L 2017, c 177, §2]

**18-231-3.4 §231-3.4 Publication of reports.** (a) The department of taxation shall publish reports on the following:

- (1) Hawaii income patterns — individuals;
- (2) Hawaii income patterns — businesses;
- (3) Tax credits; and
- (4) General excise tax exemptions that:
  - (A) Are tax expenditures at the wholesale rate;
  - (B) Are tax expenditures at the retail rate; and
  - (C) May be foregone opportunities to export taxes; provided that the department of taxation shall have the discretion to determine the exemptions that fit within each of the categories within subparagraphs (A), (B), and (C) and those that do not fit into any of the categories. The department shall not be required to publish reports on exemptions that do not fit into any of the categories.

(b) The department shall make each of these reports available in both paper form and commonly accessible electronic forms.

(c) The department of taxation shall provide the reports required by subsection (a)(1) and (3) to the legislature no later than twenty days prior to the convening of each regular session; provided that on or before December 31, 2015, the department of taxation shall report to the legislature on the status of upgrading its forms and reporting capabilities per the implementation of the department of taxation's tax system modernization. The department of taxation shall provide the reports required by subsection (a)(2) and (4) to the legislature no later than twenty days prior to the convening of the 2017 regular session and each session thereafter.

(d) The department may explore and implement all reasonable methods of covering the costs of distribution of the reports, including but not limited to:

- (1) Setting reasonable fees that will cover the costs of producing and distributing the reports in paper and electronic form; and
- (2) Negotiating licensing fees with commercial information providers for rights to carry the reports on-line or in other electronic storage methods. [L 1996, c 250, §2; am L 2012, c 189, §1; am L 2015, c 94, §2]

**Note**

Establishing positions to fulfill the L 2012, c 189 amendment. L 2012, c 189, §2.

**§231-3.5 Suspension of running of the period of limitation during bankruptcy proceedings.** The running of the periods of limitation provided under chapters of the law under title 14 administered by the department to the contrary notwithstanding, shall be suspended for the period during which the director of taxation is prohibited from making an assessment of taxes by reason of title 11 (with respect to bankruptcy) of the United States Code and for sixty days after the prohibition is lifted. [L 1991, c 19, §1; am L 1994, c 20, §1; am L 1995, c 66, §3]

**[§231-3.6] Streamlined sales and use tax agreement compliance.** (a) A seller that registers to pay or collect and remit sales or use tax in accordance with the terms of the streamlined sales and use tax agreement may select one of the following methods of remittance or other method allowed by law to remit the taxes collected, as follows:

- (1) A model 1 seller, who shall be a seller who selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;

- (2) A model 2 seller, who shall be a seller who selects a certified automated system to use which calculates the amount of tax due on a transaction; or
  - (3) A model 3 seller, who shall be a seller who uses its own proprietary automated sales tax system that has been certified as a certified automated system.
- (b) A certified service provider in model 1 shall be allowed a monetary allowance in accordance with the terms of the contract that the states participating in the streamlined sales and use tax agreement execute with the provider. The director shall prescribe the allowance in accordance with the terms of the contract, which shall be funded entirely from money collected in model 1.
- A monetary allowance to a certified service provider may be based on one or more of the following incentives:
- (1) A base rate that applies to taxable transactions processed by the provider; and
  - (2) For a period not to exceed twenty-four months following a voluntary seller's registration through the streamlined sales and use tax agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.
- (c) A model 2 seller shall be allowed a monetary allowance that the director shall prescribe in accordance with the terms agreed to by the member states of the streamlined sales and use tax agreement. The member states initially anticipate that they will provide a monetary allowance to sellers under model 2 based on the following:
- (1) Each seller shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by the seller; and
  - (2) For a period not to exceed twenty-four months following a voluntary seller's registration through the streamlined sales and use tax agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.
- (d) A model 3 seller and all other sellers that are not under model 1 or model 2 shall be allowed a monetary allowance that the director shall prescribe in accordance with the terms agreed to by the member states of the streamlined sales and use tax agreement. The member states initially anticipate that they will provide a monetary allowance to sellers under model 3 and to all other sellers that are not under models 1 or 2 based on the following:
- (1) For a period not to exceed twenty-four months following a voluntary seller's registration through the streamlined sales and use tax agreement's central registration process; and
  - (2) A percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.
- (e) Pursuant to the streamlined sales and use tax agreement, the director is authorized to accept certified automated systems and certified service providers to aid in the administration of the collection of the tax imposed under chapter 237 and chapter 238.
- (f) No person required to collect any tax imposed by chapter 237 or 238, or any tax authorized to be collected under the streamlined sales and use tax agreement shall be held liable for having charged and collected the incorrect amount of sales or use tax by reason of reliance on erroneous data provided by the director with respect to tax rates, boundaries, or taxing jurisdiction assignments.
- (g) In connection with a purchaser's request from a seller of overcollected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of the sales or use taxes, the seller:
- (1) Uses either a provider or a system, including a proprietary system, that is certified by the State; and
  - (2) Has remitted to the State all taxes collected less any deductions, credits, or collection allowances.
- (h) For the purposes of this section, "streamlined sales and use tax agreement" means the agreement authorized under chapter 255D. [L Sp 2005, c 3, §2]

**§231-4 Assessing officers eligible to appointment as collecting officers and vice versa.** Appointees to offices or positions in the department of taxation for the assessing of taxes shall be eligible for appointment to offices or positions in the department for the collection of taxes, and vice versa. [L 1932 2d, c 40, §6; RL 1935, §1904; RL 1945, §5106; am L 1951, c 264, §2; RL 1955, §115-6; am L Sp 1959 2d, c 1, §16; HRS §231-4; am L 1989, c 14, §4(3)]

**[§231-4.3] Investigators; appointment and powers.** The director may appoint and commission one or more investigators as the exigencies of the public service may require. Persons appointed and commissioned under this section shall have and may exercise all of the powers and authority and the benefits and privileges of a police officer or of a deputy sheriff, including the power to arrest; provided that such powers shall remain in force and effect only while in actual performance of their duties. These investigators shall consist of personnel whose primary duty is to conduct investigations as directed by the director. Persons appointed and commissioned under this section shall be exempt from chapter 76. [L 2003, c 136, §2]

**[§231-4.5] Administrative rules officer; specialists; appointment and duties.** The director of taxation may appoint an administrative rules officer, and administrative rules specialists as necessary to assist the administrative rules officer.



The administrative rules officer shall direct the adoption of rules related to taxes administered by the department, assist with the issuance of tax memoranda and tax information releases, and perform other duties as directed by the director. The administrative rules officer and the administrative rules specialists shall be exempt from chapters 76 and 77 and may be legal or accounting professionals; provided that no individual appointed under this section shall render legal services reserved to the attorney general under chapter 28. [L 1990, c 102, §1]

**§231-5 Deceased officers, duties of personal representatives, etc.** The personal representatives of any deceased officer of the department of taxation, and all other persons into whose hands any tax lists, or records, papers, documents, or books, or taxes, may come, shall deliver the same to the department, and any refusal or wilful failure so to do shall constitute a misdemeanor. [L 1932 2d, c 40, §9; RL 1935, §1909; RL 1945, §5109; RL 1955, §115-9; am L Sp 1959 2d, c 1, §16; HRS §231-5; am L 1976, c 200, pt of §1]

**§231-6 Oath, power to administer.** The department of taxation may administer all oaths or affirmations required to be taken or be administered under chapters of the law under title 14 administered by the department, with respect to any matters coming within the scope of the duties of the department. [L 1932 2d, c 40, §10; RL 1935, §1916; RL 1945, §5110; RL 1955, §115-10; am L Sp 1959 2d, c 1, §16; HRS §231-6; am L 1983, c 217, §4; am L 1985, c 16, §3; am L 1986, c 340, §3; am L 1991, c 263, §4; am L 1995, c 66, §4]

**§231-7 Hearings and subpoenas.** *[This section is effective until June 30, 2011. For section effective on July 1, 2011, see below.]* (a) The director of taxation, and any representative of the director duly authorized by the director, may conduct any inquiry, investigation, or hearing, relating to any assessment, or the amount of any tax, or the collection of any delinquent tax, including any inquiry or investigation into the financial resources of any delinquent taxpayer or the collectability of any delinquent tax.

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

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

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

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

(e) The provisions of this section are in addition to all other provisions of law, and apply to any tax within the jurisdiction of the department. [L 1945, c 196, §1; RL 1955, §115-11; am L Sp 1959 2d, c 1, §16; HRS §231-7; gen ch 1985; am L 2009, c 166, §17]

#### Note

Applicability of 2009 amendment. L 2009, c 166, §27.

**§231-7 Audits, investigations, hearings and subpoenas.** *[Section is effective July 1, 2011. For section effective until June 30, 2011, see above.]* (a) The director of taxation, and any representative of the director duly authorized by the director, may conduct any civil audit or criminal investigation, investigation, or hearing, relating to any assessment, or the amount of any tax, or the collection of any delinquent tax, including any audit or investigation into the financial resources of any delinquent taxpayer or the collectability of any delinquent tax.

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

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

- (1) Shall state that the subpoena is issued by the department and shall command each person to whom it is directed to attend and give testimony at the time and place specified, and may also command the person to whom the subpoena is directed to produce books, papers, documents, or other objects specifically designated;
- (2) May be served at any place within the State by an investigator appointed pursuant to section 231-4.3 or any other representative of the director duly authorized by the director;
- (3) Shall require attendance of the person only in the county wherein the person is served with the subpoena or at any other place as is agreed upon by the person and the department; provided that if the subpoena is served in a county other than that in which the person resides, is employed, or transacts the person's business in person, the department shall bear the person's expenses for travel to and attendance at the place named in the subpoena to the same extent as provided by the rules of court other than the expenses of the taxpayer or the taxpayer's witnesses, officers, directors, agents, or employees; and
- (4) Shall contain a short, plain statement of the person's rights and the procedure for enforcing and contesting the subpoena.

If any person disobeys any process or, having appeared in obedience thereto, refuses to answer pertinent questions put to the person by the director or other person conducting the civil audit, investigation, or hearing, or to produce any books, papers, documents, objects, or records pursuant thereto, the director may apply to the circuit court of the circuit wherein the civil audit, investigation, or hearing is being conducted, or to any judge of the court, setting forth the disobedience to process or refusal to answer, and the court or judge shall cite the person to appear before the court or judge to answer the questions or to produce the books, papers, documents, objects, or records; provided that the court, upon a motion promptly made by the person, may quash or modify the subpoena if compliance would be unreasonable or oppressive or would violate any privilege the person would be entitled to exercise in a court proceeding. If the person fails or refuses to produce the subpoenaed books, papers, documents, objects, or record, the court shall institute a contempt proceeding against the person, at which time the court shall determine whether good cause is shown for the failure to obey the subpoena or the refusal to testify; provided that the court, on a motion promptly made, may quash or modify the subpoena if compliance would be unreasonable or oppressive or would violate any privilege the person would be entitled to exercise in a court proceeding. In the event that no good cause is shown, the court does not quash or modify the subpoena, and the person fails or refuses to comply with the subpoena, then the court shall commit the person to jail until the person testifies, but not for a longer period than sixty days. Notwithstanding the serving of the term of commitment by any person, the director may proceed in all respects as if the witness had not previously been called upon to testify. Witnesses (other than the taxpayer or the taxpayer's officers, directors, agents, and employees) shall be allowed their fees and mileage as authorized in cases in the circuit courts, to be paid on vouchers of the department of taxation, from any moneys available for the expenses of the department.

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

- (1) Shall state that the subpoena is issued by the department and shall command each person to whom it is directed to attend and give testimony at the time and place specified, and may command the person to whom it is directed to produce books, papers, documents, or other objects specifically designated;
- (2) May be served at any place within the State by an investigator appointed pursuant to section 231-4.3 or any other law enforcement official with the powers of a police officer;
- (3) Shall require attendance of the person only in the county wherein the person is served with the subpoena or at any other place agreed upon by the person and the department; provided that if the subpoena is served in a county other than that in which the person resides, is employed, or transacts the person's business in person, the department shall bear the person's expenses for travel to and attendance at the place named in the subpoena to the same extent as provided by the rules of court; and
- (4) Shall contain a short, plain statement of the person's rights and the procedure for enforcing and contesting the subpoena.

Upon application by the director, a circuit court of the county wherein the person resides or is found may compel obedience to the subpoena; provided that the court, on a motion promptly made, may quash or modify the subpoena

if compliance would be unreasonable or oppressive or would violate any privilege the witness may be entitled to exercise in a court proceeding.

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

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

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

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

(h) The provisions of this section are in addition to all other provisions of law, and apply to any tax within the jurisdiction of the department. [L 1945, c 196, §1; RL 1955, §115-11; am L Sp 1959 2d, c 1, §16; HRS §231-7; am imp L 1984, c 90, §1; gen ch 1985; am L 2009, c 166, §17; am L 2011, c 101, §2]

#### Note

Applicability of 2009 amendment. L 2009, c 166, §27.

The 2011 amendment shall apply to any subpoena issued on or after July 1, 2011. L 2011, c101, §4.

#### Cross Reference

[Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"](#)

**§231-7.5 Expedited appeals and dispute resolution program.** (a) The department shall be authorized to implement an administrative appeals and dispute resolution program that shall expeditiously resolve all tax, penalty, interest, fine, assessment, and other such disputes between the department and the taxpayer or return preparer. The director or the director's designee, who shall report directly and be answerable solely to the director, shall serve as an independent appeals officer and shall be authorized to compromise, settle, or otherwise resolve any dispute on any basis, including hazards and costs of litigation, considering equally the position of the taxpayer and the department on an impartial basis. The independent appeals officer shall not be influenced by any department tax compliance initiatives and policies, or loss of revenue to the State. Decisions of the independent appeals officer shall be in writing stating the facts, analysis, and conclusions in support, which shall be provided to the taxpayer and return preparer. Persons who currently serve or have served in the previous five years as an auditor, audit supervisor or manager, collector, collection supervisor or manager, district manager or supervisor, or tax compliance administrator, shall not be eligible to be the director's designee.

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

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

(d) The director of taxation may appoint an administrative appeals officer as necessary to administer this section, and perform other duties as directed by the director. The administrative appeals officer shall be exempt from chapter 76 and may be a legal or accounting professional; provided that no individual appointed under this section shall render legal services reserved to the attorney general under chapter 28. [L 2009, c 166, §15; am L 2012, c 189, §4]

#### Note

Applicability of section. L 2009, c 166, §27.

**§231-8 Timely mailing treated as timely filing and paying.** (a) Any report, claim, tax return, statement, or other document required or authorized to be filed with or any payment made to the State which is:

- (1) Transmitted through the United States mail, shall be deemed filed and received by the State on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it;
- (2) Mailed but not received by the State or where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing; and in cases of the nonreceipt of a report, tax return, statement, remittance, or other document required by law to be filed, the sender files with the State a duplicate within thirty days after written notification is given to the sender by the State of its nonreceipt of the report, tax return, statement, remittance, or other document.

(b) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States Post Office of the registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was delivered to the state officer or state agency to which addressed, and the date of registration, certification, or certificate shall be deemed the postmarked date.

(c) Any reference in this section to the United States mail shall be treated as including a reference to a designated delivery service, and any reference to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked by the designated delivery service.

As used in this section, “designated delivery service” means any delivery service designated for purposes of section 7502 of the federal Internal Revenue Code. [L 1967, c 271, §1; HRS §231-8; am L 1997, c 297, §1]

#### Note

The 1997 amendment applies to taxable years beginning after December 31, 1996. L 1997, c 297, §7.

#### Cross Reference

[Tax Information Release No. 97-3, “The Expansion of the ‘Timely Mailing Treated as Timely Filing/Paying Rule’ to Documents and Payments Delivered by a Designated Private Delivery Service \(PDS\)”](#)

[Tax Information Release No. 99-1, “Filing of Tax Returns Required by Taxpayers Who Pay Taxes by Electronic Funds Transfer \(EFT\)”](#)

**§231-8.5 Electronic filing of tax returns.** (a) The department may allow filing by electronic, telephonic, or optical means of any tax return, application, report, or other document required under the provisions of title 14 administered by the department.

(b) If the requirements of subsection (c) are satisfied, the department may require electronic filing of any tax return, application, report, or other document required under the provisions of title 14 administered by the department for the following taxpayers:

- (1) For withholding tax filings required under chapter 235, only employers whose total tax liability under sections 235-61 and 235-62 for the calendar or fiscal year exceeds \$40,000;
- (2) For income tax filings required under chapter 235, only taxpayers who are subject to tax under section 235-71, 235-71.5, or 235-72;
- (3) For general excise tax filings required under chapter 237, only taxpayers whose total tax liability under chapter 237 for the calendar or fiscal year exceeds \$4,000;
- (4) For transient accommodations tax filings required under chapter 237D, only operators and plan managers whose total tax liability under chapter 237D for the calendar or fiscal year exceeds \$4,000; and
- (5) For filings required under the following chapters, all taxpayers subject to tax under those chapters:
  - (A) 236E;
  - (B) 239;
  - (C) 241;
  - (D) 243;
  - (E) 244D;
  - (F) 245; and
  - (G) 251.

(c) As a prerequisite to requiring electronic filing under subsection (b), the department shall provide:

- (1) An electronic filing option to the taxpayer; and
- (2) No less than ninety days prior written notice to the general public of the department’s intention to require electronic filing.

(d) The date of filing shall be the date the tax return, application, report, or other document is transmitted to the department in a form and manner prescribed by departmental rules adopted pursuant to chapter 91. The department may determine alternative methods for the signing, subscribing, or verifying of a tax return, application, report, or other

document that shall have the same validity and consequences as the actual signing by the taxpayer. A filing under this section shall be treated in the same manner as a filing subject to the penalties under section 231-39.

(e) If a person who is required by the department under subsection (b) to electronically file any tax return fails to file using an approved method, unless it is shown that the failure is due to reasonable cause and not to neglect, the person shall be liable for a penalty of two per cent of the amount of the tax required to be shown on the return. [L 1997, c 176, §1; am L 2018, c 66, §2]

**§231-8.6 REPEALED.** L 2007, c 9, §22.

**§231-9 Tax collection; general duties, powers of director; dollar rounding.** (a) The director of taxation shall collect all taxes according to the assessments. The director of taxation shall duly and accurately account to the director of finance for the collection and the amount of taxes according to such assessments and shall be liable and responsible for the full amount of the taxes assessed, unless the director of taxation shall under oath account for the noncollection of the same to the full satisfaction of the director of finance, or shall be released from accountability as provided in section 231-32. The director of taxation shall, from time to time, pay over to the director of finance all taxes collected, at such times as the director of finance shall direct. The county attorney of each county shall, under the supervision and direction of the attorney general, assist the director of taxation in the collection of all taxes.

(b) The director of taxation may require the rounding of tax return items (upward and downward) to the nearest whole dollar amount; provided that amounts of 50 cents shall be rounded upward. [L 1932 2d, c 40, §60; RL 1935, §1955; RL 1945, §5112; RL 1955, §115-13; am L Sp 1959 2d, c 1, §§14, 16; am L 1963, c 114, §1; HRS §231-9; am imp L 1984, c 90, §1; gen ch 1985; am L 1996, c 133, §1]

**[§231-9.2] Offers in compromise.** (a) Requests for compromises authorized under section 231-3 shall be submitted to the department and accompanied by the following:

- (1) In the case of a lump-sum offer in compromise, twenty per cent of the amount of the offer; or
- (2) In the case of a periodic payment offer in compromise, payment in the amount of the first proposed installment. Any failure to make an installment other than the first installment due under the offer in compromise, during the period the offer is being evaluated by the department, may be treated by the department as a withdrawal of the offer in compromise.

(b) Where an offer in compromise is not accepted by the department for any reason, payments made under subsection (a) shall be applied to the tax first assessed or other amounts imposed under title 14.

(c) The department may waive the payment requirements under subsection (a) for individual taxpayers who meet the low-income certification guidelines published by the Internal Revenue Service for the period in which the request for compromise has been submitted.

(d) The director of taxation shall prepare any forms that may be necessary to meet the requirements of this section. In addition to any other administrative requirements, the director of taxation may also require the taxpayer to furnish reasonable information to ascertain the validity of the request for payment waiver made under subsection (c).

(e) The department may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this section.

(f) As used in this section:

“Lump-sum offer in compromise” means any offer of payments made in five or fewer installments.

“Periodic payment offer in compromise” means any offer of payments made in six or more installments. [L 2013, c 6, §1]

**Note**

The 2013 amendment does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before April 5, 2013. L 2013, c 6, §2.

**[§231-9.3] Tax collection; mainland contractors working on federal construction projects.** The director of taxation shall develop a system to determine when contractors from the United States mainland are present in Hawaii to work on federal projects, including the starting and anticipated completion dates for these contracts, to enforce the laws relating to the collection of general excise taxes on these contractors that may be required under chapter 237.

The United States government is requested to provide the information necessary to ascertain the names and work dates of United States mainland contractors working on federal projects. The director of taxation shall work with the United States government to establish this information to enforce and collect taxes owed to the State.

The director of taxation may contract with bonded collection agencies, licensed attorneys, accountants, auditors, or other persons to pursue and collect claims of the State when the mainland contractor, who owes delinquent general excise taxes or is subject to other provisions under chapter 231, has moved back to the United States mainland.

The director of taxation may adopt rules pursuant to chapter 91 to implement this section. [L 2001, c 206, §2]

## Revision Note

Subsection designation deleted pursuant to §23G-15(1).

**[§231-9.4] Credit or debit card remittances.** In addition to sections 237-31, 237D-6.5, and 251-5, as well as any other form of payment allowed under provisions of title 14 administered by the department, the director, by rules adopted pursuant to chapter 91, may permit the use of credit or debit cards for remittances made to the department. A service fee shall not be required by the department for the use of debit cards for remittances, but may be required by the department for the use of credit cards for remittances.

For purposes of this section:

“Credit card” shall have the same meaning as provided in section 478-1.

“Debit card” means any card, plate, or other single credit device issued with or without a fee to a cardholder to purchase goods or services or to obtain cash that is debited from the cardholder’s checking or other bank account. [L 1997, c 179, §1]

**[§231-9.5] Assessment of additional taxes of corporations or partnerships.** Additional taxes of a corporation or partnership shall be assessed to it under its corporate or firm name. [L 1989, c 14, §1(2)]

**[§231-9.6] Fiduciaries, liability.** Every personal representative, trustee, guardian, or other fiduciary shall be answerable as such for the performance of all acts, matters, or things as are required to be done in respect to the assessment of the taxes for which the fiduciary is responsible in a fiduciary capacity. The fiduciary shall be liable for the payment of those taxes up to the amount of the available property held by the fiduciary, but shall not be personally liable. The fiduciary may retain so much property as may be necessary to pay the taxes due. The fiduciary may recover the amount of taxes paid from the beneficiary to whom the property shall have been distributed. [L 1989, c 14, §1(3)]

**[§231-9.7] Informalities not to invalidate assessments, mistakes in names or notices, etc.** No assessment or act relating to the assessment or collection of taxes shall be illegal nor shall such assessment, levy, or collection be invalid on account of mere informality or mistakes in names, notices, etc. [L 1989, c 14, §1(6)]

**[§231-9.8] Tax bills.** Each state tax collector shall mail, postage prepaid, or deliver to all known persons assessed taxes in the state tax collector’s district, tax bills demanding payment of taxes due from each of them, but no person shall be excused from the payment of any tax or delinquent penalties thereon by reason of failure on the person’s part to receive such bill. The bill, if mailed, shall be addressed to the person concerned at the person’s last known address or place of residence. [L 1989, c 14, §1(7)]

**18-231-9.9 §231-9.9 Filing and payment of taxes by electronic funds transfer.** (a) The director of taxation is authorized to require every person whose tax liability for any one taxable year exceeds \$100,000 and who files a tax return for any tax, including consolidated filers, to remit taxes by one of the means of electronic funds transfer approved by the department; provided that for withholding taxes under section 235-62, electronic funds transfers shall apply to annual tax liabilities that exceed \$40,000. Notwithstanding the tax liability thresholds in this subsection, the director of taxation is authorized to require any person who is required to electronically file a federal return or electronically remit any federal taxes to the federal government, to electronically file a state return and electronically remit any state taxes under title 14 to the department. The director is authorized to grant an exemption to the electronic filing and payment requirements for good cause.

(b) Any person who files a tax return for any tax and is not required by subsection (a) to remit taxes by means of electronic funds transfer may elect to remit taxes by one of the means of electronic funds transfer approved by the department with the approval of the director of taxation.

(c) If a person who is required under subsection (a), to file a return electronically or remit taxes by one of the means of electronic funds transfer approved by the department fails to file electronically or to remit the taxes using an approved method on or before the date prescribed therefor, unless it is shown that the failure is due to reasonable cause and not to neglect, there shall be added to the tax required to be so remitted a penalty of two per cent of the amount of the tax. The penalty under this subsection is in addition to any penalty set forth in section 231-39.

(d) No later than twenty days prior to the convening of each regular session, the department shall submit a report to the legislature containing:

- (1) The number of taxpayers who were assessed the two per cent penalty pursuant to subsection (c);
- (2) The amounts of each assessment; and
- (3) The total amount of assessments collected for the previous year. [L 1995, c 121, §1; am L 1997, c 177, §§ 1, 3; am L 2001, c 44, §1; am L 2004, c 113, §2; am L 2009, c 196, §2]

## Revision Note

Subsection (d), enacted as a new section, is codified to this section pursuant to §23G-15.

**Note**

The 2009 amendment applies to returns and payments due after May 31, 2009. L 2009, c 196, §8.

**Cross Reference**

Tax Information Release No. 95-6, "Questions and Answers on Paying Taxes by Electronic Funds Transfer"  
 Tax Information Release No. 99-1, "Filing of Tax Returns Required by Taxpayers Who Pay Taxes by Electronic Funds Transfer (EFT)"  
 Tax Information Release No. 2004-1, "Act 113, Session Laws of Hawaii 2004, Relating to Income Tax Withholding"  
 Tax Announcement 2005-01, "Instructions on Filing Federal Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, for Hawaii Withholding Tax Purposes"

**§231-10 Department; keep offices where.** The department of taxation shall keep offices in the several districts, for the convenience of the public business. [L 1932 2d, c 40, §59; RL 1935, §1956; RL 1945, §5113; RL 1955, §115-14; am L Sp 1959 2d, c 1, §16; am L 1967, c 37, §1; HRS §231-10]

**[§231-10.5] Closing audit letters.** At the conclusion of a tax audit, the department shall provide to the taxpayer a closing audit letter that shall confirm in writing the department's position on each issue considered in the audit, and which shall provide guidance on how the taxpayer may report such issues for post audit years. [L 2009, c 166, pt of §16]

**Note**

Applicability of section. L 2009, c 166, §27.

**[§231-10.6] Rules or administrative guidance.** Rules, including temporary rules, providing examples and safe harbors shall be implemented to explain in clear and unambiguous terms, the penalties and fines provided under any provision of title 14 that may be imposed against a return preparer or taxpayer for understatement of tax liabilities, promotion of abusive tax shelters, erroneous claims for refund or credit, or substantial understatements or misstatements of tax. Federal laws and administrative guidance may be used to interpret this section. Any such penalties or fines shall first be approved by the director before assessment. [L 2009, c 166, pt of §16]

**Note**

Applicability of section. L 2009, c 166, §27.

**[§231-10.7] Temporary rulemaking authority for regulation of tax matters.** (a) Notwithstanding any other law in title 14, chapter 91, or chapter 201M to the contrary, the department is authorized to adopt any temporary rules as the department may deem proper as provided in this section. Temporary rules may include the adoption, amendment, or repeal of any rules concerning any matters which the department is authorized to regulate.

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

- (1) Making the temporary rules available on the department's and the lieutenant governor's websites;
- (2) Making copies of the temporary rules available to the public for inspection at the department's offices or copying if any required fee is paid; and
- (3) Providing public notice of the substance of the temporary rules at least once statewide.

(c) Temporary rules shall be approved by the governor.

(d) Any temporary rules issued by the department shall also be issued as proposed administrative rules that shall be subject to the procedural requirements of chapter 91.

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

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

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

(g) Temporary rules shall have the same force and effect as any other administrative rules. [L 2009, c 166, pt of §16]

**Note**

Applicability of section. L 2009, c 166, §27.

**[§231-10.8] Tax clearance fees.** The department may charge a fee of \$20 for each tax clearance application submitted and \$5 for each certified copy of a tax clearance. [L 2012, c 180, §2]

**Note**

Section applies to requests for tax clearances and requests for certified copies of tax clearances received on or after July 1, 2012. L 2012, c

180, §4.

**POLICE; DISTRICT JUDGES**

**§231-11 Police to aid assessing or collecting officers.** The director of taxation or any assessing or collecting officer of the department of taxation, when resisted or impeded in the exercise of the director's or assessing or collecting officer's office, may require any police officer to aid the director or assessing or collecting officer in the discharge of the director's or assessing or collecting officer's duties, and if any police officer refuses to render aid, the police officer shall be deemed guilty of a misdemeanor. [L 1932 2d, c 40, §11; RL 1935, §1918; RL 1945, §5114; am L 1945, c 79, §6; RL 1955, §115-15; am L Sp 1959 2d, c 1, §16; HRS §231-11; am L 2017, c 12, §32]

**§231-12 REPEALED.** L 1995, c 92, §20.

**Note**

L 1995, c 66, §5 purports to amend this section.

**Case Notes**

An action on the judgment recovered for taxes, as distinguished from an action for taxes, cannot be maintained in the district court if the amount of the judgment exceeds the limit of the courts' jurisdiction. 18 H. 278.

In hearing counterclaim over which it had no jurisdiction, district court did not lose its jurisdiction over the main claim. 53 H. 642, 500 P.2d 743.

**DELINQUENT TAXES**

**§231-13 Director; examination, investigation, and collection.** [Repeal and reenactment on June 30, 2017. L 2013, c 93, §4.] (a) The director of taxation shall be responsible for the collection and general administration of all taxes, including delinquent taxes. Notwithstanding any other law to the contrary, the director, by contract, may select and retain bonded collection agencies, licensed attorneys, accountants, and auditors or other persons for the purpose of assessment, enforcement, or collection of taxes from persons subject to the provisions of title 14 administered by the department.

- (b) At the option of the director, any contract entered into under this section may provide for compensation on:
- (1) A fixed price basis;
  - (2) An hourly rate basis with or without a fixed cap; or
  - (3) A contingent fee arrangement to be specified in the contract; provided that this paragraph shall not apply to auditors and accountants.

All compensation shall be payable out of the taxes recovered for the State or from the taxpayer in accordance with the terms of, and up to the amount authorized by the contract, unless otherwise determined by the director. [L 1933, c 135, §2; RL 1935, §1966; am L 1937, c 241, §1; RL 1945, §5118; RL 1955, §115-18; am L Sp 1959 2d, c 1, §16; HRS §231-13; am L 1982, c 88, §2; am imp L 1984, c 90, §1; gen ch 1985; am L 1990, c 34, §3; am L 1997, c 253, §1; am L 1999, c 68, §1; am L 2013, c 93, §1]

**Note**

Reports to legislature on contracts for the assessment, enforcement, or collection of taxes up through June 30, 2017; annual report of all contracts to 2014-2017 legislature. L 2013, c 93, §2.

The L 2013 amendment shall take effect on May 31, 2013, provided that on June 30, 2017, c 93 shall be repealed and section 231-13, Hawaii Revised Statutes shall be reenacted in the form in which it read on the day immediately prior to May 31, 2013. L 2013, c 93, § 4.

**§231-14 Attorney.** The attorney general shall assign one of the attorney general's deputies as attorney and legal advisor and representative of the director of taxation. The attorney may proceed to enforce payment of any delinquent taxes by any means provided by law. Any legal proceeding may be instituted in the name of the director or the director's deputy, the collector of the district in which the delinquency exists, or in the name of the collector of delinquent taxes. [L 1933, c 135, §3; RL 1935, §1967; am L 1937, c 241, §2; RL 1945, §5119; RL 1955, §115-19; am L Sp 1959 2d, c 1, §16; am L 1967, c 37, §1; HRS §231-14; am imp L 1984, c 90, §1; gen ch 1985]

**RETURNS AND RECORDS, GENERALLY; VALIDITY**

**§231-15 Returns to be signed.** Every return statement, or other document required to be made for taxation purposes shall be signed in accordance with forms or regulations prescribed by the department of taxation. Where forms or regulations have not been prescribed, every such return, statement, or other document shall be signed by the person required to make the return, statement, or other document or by some duly authorized person in the person's behalf.



The department of taxation may require that, if any person or persons actually prepare or sign a return for another person, the person or persons so preparing or signing the return shall sign a statement showing such facts and such authority to sign such return as may be prescribed by the department, and the department may by regulation define the classes of persons to whom this provision shall apply.

Any other provision of law to the contrary notwithstanding, no oath shall be required upon any tax return. [L 1943, c 4, §§1, 2, 3; RL 1945, §5123; RL 1955, §115-21; am L Sp 1959 2d, c 1, §16; HRS §231-15; am L 1980, c 211, §1]

**[§231-15.3] Signature presumed authentic.** The fact that an individual's name is signed on a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by the individual. [L 2009, c 166, pt of §16]

**Note**

Applicability of section. L 2009, c 166, §27.

**§231-15.5 Disclosure by return preparers.** (a) Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, tax returns or any person who, for compensation, prepares any tax return for any other person and, without the written consent or request of the person for whom the return is prepared:

- (1) Discloses any information furnished to the return preparer or person providing services for or in connection with the preparation of any return; or
  - (2) Uses the information for any purpose other than to prepare or assist in preparing any return,
- shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) Except as otherwise provided, this section shall not apply to a disclosure of information if the disclosure is made pursuant to section 231-3 or an order of a court. [L 1973, c 106, §1; am L 1974, c 128, §1; am L 2017, c 12, §33]

**§231-15.6 Returns of corporations or partnerships.** The returns, statements, or answers required under chapters of the law under title 14 administered by the department, in the case of a corporation, shall be made by any officer of the corporation, or in the case of a partnership, by any one of the partners. [L 1989, c 14, §1(4); am L 1991, c 263, §6; am L 1994, c 16, §1; am L 1995, c 66, §6]

**§231-15.7 Returns by fiduciaries.** The returns, statements, or answers required under chapters of the law under title 14 administered by the department shall be made by the personal representative, trustee, guardian, or other fiduciary in such capacity in any taxation district in which returns are required. [L 1989, c 14, §1(5); am L 1991, c 263, §7; am L 1994, c 16, §2; am L 1995, c 66, §7]

**§231-15.8 Time for performing certain acts postponed by reason of service in combat zone.** (a) This section shall apply to state tax laws set forth in this title 14 that provide for the filing with the director of taxation of a return or statement of the tax or payment of the amount taxable.

(b) This section applies to any individual serving in the armed forces of the United States, or serving in support of the armed forces, in an area designated by the President of the United States by Executive Order as a combat zone for purposes of section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended, at any time during the periods designated by the President by Executive Order as the periods of combatant activities in the zone for the purposes of section 112, or when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law, at any time during the period designated by the President by Executive Order as the period of combatant activities in such zone for purposes of such section or at any time during the period of such contingency operation, or hospitalized as a result of injury received while serving in such zone or operation during such time.

The period of service in the zone or operation, plus the period of continuous qualified hospitalization attributable to the injury, and the next one hundred eighty days thereafter, shall be disregarded in determining in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of the individual:

- (1) Whether any of the following acts was performed within the time prescribed therefore:
  - (A) Filing any tax return (except income tax withheld at source);
  - (B) Payment of any tax (except income tax withheld at source) or any installment thereof or any other liability to the State in respect of such tax;
  - (C) Filing a tax appeal pursuant to chapter 232 or an action to recover moneys paid under protest pursuant to section 40-35(b) if the payment was for tax liability imposed pursuant to this title 14;
  - (D) Allowance of a credit or refund of any tax;
  - (E) Filing a claim for credit or refund of any tax;

- (F) Bringing suit upon any claim for credit or refund;
- (G) Assessment of any tax;
- (H) Giving or making any notice or demand for the payment of any tax or with respect to any liability to the State in respect of any tax;
- (I) Collection by the director, by levy or otherwise, of the amount of any liability in respect of any tax;
- (J) Bringing suit by the State or any representative of the State on its behalf in respect of any liability in respect of any tax; and
- (K) Any other act required or permitted under the tax or revenue laws of the State pursuant to rules adopted by the director.

(2) The amount of any credit or refund.

(c) This section shall apply to the spouse of any individual entitled to the benefits of this section. The preceding sentence shall not cause this section to apply for any spouse for any taxable year beginning more than two years after the date designated under section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended, as the date of termination of combatant activities in a combat zone.

(d) The period of service in a designated combat zone shall include the period during which an individual entitled to benefits under this section is in a missing status, within the meaning of section 6013(f)(3) (with respect to joint return where an individual is in missing status) of the federal Internal Revenue Code of 1986, as amended.

(e) Notwithstanding subsection (b), any action or proceeding authorized by section 231-24 (regardless of the taxable year for which the tax arose) as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted. In any other case in which the director determines that collection of the amount of any assessment would be jeopardized by delay, subsection (b) shall not operate to stay collection of the amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this subsection the amount of interest, penalty, additional amount, and addition to the tax, if any, in respect of the period disregarded under subsection (b). In any case to which this subsection relates, if the director is required to give any notice to or make any demand upon any person, the requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of the person last known to the director is in an area for which United States post offices under instructions of the Postmaster General, by reason of the combatant activities, are not accepting mail for delivery at the time the notice or demand is signed. In this case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(f) The assessment or collection of any tax or of any liability to the State in respect of any tax or any action or proceeding by or on behalf of the State in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to subsection (b), unless prior to the assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (b).

(g) Treatment of individuals performing Desert Shield services:

- (1) Any individual who performed Desert Shield services (and the spouse of the individual) shall be entitled to the benefits of this section in the same manner as if the services were services referred to in subsection (b).
- (2) For purposes of this subsection, "Desert Shield services" means any services in the armed forces of the United States or in support of the armed forces if these services are performed in the area designated by the President as the "Persian Gulf Desert Shield area" and the services are performed during the period beginning on August 2, 1990, and ending on the date on which any portion of the Persian Gulf Desert Shield area is designated by the President as a combat zone pursuant to section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended.

(h) For purposes of this section, "qualified hospitalization" means any hospitalization outside the United States and any hospitalization inside the United States, except that not more than five years of hospitalization inside the United States may be taken into account under this subsection. The five-year period of qualified hospitalization inside the United States shall not apply for purposes of applying this section with respect to the spouse of an individual entitled to the benefits of subsection (b).

(i) If an individual is entitled to the benefits of this section with respect to any return and the return is timely filed (determined after the application of subsection (b)) section 231-23(d)(1) with respect to the limitations for computing interest shall not apply and interest shall be paid from the due date of the return regardless of when the return is filed.

(j) If an individual is entitled to the benefits of subsection (b), then, with respect to claiming any credit pursuant to state tax laws set forth in this title 14 and any general credit enacted pursuant to Article VII, section 6, of the State Constitution, the limitation period prescribed for such claims shall be determined after the application of subsection (b). [L 1991, c 208, §2; am L 2004, c 89, §2]

#### Note

The 2004 amendment applies to taxable years beginning after December 31, 2003, except as otherwise provided in this Act. L 2004, c 89, §6.

#### Cross References

Civil relief for state military forces, see chapter 657D.

Tax Information Release No. 2003-2, "Extension of Deadlines and Other Tax Relief for Members of the Armed Forces, Reserves, and Hawaii National Guard"

**§231-16 Copies of returns.** Except as otherwise provided by law, copies of any tax return filed with the department of taxation shall be furnished to the taxpayer filing the return or to the taxpayer's representative who has written authorization to be provided such copies upon the payment of \$1 per page and \$1 for any certification thereof by the department. [L 1963, c 24, §1; Supp, §115-21.5; HRS §231-16; am L 1980, c 212, §1; am imp L 1984, c 90, §1; gen ch 1985]

**Cross References:**

Modification of fees, see §92-28.

**§231-17 Notices, how given.** Unless otherwise provided, every notice, the giving of which by the department of taxation is required or authorized, shall be deemed to have been given on the date when the notice was mailed, properly addressed to the addressee at the addressee's last known address or place of business. [L 1953, c 125, §2; RL 1955, §115-22; am L Sp 1959 2d, c 1, §16; HRS §231-17; am imp L 1984, c 90, §1; gen ch 1985]

**§231-18 Tax and other officials permitted to inspect returns; reciprocal provisions.** Notwithstanding the provisions of any law making it unlawful for any person, officer, or employee of the State to make known information imparted by any tax return or permit any tax return to be seen or examined by any person, it shall be lawful to:

- (1) Permit a duly accredited tax official of the United States, any state or territory, any county of this State, or the Multistate Tax Commission to inspect any tax return of any taxpayer;
- (2) Furnish to an official, commission, or the authorized representative thereof an abstract of the return or supply the official, commission, or the authorized representative thereof with information concerning any item contained in the return or disclosed by the report of any investigation of the return or of the subject matter of the return for tax purposes only; or
- (3) Provide tax return information to the auditor pursuant to section 23-5(a).

The Multistate Tax Commission may make the information available to a duly accredited tax official of the United States, any state or territory, or the authorized representative thereof, for tax purposes only. [L 1937, c 109, §1; RL 1945, §5124; RL 1955, §115-23; HRS §231-18; am L 1974, c 139, §1; am imp L 1984, c 90, §1; gen ch 1985; am L Sp 2005, c 9, §3; am L 2014, c 136, §3]

**§231-19 REPEALED.** L 1989, c 14, §20.

**[§231-19.3] Disclosure of letter rulings, et al.** Notwithstanding any law to the contrary, any and all advice given or communications made by the department, including but not limited to letter rulings and determination letters, containing tax advice, shall be disclosed to the public under standards and procedures under section 6110 of the federal Internal Revenue Code of 1986, as amended, the regulations thereunder, and federal court interpretations. [L 2009, c 166, pt of §16]

**Note**

Applicability of section. L 2009, c 166, §27.

**18-231-19.5 [§231-19.5] Public inspection and copying of written opinions.** (a) Written opinions shall be open to public inspection and copying as provided in this section, notwithstanding sections 235-116, 236D-15, 237-34, and 237D-13 and any other law restricting disclosure of tax returns or tax return information to the contrary. Except as provided in subsection (f), regarding the disclosure of the text of written opinions, chapter 92F shall not apply to tax returns and tax return information.

A written opinion may not be used or cited as precedent unless otherwise provided by department rules.

(b) For purposes of this section, the term "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 generally recites the relevant facts, sets forth the applicable provisions of law, and shows the application of the law to the facts. A written opinion shall not include:

- (1) Any written communication from the department to any person in connection with the examination or audit of any person's tax return, or in connection with collection activities relating to any person's delinquent tax liability;
- (2) An information letter, which is 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 may be issued when the nature of the request from the taxpayer suggests that the taxpayer is seeking general information, or where the department believes that general information will assist the taxpayer; or

- (3) A determination letter, which is a written statement issued by the department that applies an interpretation or principle of tax law clearly established by statute, rule, written opinion, or published court decision to a particular set of facts. A determination letter includes the grant or denial of consent, permission, exemption or registration, or a routine correspondence in response to taxpayer inquiries. A determination letter shall be designated as such, and shall indicate the clearly established interpretation or principle applied and its source.

(c) Before making a written opinion available for public inspection and copying under subsection (a), the department where possible shall segregate from the opinion trade secrets or other confidential, commercial, and financial information, and identifying details such as the name, address, and social security or tax identification number of the person to whom the written opinion pertains and of any other person identified in the written opinion. Segregated text shall not be disclosed under this section.

(d) Upon issuance of any written opinion, the department shall mail a notice of intention to disclose the opinion together with a copy of the opinion showing the text the department proposes to segregate to any person to whom the written opinion pertains (or any known successor in interest, personal representative, or other person authorized by law to act for or on behalf of such person).

(e) Except as otherwise provided in subsection (h), a written opinion, as segregated under subsection (c), shall be open to public inspection and copying no earlier than seventy-five days, and no later than ninety days, after the department's notice of intention to disclose is mailed. At the written request of a person to whom the written opinion pertains (or a successor in interest, personal representative, or other person authorized by law to act for or on behalf of the person), the preceding period may be extended, but the department shall make the written opinion available for inspection and copying no later than one hundred eighty days after the notice to disclose is mailed, including extensions.

(f) The department's decision as to what constitutes a written opinion is final. A decision concerning the disclosure of the text of written opinions may be contested, but only in the manner and within the time set forth in this subsection. Any person who meets the requirements of paragraph (1) or (2) and who has exhausted the administrative remedies as prescribed by rules adopted by the department may appeal within sixty days of the date of the department's decision to the office of information practices in accordance with procedures established by the office of information practices under sections 92F-15.5 and 92F-42(1). The office of information practices may examine the written opinion at issue, in camera, to assist in determining whether it, or any part of it, may be withheld. In determining whether information constitutes a trade secret or other confidential, commercial, and financial information, the office of information practices may consider and apply, in addition to any other relevant sources, interpretations of those terms under chapter 92F.

Only the following persons may contest a decision of the department concerning the disclosure of written opinions:

- (1) Any person:
  - (A) To whom a written opinion pertains (or a successor in interest, personal representative, or other person authorized by law to act for or on behalf of the person);
  - (B) Who has a material interest in maintaining the confidentiality of any written opinion or portion thereof; and
  - (C) Who disagrees with a decision by the department not to segregate information from any written opinion; or
- (2) Any person who is aggrieved by the department's denial of a request to inspect and copy any written opinion or portion thereof.

Any person aggrieved by a decision of the office of information practices may appeal the decision to the circuit court of the first judicial circuit, or of the judicial circuit in which the request for the written opinion is made or in which a copy of the written opinion is maintained by the department. The appeal shall be filed within thirty days after the date of the decision of the office of information practices. The circuit court shall hear the matter de novo. Opinions and ruling of the office of information practices shall be admissible. The circuit court may examine the written opinion at issue, in camera, to assist in determining whether it, or any part of it, may be withheld.

Any person advocating nondisclosure or segregation under paragraph (1) shall have the burden of proof and persuasion, but any person under paragraph (2) need only establish the denial of a request and the department shall have the burden of proof and persuasion to justify the denial of the request to inspect and copy.

(g) Except for cases the circuit court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom, shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(h) Upon appeal to the office of information practices or a court under subsection (f), the written opinion at issue shall not be made available for public inspection and copying pending the final decision in the case. If the final decision in the case determines that the written opinion subject to the appeal shall be open and available to public inspection and copying, or that confidential or identifying information must be segregated, then the department shall make the written opinion available for public inspection and copying not later than thirty days after the decision becomes final. The office of information practices or the court may extend this thirty-day period for such time as the office of information practices or the court finds necessary to allow the department to comply with its decision.

(i) The department shall compile yearly an index in such form as the department determines of all written opinions issued during the preceding calendar year. Copies of the index shall be furnished upon the payment of 50 cents a page. Copies of written opinions shall be furnished upon the payment of \$1 a page.

(j) Except as provided in this section, written opinions shall remain subject to all laws governing tax returns and tax return information and the department shall not be required by any court to disclose any written opinion except as specifically authorized by title 14.

(k) No officer or employee of the department shall be in violation of any law prohibiting the disclosure of tax returns or tax return information, or in violation of any other law restricting the disclosure of information, due to the release of any written opinion pursuant to this section.

(l) The department may adopt rules pursuant to chapter 91 to implement this section. [L 1994, c 115, §2]

#### Cross Reference

[Tax Information Release No. 2009-01, "Procedural Guidelines for Requesting Letter Rulings"](#)

#### Law Journals and Reviews

2013 Law and Administrative Rules Governing Appeal Procedures of Hawaii's Office of Information Practices. 36 UH L. Rev. 271 (2014).

**§231-20 Evidence, tax records as.** In respect of every tax the administration of which is within the scope of the department of taxation's duties and except as otherwise specifically provided in the law imposing the tax, the notices of assessments, records of assessments, and lists or other records of payments and amounts unpaid, prepared by or under the authority of the department, or copies thereof, shall be prima facie proof of the assessment of the property or person assessed, the amount due and unpaid, and the delinquency in payment, and that all requirements of law in relation thereto have been complied with. [L 1932 2d, c 40, §4; RL 1935, §1911; RL 1945, §5127; am L 1953, c 125, §3; RL 1955, §115-25; am L Sp 1959 2d, c 1, §16; HRS §231-20]

**§231-21 Due date on Saturday, Sunday, or holiday.** When the due date for any remittance or document required by any law imposing a tax falls on a Saturday, Sunday, or legal holiday, the remittance or document shall not be due until the next succeeding day which is not a Saturday, Sunday, or legal holiday. [L 1965, c 133, §1; Supp, §115-25.5; HRS §231-21]

**[§231-21.5] Effect of civil union.** All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or person in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were "husband and wife", "spouses", or other terms that describe persons in a legal marital relationship. [L 2011, c 1, §3]

#### Note

Section applies to taxable years beginning after December 31, 2011. L 2011, c 1, §10.

#### Attorney General Opinions

[Civil union partners have all the same rights, benefits, protections, and responsibilities under the law as married couples who are of the opposite gender; civil union partners have the same tax filing status options as married couples who are of the opposite gender for Hawaii income tax purposes for taxable years beginning after December 31, 2011. Att. Gen. Op. 11-2.](#)

## ADJUSTMENTS AND REFUNDS

**§231-22 REPEALED.** L 1989, c 14, §21.

**§231-23 Adjustments and refunds.** (a) This subsection shall apply to all taxes except those collected under chapter 247 and those collected under a chapter containing a provision for credit and refund of the amount of tax paid in excess of the tax imposed by such chapter. As to all tax payments for which a refund or credit is not authorized by this subsection (including without prejudice to the generality of the cases of unconstitutionality hereinafter mentioned in (1) (C)) the remedies provided by appeal or under section 40-35 are exclusive.

- (1) If the amount already paid exceeds that which should have been paid under the chapter imposing a particular tax, or if the amount already paid results in duplication of payment in whole or in part, the excess so paid shall be refunded in the manner provided in subsection (c) subject however to the following limitations:
  - (A) No refund shall be made unless an application for the refund shall have been made within five years after the amount to be refunded was paid;
  - (B) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the director of taxation, provided that if the assessment by the director shall contain

clerical errors, transposition of figures, typographical errors, and errors in calculation or if there shall be an illegal or erroneous assessment, the usual refund procedures shall apply; or

- (C) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied in respect of the taxpayer concerned differently than in respect of taxpayers generally.

- (2) In any case where a taxpayer is entitled to a refund, the taxpayer, at the taxpayer's election, may apply the amount of the refund as an overpayment credit to taxes subsequently accruing under the same chapter as that under which the refundable amount was collected.

- (b) This subsection shall apply to the taxes collected under chapter 247.

There may be refunded in the manner provided in subsection (c) such conveyance tax as has been erroneously or unjustly paid.

- (c) This subsection shall apply to all taxes.

- (1) All refunds shall be paid only upon a form to be known as a "refund voucher" prepared by the collector. The refund vouchers shall set forth all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue a warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.

- (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a trust fund to be known as the tax reserve fund. All refunds of taxes collected by the department under chapters of the law under title 14 administered by the department shall be made out of the tax reserve fund. The director of taxation, from time to time, may deposit taxes collected under chapters of the law under title 14 administered by the department in the state treasury to the credit of the tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The amounts deposited shall be made from the taxes with respect to which a particular refund is made.

- (d) This subsection shall apply to a refund for an overpayment of a tax:

- (1) If the tax return as filed by a taxpayer shows the amount already paid exceeds the amount determined to be the correct amount of the tax due, whether or not the tax was paid by installments, and the taxpayer requests a refund of the overpayment, the amount of the overpayment shall be refunded in the manner provided in subsection (c) within ninety days of the due date of the tax return or the date the tax return is filed, whichever is later; provided that interest on the overpayment shall be paid:

(A) To the taxpayer if the amount overpaid is not refunded within ninety days; and

(B) At the rate of one-third of one per cent of the refund amount for each month or fraction thereof after the ninety-day period, until the refund and any applicable interest is paid to the taxpayer;

- (2) If any overpayment of taxes results or arises from:

(A) The taxpayer filing an amended return; or

(B) A determination made by the director; and

the overpayment is not shown on the original return as filed by the taxpayer, the amount overpaid shall be refunded to the taxpayer within ninety days from the due date of the original return or the date the overpayment is discovered under subparagraphs (A) or (B), whichever occurred later; provided that interest shall be paid to the taxpayer if the amount overpaid is not refunded within ninety days and at the rate of one-third of one per cent of the refund amount for each month or fraction thereof after the ninety-day period, until the refund and any applicable interest is paid to the taxpayer;

- (3) For purposes of a net income tax return, if any overpayment of any taxes results from a carryback of a net operating loss, the overpayment shall be deemed to have been made at the close of the taxable year in which the net operating loss arises. To the extent that the carryback of net operating loss results in reducing the amount of underpayment of taxes for prior taxable year or years, interest that would be chargeable because of the underpayment shall not be applicable with respect to that amount or amounts that are carried back; and

- (4) In the case of credit, interest shall be paid in the same manner as paragraph (1). [L 1939, c 213, §1; RL 1945, §5130; am L 1949, c 205, §1; RL 1955, §115-28; am L 1957, c 152, §1; am L Sp 1959 2d, c 1, §16; am L 1963, c 45, §1(c); am L 1966, c 10, §3; am L 1967, c 134, §2; HRS §231-23; am L 1968, c 32, §3; am L 1971, c 10, §1; am L 1972, c 200, §5; am L 1974, c 12, §1; am L 1983, c 217, §6; am imp L 1984, c 90, §1; gen ch 1985; am L 1985, c 16, §5; am L 1986, c 340, §5; am L 1989, c 14, §4(4); am L 1991, c 136, §1 and c 263, §8; am L 1992, c 102, §1; am L 1995, c 66, §8; am L 2003, c 135, §2; am L 2009, c 40, §1; am L 2010, c 171, §1]

**Note**

The 2010 amendment applies to taxable years beginning after December 31, 2009. L 2010, c 171, §4.

## Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

## Case Notes

Mentioned with respect to applicable period for bringing action for refund of general excise taxes. 53 H. 1, 486 P.2d 396.  
Prohibits original actions by insurers to recover moneys paid to State without protest under §431-318. 5 H. App. 122, 678 P.2d 1101.

**§231-24 Jeopardy assessments, etc.** (a) If the department of taxation determines that a taxpayer designs to depart quickly from the State, or to remove the taxpayer's property therefrom, or to conceal the taxpayer's self or the taxpayer's property therein, or to do any other act tending to prejudice or jeopardize, in whole or in part, the assessment or collection of any tax the administration of which is within the scope of the department's duties, the department shall cause notice of the determination to be given to the taxpayer addressed to the taxpayer's last known address or place of business. The determination by the department shall be for all purposes presumptive evidence of the taxpayer's design.

(b) Upon making the determination, the department shall immediately assess, insofar as not theretofore assessed, and shall collect, the tax and all penalties and interest provided for by law. It shall not be a defense to any assessment made under this section, or to any distraint or other proceedings for collection initiated under this section, that the taxable year or other tax period has not terminated, or that the time otherwise allowed by law for filing a return has not expired, or that the notices otherwise required by law for making an assessment have not been given, or that the time otherwise allowed by law for taking or prosecuting an appeal or for paying the tax has not expired.

(c) Nothing in this section shall prejudice the right of any taxpayer to have the moneys collected held apart or in a special fund pending the pursuit of any remedy the taxpayer may have for the recovery thereof, as otherwise provided by law.

(d) Notwithstanding this section, the collection of the whole or any part of the tax may be stayed by filing with the department a bond in such amount, and with such sureties as the department deems necessary, together with such further security as the department may from time to time require, conditioned for the payment of the amount collection of which is stayed at the time at which, but for this section, the amount would be due. [L 1953, c 125, pt of §4; RL 1955, §115-29; am L Sp 1959 2d, c 1, §16; HRS §231-24; am imp L 1984, c 90, §1; gen ch 1985]

## Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

## COLLECTION PROCEEDINGS

**§231-25 Payment, enforcement of by assumpsit action or by levy and distraint upon all property and rights to property.** (a) If any tax be unpaid when due, the director of taxation may proceed to enforce the payment of the same, with all penalties, as follows:

- (1) By action in assumpsit, in the director's own name, on behalf of the State, for the amount of taxes and costs, or, if the tax is delinquent, for the amount of taxes, costs, penalties, and interest, in any district court, irrespective of the amount claimed. Execution may issue upon any judgment rendered in any such action which may be satisfied out of any real or personal property of the defendant; and
  - (2) By levy upon all property and rights to property (except such property as is exempt under subsection (b)(6)) belonging to such taxpayer or on which there is a lien, as the director may deem sufficient to satisfy the payment of taxes due, penalties and interest if any, and the costs and expenses of the levy.
- (b) The following rules are applicable to the levy as provided for in subsection (a)(2):
- (1) Seizure and sale of property. The term "levy" as used in this section includes the power of distraint and seizure by any means. Except as provided in paragraph (2), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the director or the director's representative may levy upon property or rights to property, the director may seize and sell the property or rights to property (whether real or personal, tangible or intangible);
  - (2) The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date the levy is first made until the levy is released. The levy on salary or wages shall attach to twenty-five per cent of any salary or wages payable or received by the taxpayer;
  - (3) Successive seizures. Whenever any property or rights to property upon which levy has been made is not sufficient to satisfy the claim of the State for which levy is made, the director or the director's representative, thereafter, and as often as may be necessary, may proceed to levy in like manner upon any other property liable to levy of the person against whom a claim exists, until the amount due from the person, together with all expenses, is fully paid;
  - (4) Surrender of property subject to levy.

- (A) Requirement. Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made, upon demand of the director or the director's representative, shall surrender the property or rights (or discharge the obligation) to the director or the director's representative, except that part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process;
  - (B) Extent of personal liability. Any person who fails or refuses to surrender property or rights to property, subject to levy, upon demand by the director or the director's representative, shall be liable in the person's own person and estate to the State in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which the levy has been made, together with costs and interest on the sum at the rate of eight per cent a year from the date of the levy. Any amount (other than costs) recovered under this subparagraph shall be credited against the tax liability for the collection of which the levy was made;
  - (C) Penalty for violation. In addition to the personal liability imposed by subparagraph (B), if any person required to surrender property or rights to property fails or refuses to surrender the property or rights to property without reasonable cause, the person shall be liable for a penalty equal to fifty per cent of the amount recoverable under subparagraph (B). No part of the penalty shall be credited against the tax liability for the collection of which the levy was made;
  - (D) Effect of honoring levy. Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the director or the director's representative, surrenders the property or rights to property (or discharges the obligation) to the director or the director's representative (or who pays a liability under subparagraph (B)) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to the property or rights to property arising from the surrender or payment; and
  - (E) Person defined. The term "person," as used in subparagraph (A), includes an officer or employee of a corporation or a member or employee of a partnership, who as an officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation;
- (5) Production of books. If a levy has been made or is about to be made on any property, or rights to property, any person having custody or control of books or records, containing evidence or statements relating to the property or rights to property subject to levy, upon demand of the director or the director's representative, shall exhibit those books or records to the director or the director's representative;
- (6) Property exempt from levy. Notwithstanding any other law of the State, no property or rights to property shall be exempt from levy other than the following:
- (A) Wearing apparel and school books. Those items of wearing apparel and those school books that are necessary for the taxpayer or for members of the taxpayer's family;
  - (B) Fuel, provisions, furniture, and personal effects. If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$500 in value;
  - (C) Books and tools of a trade, business, or profession. So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$250 in value;
  - (D) Unemployment benefits. Any amount payable to an individual with respect to the individual's unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States or the State; and
  - (E) Undelivered mail. Mail, addressed to any person, which has not been delivered to the addressee; and
- (7) Sale of the seized property.
- (A) Notice of sale. The director shall take possession and keep the levied property until the sale. After taking possession, the director shall sell the taxpayer's interest in the property at public auction after first giving fifteen days' public notice of the time and place of the sale in the district, and by posting the notice in at least three public places in the district where the sale is to be held;
  - (B) Assistance in seizure and sale. The director may require the assistance of any sheriff or authorized police officer of any county to aid in the seizure and sale of the levied property. The director may further retain the services of any person competent and qualified to aid in the sale of the levied property, provided that the consent of the delinquent taxpayer is obtained. Any sheriff or the person so retained by the director shall be paid a fair and reasonable fee but in no case shall the fee exceed ten per cent of the gross proceeds of the sale. Any person other than a sheriff so retained by the director to assist the director may be required to furnish bond in an amount to be determined by the director. The fees and the cost of the bond shall constitute a part of the costs and expenses of the levy;
  - (C) Time and place of sale. The sale shall take place and be completed within one hundred eighty days after seizure; provided that the time period set herein shall be tolled during the pendency of any action commenced by any person relating to the seized property until a final order is rendered in that action,



whether by stipulation with the person or by court order, or upon the expiration of any extended time as may be agreed upon;

- (D) Manner and conditions of sale. Sufficient property shall be sold to pay all taxes, penalties, interest, costs, and expenses. On payment of the price bid for any property sold, the delivery thereof with a bill of sale from the director shall vest the title of the property in the purchaser. No charge shall be made for the bill of sale. All surplus received upon any sale after the payment of the taxes, penalties, interest, costs, and expenses, shall be returned to the owner of the property sold, and until claimed shall be deposited with the department subject to the order of the owner. Any unsold portion of the property seized may be left at the place of sale at the risk of the owner; and
- (E) Redemption of property. If the owner of the property seized desires to retain or regain possession thereof, the owner may give a sufficient bond with surety to produce the property at the time and place of sale, or pay all taxes, penalties, interest, costs, and expenses. [L 1932 2d, c 40, §69; RL 1935, §1963; RL 1945, §5131; am L 1949, c 311, §1(b); am L 1955, c 246, §1; RL 1955, §115-30; am L Sp 1959 2d, c 1, §16; am L 1967, c 37, §1; HRS §231-25; am L 1972, c 83, §2; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 1998, c 2, §66; am L 2002, c 153, §3; am L 2013, c 44, §1]

#### Rules of court

Applicability of rules, see HRCF rule 81(b)(8); DRCP rule 81(b)(4).

#### Case Notes

Distress of goods. 2 H. 241; 2 H. 259.

Enforcing tax lien by foreclosure in equity. 18 H. 170.

Pre-hearing summary constraint is constitutional. 57 H. 1, 548 P.2d 246.

### COLLECTION PROCEEDINGS

**18-231-25.5 §231-25.5 Cost recovery fees for the administration of taxes.** (a) The department may charge and add a fee to any amount due in accordance with the department's duties and powers under section 231-3 for:

- (1) Any cost or expense incurred by the department as a result of any action taken to enforce the collection of taxes administered under title 14, including levy, seizure, foreclosure, and other similar acts, after the department has mailed written notice demanding payment and advising that continued failure to pay the amount due may result in collection action, including the imposition of fees pursuant to this section. Any such fee charged against the taxpayer for costs, fees, and other charges, may include attorneys' fees, collection agency fees, court filing fees, recording fees, and similar fees, incurred by the department in connection with the collection action;
- (2) Department-sponsored seminars or workshops, including educational materials in various media formats;
- (3) Research and reference materials published on magnetic media, CD-ROM, or other machine-readable form; and
- (4) The re-issuance of refund checks to taxpayers; provided that no fee shall be charged if the amount of the refund check is less than the fee.

(b) The director may waive any fee imposed by the department under title 14 in cases of hardship as determined by the director.

(c) Interest shall not accrue with respect to any fee charged under this section.

(d) Notwithstanding any other provisions provided under title 14, whenever a taxpayer makes a partial payment of a particular delinquent amount, the amount received by the department shall first be credited to the fees provided by this section, in the order that the fees were charged.

(e) The department shall prescribe the procedures relating to the charging of fees, the waiver of fees, the documents and services for which the fees may be charged, and the amount of the fees, increasing or decreasing the fees as necessary, pursuant to rules adopted under chapter 91. [L 1995, c 14, §1; am L 1996, c 131, §1]

**§231-26 Extraterritorial enforcement of tax laws.** (a) The courts of the State shall recognize and enforce the liability for taxes lawfully imposed by the laws of any state which extends a like comity, whether by statute or case law, in respect of the liability for taxes lawfully imposed by the laws of this State. Should a claim be made in the state courts for taxes by a state whose highest court has not yet passed upon the question of enforcing extraterritorial revenue laws, the courts of the State shall enforce such claims until such time as the highest court of that state prohibits the enforcement of extraterritorial revenue laws.

(b) Any and all authorized officials of a state entitled to enforce its tax claims within the state courts may bring action in the courts of this State for the collection of the taxes. The certificate of the secretary of state of such state, or of the nearest equivalent official, that such officials have the authority to collect the taxes sought to be collected by the action shall be conclusive proof of that authority.

(c) The attorney general may bring action in the name of the State, or authorize action to be brought in the name of the State, in the courts of any state to collect taxes legally due the State.

(d) The term “state” as used herein means any state, territory, or possession of the United States. The term “taxes” as herein employed shall include:

- (1) Any and all tax assessments lawfully made, whether they be based upon a return or other disclosure of the taxpayer, upon the information and belief of the taxing authority, or otherwise;
- (2) Any and all penalties lawfully imposed pursuant to a taxing statute; and
- (3) Interest charges lawfully added to the tax liability which constitutes the subject of the action.

(e) In any case where a person owing delinquent taxes to the State has moved from the State to another state or country, is situated in another state or country, resides, or maintains a place of business in another state or country, the director, notwithstanding any other law to the contrary, by contract, may select and retain bonded collection agencies, licensed attorneys, accountants, and auditors or other persons to pursue and collect the claims of the State.

(f) At the option of the director, any contract entered into under this section may provide for compensation on:

- (1) A fixed price basis;
- (2) An hourly rate basis with or without a fixed cap; or
- (3) A contingent fee arrangement to be specified in the contract; provided that this paragraph shall not apply to auditors and accountants.

All compensation shall be payable out of the taxes recovered for the State or from the debtor in accordance with the terms of, and up to the amounts authorized by the contract, unless otherwise determined by the director.

(g) Suits brought upon judgments shall be governed by the law relating thereto, and not by this section. [L 1949, c 311, §1(a); am L 1953, c 67, §1; RL 1955, §115-31; am L Sp 1959 2d, c 1, §16; HRS §231-26; am imp L 1984, c 90, §1; gen ch 1985; am L 1997, c 253, §2; am L 1999, c 68, §2]

**§231-27 Partial payment of taxes.** Whenever a taxpayer makes a partial payment of a particular assessment of taxes, the amount received by the department of taxation shall first be credited to interest, then to penalties, and then to principal. [L 1949, c 312, §1; RL 1955, §115-32; am L Sp 1959 2d, c 1, §16; HRS §231-27]

**§231-28 Tax clearance before procuring liquor licenses.** No liquor licenses shall be issued or renewed unless the applicant therefor shall present to the issuing agency, a certificate signed by the director of taxation, showing that the applicant does not owe the State any delinquent taxes, penalties, or interest; or that the applicant has entered into and is complying with an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments. [L 1949, c 352, §1; RL 1955, §115-33; am L 1963, c 82, §1; am L 1964, c 6, §2; HRS §231-28; am L 2009, c 184, §1]

#### Attorney General Opinions

[Taxpayer’s agreement to pay its delinquent taxes, pursuant to a payment schedule, does not satisfy the requirements for liquor license renewal under this section and §281-45. At. Gen. Op. 95-1.](#)

#### Hawaii Legal Reporter Citations

Automatic stay in bankruptcy. 81-1 HLR 810555.

**§231-29 Joinder of party defendant when State claims tax liens.** The director of taxation (or in the case of a lien under chapter 383, the director of labor and industrial relations) may be named a party defendant in any civil action in any state court of competent jurisdiction or in the district court of the United States for the district of Hawaii, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the State has or claims a tax lien under chapters of the law under title 14 administered by the department or chapter 383; provided that the jurisdiction conferred by this section shall be limited and shall not operate as a consent by the State to be sued as to its claim of title to or liens and encumbrances on real and personal property other than the liens aforementioned. Service upon the director shall be made as provided by the rules of court. In any action contemplated under this section, the director may ask, by way of affirmative relief, for the foreclosure of the aforementioned state tax liens, but in the absence of such request for affirmative relief, upon any foreclosure sale the property shall be sold subject to the tax liens. Nothing in this section shall preclude the director from asking for such other and further relief as might have been claimed by intervention in the action. [L 1953, c 187, §1; RL 1955, §115-34; am L 1957, c 185, §4; am L Sp 1959 2d, c 1, §16; HRS §231-29; am L 1973, c 133, §1; am L 1985, c 16, §6; am L 1986, c 340, §6; am L 1991, c 263, §9; am L 1995, c 66, §9]

#### Cross References

Service by mail, see §1-28.

#### Rules of Court

Service, see HRCF rule 4(d)(5).

As to pleading, see HRCF rules 7, 8, 12.

**§231-30 Unknown or nonresident delinquents; procedure to collect taxes from.** Notwithstanding section 604-7(c):

- (1) Unknown persons. In all cases where taxes assessed to persons unknown are delinquent and unpaid when due, action may be brought by the department of taxation in the district court of the circuit in which the assessment was made and the defendant may be named as unknown. In any such case, it shall be a good and sufficient service of summons, binding on all parties in interest, if under the order of the district court the title and the substance of the action and summons, including a return day not less than three weeks from the date of the issuance of such summons, and calling on all parties in interest to appear and defend, shall be published once a week for three consecutive weeks in some newspaper of general circulation in the State, and the district courts are given jurisdiction to order the service. In the summons and in the notice published, a brief description of the property assessed shall be given. Any judgment entered against the defendant shall be enforced only against the property for which the tax was assessed, unless the defendant has appeared in the action and defended on the merits, in which case the defendant shall be liable to a personal judgment with respect to the claim so defended.
- (2) Nonresident delinquents. Where taxes assessed to nonresidents of the taxation district are delinquent and unpaid when due, service of summons may be made in any part of the State, or by exercise by the district court of the powers conferred on circuit courts with respect to defendants who cannot be served with process within the State, with the same effect as if the action had been brought in the circuit court. [L 1932 2d, c 40, §70; RL 1935, §1964; RL 1945, §5132; RL 1955, §115-35; am L Sp 1959 2d, c 1, §16; am L 1967, c 37, §1; HRS §231-30; am L 1973, c 133, §2; am imp L 1984, c 90, §1; gen ch 1985]

**§231-31 Nonresidents engaged in business, etc., service of process on, designation of agent for service of process.** Every nonresident individual who, jointly, severally, or jointly and severally, is subject to a tax upon the gross or net income from, or sales of, an occupation, trade, or business carried on in the State, in whole or in part, or upon the carrying on of such occupation, trade, or business, or upon the use or keeping for use of property therein, shall file with the department of taxation in the district in which the occupation, trade, or business is carried on, the name and address of a person residing within the State upon whom process may be served, and in default of such designation, and if the nonresident individual cannot be found in the State, service of process in any action for the collection of the taxes may be made on any manager, superintendent, or other person in charge, employed in the carrying on of the occupation, trade, or business, with like effect as if the person so served had been designated by the nonresident as the nonresident's agent for such purpose; provided that nothing therein shall preclude the service of process in any other manner provided by law. [L 1953, c 67, §2; RL 1955, §115-36; am L Sp 1959 2d, c 1, §16; am L 1967, c 37, §1; HRS §231-31; am imp L 1984, c 90, §1; gen ch 1985]

#### Rules of Court

Service, see HRCP rule 4(d)(1).

**§231-32 Records of delinquent taxes, uncollectible delinquent taxes.** The department of taxation shall prepare and maintain, open to public inspection, a complete record of the amounts of taxes assessed in each district that have become delinquent with the name of the delinquent taxpayer in each case, but it shall not be necessary to periodically compute on the records the amount of penalties and interest upon delinquent taxes.

The department, from time to time, may prepare lists of all delinquent taxes that in its judgment are uncollectible. Taxes that the department finds to be uncollectible shall be entered in a special record and be deleted from the other books kept by the department. The department shall then be released from any further duty to collect these taxes. No account shall be deleted unless the department finds that there is reasonable cause to delete the account, considering factors such as the financial condition of the taxpayer, inability to locate the taxpayer, costs of collection against the amount of tax owed, health of the taxpayer, and future income prospects of the taxpayer. Any items written off may be transferred back to the delinquent tax roll if the department finds that the alleged facts as previously presented to it were not true or that the items are in fact collectible. [L 1932 2d, c 40, §68; RL 1935, §1962; am L 1937, c 203, §1; am L 1939, c 182, §1; am L 1941, c 254, §1; RL 1945, §5133; am L 1951, c 133, §3; RL 1955, §115-37; am L Sp 1959 2d, c 1, §16; am L 1967, c 37, §1; HRS §231-32; am L 2013, c 33, §2]

#### Note

The 2013 amendment is retroactive to January 1, 2013. L 2013, c 33, §4.

**§231-33 Tax debt due the State; lien.** (a) Within the meaning of this section:

- (1) The terms "mortgagee", "pledgee", and "purchaser" do not include any person to whom property or an interest in property is conveyed (A) as security for or in satisfaction of an antecedent or pre-existing debt of a debtor who is insolvent within the meaning of the Bankruptcy Act, or (B) as trustee, assignee, or agent for the benefit of one or more creditors, other than mortgage bondholders.

- (2) The term “motor vehicle” means any self-propelled vehicle to be operated on the public highways.
- (3) The interest of a party, if required to be recorded or entered of record in any public office in order to be valid against subsequent purchasers, does not arise prior to the time of such recording or entry of record.
- (4) An employer or other person who is required by any tax law to withhold tax at the source, or to collect a tax, and who is made liable for the tax if the employer or other person does not fulfill the employer’s or other person’s duties in that regard, shall be deemed a person liable for the tax.
- (5) The term “real property” includes leasehold or other interest in real property and also any personal property sold or mortgaged with real property if affixed to the real property and described in the instrument of sale or mortgage.

(b) Any state tax which is due and unpaid is a debt due the State and constitutes a lien in favor of the State upon all property and rights to property, whether real or personal, belonging to any person liable for the tax. The lien for the tax, including penalties and interest thereon, arises at the time the tax is assessed, or at the time a return thereof is filed, or at the time of filing by the department of taxation of the certificate provided for by subsection (f) whichever first occurs. From and after the time the lien arises it is a paramount lien upon the property and rights to property against all parties, whether their interest arose before or after that time, except as otherwise provided in this section.

(c) The lien imposed by subsection (b) is not valid as against:

- (1) A mortgagee or purchaser of real property, or the lien of a judgment creditor upon real property, whose interest arose prior to the recording by the department of the certificate provided for by subsection (f);
- (2) A mortgagee or purchaser of a motor vehicle who becomes the legal owner or owner at a time when the tax lien and encumbrance record provided for by section 286-46 does not show the lien.

(d) As to tangible personal property, possession of which is held by a person liable for tax for the purpose of sale to the public in the ordinary course of the person’s business, the lien imposed by subsection (b) is extinguished as to any such property sold in the ordinary course of the business by or under the direction of the person to any purchaser for valuable consideration. As to securities, negotiable instruments, and money, the lien imposed by subsection (b):

- (1) Is extinguished as to such property upon passage of title to a person without notice or knowledge of the existence of the lien, for an adequate and full consideration in money or money’s worth;
- (2) Is not valid as against a mortgagee or pledgee for an adequate and full consideration in money or money’s worth, who is located outside the State and takes possession of the property, if at the time of taking possession of the property the mortgagee or pledgee is without notice or knowledge of the existence of the lien. The mere recording or filing of the certificate provided for by subsection (f) does not constitute notice for the purposes of this subsection.

(e) Subject to the provisions of this subsection, the lien imposed by subsection (b) is not valid as against a mortgagee, pledgee, or purchaser who gives notice to the department on a form prescribed by it of the mortgage, pledge, or purchase made or about to be made, with a description of the property encumbered or conveyed or proposed to be encumbered or conveyed thereby, and whose interest in the property arises prior to the recording or filing by the department of the certificate provided for by subsection (f) or within ten days after the filing. If the notice is given the lien imposed by subsection (b) is valid against the party giving the notice, as to any taxes set forth in a certificate filed as provided in subsection (f) within the period of fifteen days after the notice. The department may waive all or any part of the period herein allowed.

(f) The department may record in the bureau of conveyances at Honolulu, or in respect of a lien on a motor vehicle, file with the county director of finance, a certificate setting forth the amount of taxes due and unpaid, which have been returned, assessed, or as to which a notice of proposed assessment has issued. The certificate shall identify the taxpayer, the taxpayer’s last known address, and the tax or taxes involved. The recording or filing of the certificate has the effect set forth in this section, but nothing in this section shall be deemed to require that a certificate recorded or filed by the department must include the amount of any penalty or interest, in order to protect the lien therefor. The certificate, if recorded or filed with the county director of finance, shall be entered of record as provided by law. Recordation of the certificate in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. Any cost incurred in the filing of the certificate shall be a part of the lien for the tax therein set forth.

(g) The department may issue a certificate of discharge of any part of the property subject to the lien imposed by this section, upon payment in partial satisfaction of such lien, of an amount not less than the value as determined by the department of the lien on the part to be so discharged, or if the department determines that the lien on the part to be discharged has no value. Any such discharge so issued shall be conclusive evidence of the discharge of the lien as therein provided.

(h) The lien imposed by subsection (b) may be foreclosed in a court proceeding or by distraint under section 231-25.

(i) This section shall not apply to a tax levied by a chapter which contains a specific provision for a lien for the tax levied by the chapter, any provision in this section to the contrary notwithstanding. [L 1957, c 185, §1; am L Sp 1959 2d, c 1, §16; am L 1963, c 104, §1; Supp, §115-37.5; am L 1966, c 33, §2; HRS §231-33; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 20, §1]

## Cross Reference

[Tax Information Release No. 96-6, "Priority of State Tax Lien Under HRS §231-33; Use of Form D-37 \(Notice of Mortgage, Pledge or Purchase\)"](#)

## Case Notes

Federal court's equitable discretion to award attorney's fees to the interpleader stakeholder was not precluded by the statutory priority given by the state tax lien statute. 488 F. Supp. 2d 1084 (2007).

Pre-hearing tax lien does not violate due process. 57 H. 1, 548 P.2d 246.

## Hawaii Legal Reporter Citations

Real property tax lien is paramount. 79 HLR 79-0723.

## PENALTIES AND INTEREST

## Note

Part heading amended by L 1995, c 92, §3.

## Cross Reference

[Tax Information Release No. 2010-07, "Voluntary Disclosure Practice" Superseded by TIR 2016-02.](#)

**§231-34 Attempt to evade or defeat tax.** Any person who wilfully attempts in any manner to evade or defeat any tax imposed under title 14, or its payment, in addition to other penalties provided by law, shall be guilty of a class C felony and, upon conviction, shall be subject to one or any combination of the following:

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

provided that a corporation shall be fined not more than \$500,000. [L 1943, c 4, §4; RL 1945, §5134; RL 1955, §115-38; am L Sp 1959 2d, c 1, §16; HRS §231-34; am L 1995, c 92, §4; am L 1999, c 303, §1]

## Cross Reference

[Tax Information Release No. 95-4, "Employee Withholding Certificate"](#)

**§231-35 Wilful failure to file return, supply information, or secure a license.** Any person required to make a return, make a report, keep any records, supply any information, or secure any license required under title 14, who wilfully fails to make the return, make the report, keep the records, supply the information, or secure the license, at the time or times required by law, shall in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction, shall be subject to one or any combination of the following:

- (1) A fine of not more than \$25,000;
- (2) Imprisonment of not more than one year; or
- (3) Probation;

provided that a corporation shall be fined not more than \$100,000. [L 1932 2d, c 40, §13; RL 1935, §1912; am imp L 1943, c 4, §4; RL 1945, §5135; RL 1955, §115-39; HRS §231-35; am imp L 1984, c 90, §1; gen ch 1985; am L 1995, c 92, §5; am L 1996, c 54, §2; am L 1999, c 303, §2]

## Cross Reference

[Tax Information Release No. 95-4, "Employee Withholding Certificate"](#)

**§231-36 False and fraudulent statements; aiding and abetting.** (a) Any person who wilfully makes and subscribes any return, statement, or other document required to be made under title 14, except chapter 238, which contains or is verified by a written declaration that it is true and correct as to every material matter, and which the person does not believe to be true and correct as to every material matter shall be guilty of a class C felony and, upon conviction, shall be subject to one or any combination of the following:

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

provided that a corporation shall be fined not more than \$500,000; and provided further that, if the person wilfully makes and subscribes any return, statement, or other document required to be made under chapter 238, which contains or is verified by a written declaration that it is true and correct as to every material matter and which the person does not believe to be true and correct, then the person shall be guilty of a misdemeanor and, upon conviction, shall be subject to one or any combination of the following:

- (1) A fine of not more than \$2,000;

- (2) Imprisonment of not more than one year; or
- (3) Probation;

(b) Any person who wilfully aids or assists in, or procures, counsels, or advises the preparation or presentation of any tax return, affidavit, claim, or other document required to be made under title 14, which is fraudulent or is false as to any material matter, regardless of whether the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document shall be guilty of a class C felony and, upon conviction, shall be subject to one or any combination of the following:

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

provided that a corporation shall be fined not more than \$500,000. [L 1932 2d, c 40, §14; RL 1935, §1902; RL 1945, §5136; RL 1955, §115-40; HRS §231-36; am L 1995, c 92, §6; am L 1998, c 103, §1; am L 1999, c 303, §3]

#### Cross Reference

[Tax Information Release No. 95-4, "Employee Withholding Certificate"](#)

#### Case Notes

Where, pursuant to §231-40, the Cheek interpretation of the wilfulness requirement--that a jury must be permitted to consider evidence of a defendant's good faith belief that defendant's conduct did not violate the tax laws, even if that belief was not objectively reasonable, in determining whether defendant acted wilfully--was adopted and applied in construing subsection (a), the trial court erred in excluding defendant's exhibit pursuant to HRE rules 401 and 403 on the grounds that defendant's analysis of the tax laws was irrelevant and that evidence of defendant's legal theories would confuse the jury. 119 H. 60 (App.), 193 P.3d 1260 (2008).

**[§231-36.4] Wilful failure to collect and pay over tax.** Any person required to collect, account for, and pay over any tax imposed by title 14, who wilfully fails to collect or truthfully account for and pay over such tax shall be guilty of a class C felony, in addition to other penalties provided by law and, upon conviction, shall be subject to one or any combination of the following:

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

provided that a corporation shall be fined not more than \$500,000. [L 2009, c 166, §21]

#### Note

Applicability of section. L 2009, c 166, §27.

**[§231-36.5] Understatement of taxpayer's liability by tax return preparer.** (a) A tax return preparer who understates a person's tax liability based upon unreasonable positions on a tax return or claim for tax refund shall pay a penalty of \$500 with respect to each such tax return or claim for tax refund.

(b) A tax return preparer who:

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

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

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

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

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

- (1) Pays an amount that is not less than fifteen per cent of the penalty amount; and
- (2) Files a claim for refund of the amount so paid, no action to levy or file a proceeding in court to collect the remainder of the penalty shall be commenced except in accordance with subsection (e).

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

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

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

(f) If there is a final administrative determination pursuant to section 231-7.5, or a final judicial decision that the penalty assessed under subsection (a) or (b) should not apply, then that portion of the penalty assessed shall be voided. Any portion of the penalty that has been paid shall be refunded to the tax return preparer as an overpayment of tax without regard to any period of limitations that, but for this subsection, would apply to the making of the refund.

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

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

(h) For purposes of this section:

“Disclosed item” means any item where:

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

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

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

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

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

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

“Understatement of liability” shall have the same meaning as stated in section 231-36.6(b). The determination of whether there is an understatement of liability may be made without regard to any administrative or judicial action involving the taxpayer.

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

(j) This section shall be construed in accordance with regulations and judicial interpretations for Section 6694 of the Internal Revenue Code. [L 2009, c 166, §1]

#### Note

Applicability of section. L 2009, c 166, §27.

**[§231-36.6] Substantial understatements or misstatements of amounts; penalty.** (a) There shall be added to the tax an amount equal to twenty per cent of the portion of any underpayment that is attributable to any substantial understatement of any tax in a taxable year. The penalty under this section shall be in addition to any other penalty assessable by law.

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

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

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

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

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

- (1) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment; or
- (2) Any item if the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis, as defined under section 231-36.8, for the tax treatment by the taxpayer.

The reduction in this subsection shall not apply to any item attributable to a tax shelter as described in section 231-36.7.

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

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

- (1) The amount of tax required to be shown on the return for the taxable year; over
- (2) The amount of tax imposed that is shown on the return, reduced by any rebate as that term is defined by section 6211(b) (2) of the Internal Revenue Code. [L 2009, c 166, §4]

#### Note

Applicability of section. L 2009, c 166, §27.

**[§231-36.7] Promoting abusive tax shelters.** (a) A person promotes an abusive tax shelter by:

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

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

(c) At the request of the director of taxation, a civil action may be brought to enjoin any person described in subsection (a) from engaging in any conduct described in subsection (a). Any action under this section shall be brought in the circuit court of the circuit where the person in subsection (a) resides or where the person's principal place of business is located. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the State against those persons described in subsection (a). If the court finds that a person described in subsection (a) has engaged in any conduct subject to penalty under subsection (b) and that injunctive relief is appropriate to prevent the recurrence of that conduct, the court may enjoin the person accordingly.

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

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

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

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



(g) This section shall be construed in accordance with regulations and judicial interpretations given to section 6700 of the Internal Revenue Code. [L 2009, c 166, §2]

**Note**

Applicability of 2009 amendment. L 2009, c 166, §27.

**§231-36.8 Erroneous claim for refund or credit.** (a) If a claim for refund or credit with respect to tax is made for an excessive amount, the person making the claim shall be liable for a penalty in an amount equal to twenty per cent of the excessive amount; provided that there shall be no penalty assessed where the penalty calculation under this section results in an amount of less than \$400.

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

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

(d) For purposes of this section:

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

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

(e) This section shall not apply to any portion of an underpayment on which a penalty is imposed under section 231-36.6. [L 2009, c 166, §3; am L 2012, c 185, §1]

**Note**

Applicability of section. L 2009, c 166, §27.

The 2012 amendment applies to taxable years beginning after December 31, 2011. L 2012, c 185, §4.

**§231-37 Neglect of duty, etc., misdemeanor.** Any officer of the department of taxation, the state director of finance, any person duly authorized by the director of taxation, or any police officer, on whom duties are imposed under this chapter, who wilfully fails or refuses or neglects to perform faithfully any duty or duties as required by this chapter, shall be deemed guilty of a misdemeanor. [L 1932 2d, c 40, §12; RL 1935, §1915; RL 1945, §5137; am L 1945, c 79, §7; RL 1955, §115-41; am L Sp 1959 2d, c 1, §§14, 16; am L 1963, c 114, §1; HRS §231-37; am L 1974, c 139, §2; am L 2017, c 12, §34]

**§231-38 REPEALED.** L 1995, c 92, §21.

**§231-39 Additions to taxes for noncompliance or evasion; interest on underpayments and overpayments.** (a) Except as otherwise provided, this section shall apply to every tax or revenue law of the State that provides for the filing with the director of taxation of a return or statement of the tax or the amount taxable.

(b) There shall be added to and become a part of the tax imposed by such tax or revenue law, and collected as such:

- (1) Failure to file tax return. In case of failure to file any tax return required to be filed on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on the return five per cent of the amount of the tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five per cent in the aggregate. For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. This paragraph shall not apply to any failure to file a declaration of estimated tax required by section 235-97.
- (2) Failure to pay tax.
  - (A) If any part of any underpayment is due to negligence or intentional disregard of rules (but without intent to defraud), there shall be added to the tax an amount up to twenty-five per cent of the underpayment as determined by the director.
  - (B) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount up to fifty per cent of the underpayment as determined by the director.

- (C) If any penalty is assessed under subparagraph (B) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under paragraph (1) (relating to failure to file the return) shall be assessed with respect to the same underpayment.
- (3) Failure to pay tax after filing timely returns. If a return is filed on or before the date prescribed therefor and the amount shown as tax on the return is not completely paid within sixty days of the prescribed filing date, there shall be added to the unpaid tax an amount up to twenty per cent as determined by the director.
- (4) Interest on underpayment or nonpayment of tax.
- (A) If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate of two-thirds of one per cent a month or fraction of a month shall be paid for the period beginning with the first calendar day after the date prescribed for payment, section 231-21 to the contrary notwithstanding, to the date paid.
- (B) If the amount of any tax is reduced by reason of a carryback of a net operating loss allowed under chapter 235, such reduction in tax shall not affect the computation of interest under this paragraph for the period ending with the last day of the taxable year in which the net operating loss arises.
- (C) Interest prescribed under this paragraph on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes.
- (D) No interest under this paragraph shall be imposed on interest provided by this paragraph.
- (E) If any portion of a tax is satisfied by credit of any overpayment, then no interest shall be imposed under this paragraph on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to the overpayment.
- (F) Interest prescribed under this paragraph on any tax may be assessed and collected at any time during the period within which the tax to which the interest relates may be collected.
- (G) This paragraph shall not apply to any failure to pay estimated tax required by section 235-97.
- (c) No taxpayer shall be exempt from any penalty or interest by reason of having contested the tax, but only to the extent that the tax is adjudged to be excessive or contrary to law. [L 1953, c 125, §4; RL 1955, §115-43; am L 1967, c 134, §1; HRS §231-39; am L 1974, c 138, §1; am L 1988, c 386, §1; am L 1991, c 136, §2; am L 1992, c 102, §2; am L 1994, c 15, §1]

#### Cross References

Cost recovery fees for the administration of taxes, see §231-25.5.  
[Tax Information Release No. 92-2, "The Administration and Application of the Conveyance Tax Law"](#)  
[Tax Information Release No. 2008-03, "Deposits in the Nature of Cash Bond Made to Suspend the Running of Interest on Potential Underpayments"](#)

#### Case Notes

Erroneous belief that no tax liability existed held not "reasonable cause" within meaning of subsection (b)(1). 57 H. 436, 559 P.2d 264.

**§231-40 Interpretation.** Sections 231-34, 231-35, 231-36, and 231-36.4 shall be construed in accordance with judicial interpretations given to similar provisions of Title 26 of the United State Code; consistent therewith, the term "wilfully" shall mean a voluntary, intentional violation of a known legal duty. [L 1995, c 92, pt of §2; am L 2009, c 166, §22; am L 2011, c 43, §3]

#### Case Notes

Where, pursuant to this section, the Cheek interpretation of the wilfulness requirement--that a jury must be permitted to consider evidence of a defendant's good faith belief that defendant's conduct did not violate the tax laws, even if that belief was not objectively reasonable, in determining whether defendant acted wilfully--was adopted and applied in construing §231-36(a), the trial court erred in excluding defendant's exhibit pursuant to HRE rules 401 and 403 on the grounds that defendant's analysis of the tax laws was irrelevant and that evidence of defendant's legal theories would confuse the jury. 119 H. 60 (App.), 193 P.3d 1260.

**[§231-40.5] Statute of limitations; extension for substantial omissions.** (a) Notwithstanding any other law to the contrary limiting the time for assessment of any tax, if a taxpayer omits an amount of:

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

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

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

(c) This section shall be construed in accordance with regulations and judicial interpretations given to Section 6501 of the Internal Revenue Code. [L 2009, c 166, §5]

**Note**

Applicability of section. L 2009, c 166, §27.

**§231-41 Statute of limitation for criminal penalties.** Notwithstanding any laws to the contrary, prosecutions under sections 231-34, 231-35, 231-36, and 231-36.4 shall be commenced within seven years after the commission of the offense. [L 1995, c 92, pt of §2; am L 2009, c 166, §23; am L 2011, c 43, §4]

**RECOVERY OF MONEY OWED TO THE STATE**

**§231-51 Purpose.** The purpose of sections 231-52 to 231-59 is to permit the retention of state income tax refunds of those persons who owe a debt to the State, who are delinquent in the payment of child support pursuant to section 576D-1, who have defaulted on an education loan note held by the United Student Aid Funds, Inc., who owe federal income taxes to the United States Treasurer, or who receive a medicaid overpayment subject to recovery under section 346-59.6. [L 1982, c 199, pt of §1; am L 1985, c 256, §1; am L 1986, c 87, §1; am L 1988, c 199, §1; am L 1998, c 153, §1 and c 293, §3]

**Cross References**

Civil relief for state military forces, see chapter 657D.

**§231-52 Definitions.** As used in sections 231-51 to 231-59, unless the context otherwise requires:

“Claimant agency” includes any state agency, board, commission, department, institution, the judiciary, or other state organization, or any subdivision thereof. In the case of delinquent child support pursuant to section 576D-1, “claimant agency” means the child support enforcement agency or an agency under cooperative agreement with the department whenever the department is required by law to enforce a support order on behalf of an individual. “Claimant agency” includes the department of budget and finance when acting on behalf and at the request of the United Student Aid Funds, Inc. to collect defaulted education loan notes incurred under the federal Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219), as amended; provided that the department has a contract with the United Student Aid Funds, Inc. under chapter 309 when acting as a claimant agency. “Claimant agency” includes the department of taxation when acting on behalf and at the request of the Internal Revenue Service under the United States Department of the Treasury, and when the Internal Revenue Service is authorized by federal law to administratively impose a levy upon a refund of a debt or in satisfaction of the federal income taxes assessed under Internal Revenue Code of 1986, as amended.

“Debt” includes:

- (1) Any delinquency in periodic court-ordered or administrative-ordered payments for child support pursuant to section 576D-1, in an amount equal to or exceeding the sum of payments which would become due over a one-month period;
- (2) Any liquidated sum exceeding \$25 which is due and owing any claimant agency, regardless of whether there is an outstanding judgment for that sum, and whether the sum has accrued through contract, subrogation, tort, operation of law, or judicial or administrative judgment or order;
- (3) Any defaulted education loan note held by the United Student Aid Funds, Inc. incurred under the federal Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219), as amended;
- (4) Any federal income taxes due and owing to the United States Treasurer;
- (5) Any medicaid overpayment under section 346-59.6; or
- (6) Any unpaid court-ordered restitution enforceable as a civil judgment pursuant to section 706-647.

“Debtor” includes any person who owes a debt to any claimant agency, who is delinquent in payment of court-ordered or administrative-ordered child support payments, pursuant to section 576D-1, who has defaulted on an education loan note held by the United Student Aid Funds, Inc. incurred under the federal Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219), as amended, or who owes federal income taxes to the United States Treasurer.

“Refund” includes any state income tax refund which is or will be due any debtor, or any other sums due to a debtor from the State. [L 1982, c 199, pt of §1; am L 1985, c 256, §2; am L 1986, c 87, §2 and c 332, §5; am L 1987, c 112, §1; am L 1988, c 199, §2; am L 1998, c 66, §1, c 153, §2, and c 293, §4; am L 2017, c 77, §3]

**§231-53 Setoff against refund.** The State, through the department of accounting and general services or the department of taxation, upon request of a claimant agency, shall set off any valid debt due and owing a claimant agency by the debtor against any debtor’s refund. Any amount of the refund in excess of the amount retained to satisfy the debt shall be refunded to the debtor. [L 1982, c 199, pt of §1; am L 2019, c 97, §1]

**§231-54 Hearings; appeals.** At the time a setoff is identified, the debtor shall be notified by the comptroller or the director of taxation of the State's intention to apply the debtor's debt against the refund. The notice shall state that the debtor within thirty days may request a hearing before the claimant agency to contest the setoff. No issues that have been previously litigated shall be considered at the hearing. Appeals from the hearing allowed under this section shall be in accordance with chapter 91. [L 1982, c 199, pt of §1; am L 2019, c 97, §2]

**[§231-55] Finalization of setoff; credit on debt.** Upon completion of the hearing and appeal process set out in section 231-54, or upon the debtor's failure to timely request a hearing pursuant to that section, the setoff shall become final. The amount of the setoff after deduction of any charge authorized by section 231-56 shall be credited by the claimant agency against the debtor's debt. [L 1982, c 199, pt of §1]

**[§231-56] Charges for setoff; credit to agency.** The State may charge the claimant agency for the cost of the setoff; provided that the charges shall not exceed the proceeds of the collection. The State may designate a single percentage to be retained from the proceeds of the setoff as a charge for cost of assistance. The net proceeds of a setoff, after deduction of any charge, shall be credited to the claimant agency's account or fund. [L 1982, c 199, pt of §1]

**[§231-57] Apportionment of joint refunds.** In the case of a setoff against a joint income tax refund, the State may make separate refunds of withheld taxes upon request by a husband or wife who has filed the joint return. The refund payable to each spouse shall be proportioned to the gross earnings of each shown by the information returns filed by the employer or otherwise shown to the satisfaction of the State. [L 1982, c 199, pt of §1]

**§231-57.5 Notification of address and social security number of debtor parent.** The department of accounting and general services or the department of taxation shall notify the child support enforcement agency of the address and social security number of each debtor who has been subject to a setoff because of a child support debt. [L 1986, c 332, §3; am L 2019, c 97, §3]

**[§231-58] Rules.** All state agencies may adopt rules pursuant to chapter 91 for carrying out the purposes of sections 231-51 to 231-59. [L 1982, c 199, pt of §1]

**§231-59 Procedure additional.** The setoff procedure authorized by sections 231-53 to 231-57.5 is in addition to and not in substitution of any other remedy available by law. [L 1982, c 199, pt of §1; am L 2017, c 12, §35]

## LIENS, FORECLOSURE

**[§231-61] Tax liens; co-owners' rights.** (a) If a cotenancy exists and within the period of a tax lien, all of the taxes, interest, penalties, and other additions to the tax, due and delinquent at the time of payment, are paid by a cotenant, the cotenant shall have a lien in an amount equal to the amount paid by the cotenant on the interest of any noncontributing cotenant upon recording in the bureau of conveyances, within ninety days after the cotenant's payment, a sworn notice setting forth the amount claimed, a brief description of the land affected by tax key or otherwise, sufficient to identify the land, the taxes paid and the name of the cotenant upon whose interest the lien is asserted. When a notice of the tax lien is recorded by a cotenant, the registrar shall cause the tax lien to be indexed in the general indexes of the bureau of conveyances. If the land affected is registered in the land court the notice shall also contain a reference to the number of the certificate of title of the land and shall be filed and registered in the office of the assistant registrar of the land court, and the registrar, in the registrar's capacity as assistant registrar of the land court, shall make a notation of the filing thereof on each land court certificate of title so specified.

The cotenant's lien shall have the same priority as the lien or liens of the State for the taxes paid by the cotenant, and maybe enforced by an action in the nature of a suit in equity. The lien shall continue for three years after recording or registering, or until termination of the proceedings for enforcement thereof if such proceedings are begun and notice of the pendency thereof is recorded or filed and registered as provided by law, within the period.

(b) The director or the director's subordinate, in case of a state tax lien, and the creditor cotenant, in case of a cotenant's lien, at the expense of the debtor, upon payment of the amount of the lien, shall execute and deliver to the debtor a sworn satisfaction thereof, including a reference to the name of the person assessed or cotenant affected as shown in the original notice, the date of filing of the original notice, a description of the land involved, and the number of the certificate of title of the land if registered in the land court. When recorded in the bureau of conveyances or filed and registered in the office of the assistant registrar of the land court, in the case of a cotenant's lien, which contains the reference to the book and page of the original lien, the sworn satisfaction shall be entered in the general indexes of the bureau of conveyances, and if a notation of the original notice was made on any land court certificate of title the filing of the satisfaction shall also be noted on the certificate.

This section as to cotenancy shall apply, as well, in any case of ownership by more than one assessable person. [L 1989, c 14, pt of §1(1)]

#### Cross References

Recordation, see § 502-31.5.

**§231-62 Tax liens; foreclosure; property.** (a) Upon enforcement or foreclosure by the State, in any manner whatsoever, of any state tax lien on real property, all state taxes of whatsoever nature and howsoever accruing and due at the time of the foreclosure sale from the taxpayer against whose property the tax lien is so enforced or foreclosed shall be satisfied as far as possible out of the proceeds of the sale remaining after payment of the:

- (1) Costs and expenses of the enforcement and foreclosure, including a title search, if any;
- (2) Amount of subsisting state tax liens on real property; and
- (3) Amount of any recorded liens against the property,  
in the order of their priority.

(b) The liens may be enforced by action of the state tax collector in the circuit court of the judicial circuit in which the property is situated. Jurisdiction is conferred upon the circuit courts to hear and determine all proceedings brought or instituted to enforce and foreclose such state tax liens, and the proceedings had before the circuit courts shall be conducted in the same manner and form as ordinary foreclosure proceedings.

(c) If the owners or claimants of the property against which a state tax lien is sought to be foreclosed are at the time without the State or cannot be served within the State, or if the owners are unknown, and the fact shall be made to appear by affidavit to the satisfaction of the court, and it shall in like manner appear prima facie that a cause of action exists against such owners or claimants or against the property described in the complaint or that such owners or claimants are necessary or proper parties to the action, the court may grant an order that the service may be made in the manner provided by sections 634-23 to 634-27. In any such case it shall not be necessary to obtain judgment and have execution issued and returned unsatisfied, before proceeding to foreclose the lien for taxes in the manner provided. [L 1989, c 14, pt of §1(1); am L 2017, c 12, §36]

**[§231-63] Tax liens; foreclosure without suit, notice.** All real property on which a lien for state taxes exists may be sold by way of foreclosure without suit by the state tax collector, and in case any lien, or any part thereof, has existed thereon for three years, shall be sold by the state tax collector at public auction to the highest bidder, for cash, to satisfy the lien, together with all interest, penalties, costs, and expenses due or incurred on account of the tax, lien, and sale, the surplus, if any, to be rendered to the person thereto entitled. The sale shall be held at any public place proper for sales on execution, after notice published at least once a week for at least four successive weeks immediately prior thereto in any newspaper with a general circulation of at least sixty thousand published in the State and any newspaper of general circulation published and distributed in the taxation district wherein the property to be sold is situated, if there is a newspaper published in the taxation district.

If the address of the owner is known or can be ascertained by due diligence, including an abstract of title or title search, the state tax collector shall send to each owner notice of the proposed sale by registered mail, with request for return receipt. If the address of the owner is unknown, the state tax collector shall send a notice to the owner at the owner's last known address as shown on the records of the department of taxation. The notice shall be deposited in the mail at least forty-five days prior to the date set for the sale. The notice shall also be posted for a like period in at least three conspicuous public places within such taxation district, and if the land is improved one of the three postings shall be on the land. [L 1989, c 14, pt of §1(1)]

**[§231-64] Tax liens; registered land.** If the land has been registered in the land court, the state tax collector shall also send by registered mail a notice of the proposed sale to any person holding a mortgage or other lien registered in the office of the assistant registrar of the land court. The notice shall be sent to any such person at the person's last address as shown by the records in the office of the registrar, and shall be deposited in the mail at least forty-five days prior to the date set for the sale. [L 1989, c 14, pt of §1(1)]

**[§231-65] Tax liens; notice, form of.** The notice of sale shall contain the names of the persons assessed, the names of the present owners (so far as shown by the records of the tax office and the records, if any, in the office of the assistant registrar of the land court), the character and amount of the tax, and the tax year or years, with interest, penalties, costs, expenses, and charges accrued or to accrue to the date appointed for the sale, a brief description of the property to be sold, and the time and place of sale, and shall warn the persons assessed, and all persons having or claiming to have any mortgage or other lien thereon or any legal or equitable right, title, or other interest in the property, that unless the tax, with all interest, penalties, costs, expenses, and charges accrued to the date of payment, is paid before the time of sale appointed, the property advertised for sale will be sold as advertised. The state tax collector may include in one advertisement of notice of sale notice of foreclosure upon more than one parcel of real property, whether or not owned by the same person and whether or not the liens are for the same tax year or years. [L 1989, c 14, pt of §1(1)]

**[§231-66] Tax liens; postponement of sale, etc.** If at the time appointed for the sale the state tax collector deems it expedient and for the interest of all persons concerned therein to postpone the sale of any property or properties for want of purchasers, or for other sufficient cause, the state tax collector may postpone the sale from time to time, until the sale is completed, giving notice of every adjournment by a public declaration thereof at the time and place last appointed for the sale; provided that the sale of any property may be abandoned at the time first appointed or any adjourned date, if no proper bid is received sufficient to satisfy the lien, together with all interest, penalties, costs, expenses, and charges. [L 1989, c 14, pt of §1(1)]

**[§231-67] Tax liens; tax deed; redemption.** The state tax collector or the state tax collector's assistant, on payment of the purchase price, shall make, execute, and deliver all proper conveyances necessary in the premises and the delivery of the conveyances shall vest in the purchaser the title to the property sold; provided that the deed to the premises shall be recorded within sixty days after the sale; provided further that the taxpayer may redeem the property sold by payment to the purchaser at the sale, within one year from the date thereof, or if the deed shall not have been recorded within sixty days after the sale, then within one year from the date of recording of the deed, of the amount paid by the purchaser, together with all costs and expenses which the purchaser was required to pay, including the fee for recording the deed, and in addition thereto, interest on such amount at the rate of twelve per cent a year, but in a case of redemption more than one year after the date of sale by reason of extension of the redemption period on account of late recording of the tax deed, interest shall not be added for the extended redemption period. [L 1989, c 14, pt of §1(1)]

**[§231-68] Tax liens; costs.** The director of taxation by rule may prescribe a schedule of costs, expenses, and charges and the manner in which they shall be apportioned between the various properties offered for sale and the time at which each cost, expense, or charge is deemed to accrue. The costs, expenses, and charges shall be added to and become a part of the tax lien on the property for the last year involved in the sale or proposed sale, the tax for which is delinquent. The costs, expenses, and charges may include provision for the making of and the securing of certificates of searches of any records to furnish information to be used in or in connection with the notice of sale or tax deed, or in any case where the director deems it advisable; provided that the state tax collector shall not be required to make such searches or to cause them to be made except as provided by section 231-64 with respect to mortgages or other liens registered in the office of the assistant registrar of the land court. [L 1989, c 14, pt of §1(1)]

**[§231-69] Tax deed as evidence.** The tax deed referred to in section 231-67 is prima facie evidence that:

- (1) The property described by the deed on the date of the sale was subject to a lien or liens for state taxes, penalties, and interest in the amount stated in the deed, for the tax years therein stated, and that the state taxes, penalties, and interest were due and unpaid on the date of sale;
- (2) Costs, expenses, and charges due or incurred on account of the state taxes, liens, and sale had accrued at the date of the sale in the amount stated in the deed;
- (3) The person who executed the deed was the proper officer;
- (4) At a proper time and place the property was sold at public auction as prescribed by law, and by the proper officer;
- (5) The sale was made upon full compliance with sections 231-63 to 231-68 and all laws relating thereto, and after giving notice as required by law; and
- (6) The grantee named in the deed was the person entitled to receive the conveyance. [L 1989, c 14, pt of §1(1)]

**[§231-70] Disposition of surplus moneys.** (a) The officer charged with the duty of distributing the surplus arising from a tax sale under sections 231-63 to 231-68 shall pay from the surplus all state taxes, including interest and penalties, of whatsoever nature and howsoever accruing, as provided in section 231-62, and the officer may pay from the surplus the cost of a search of any records where such search is deemed advisable by the officer to ascertain the person or persons entitled to the surplus; provided that nothing in this section shall be construed to require the state tax collector to make or cause any such search to be made. If the officer is in doubt as to the person or persons entitled to the balance of the fund the officer may refuse to distribute the surplus and any claimant may sue the officer or the officer's successor in office in the circuit court in the circuit within which the property sold was situated. The officer may require the claimants to interplead, in which event the officer shall state the names of all claimants known to the officer, and shall cause them to be made parties to the action. If in the officer's opinion there may be other claimants who are unknown, the officer may apply for an order or orders joining all persons unknown having or claiming to have any legal or equitable right, title, or interest in the moneys or any part thereof or any lien or other claim with respect thereto.

(b) Any orders of the court or summons in the matter may be served as provided by law or the rules of court, and all persons having any interest in the moneys who are known, including the guardians of such of them as are under legal age or under any other legal disability (and if any one or more of them is under legal age or under other legal disability and without a guardian the court shall appoint a guardian ad litem to represent them therein) shall have notice of the action by personal service upon them. All persons having any interest in the moneys whose names are

unknown or who if known do not reside within the State, or for any reason cannot be served with process within the State shall have notice of the action as provided by sections 634-23 to 634-27, except that any publication of summons shall be in at least one newspaper published in the State and having a general circulation in the circuit within which the property sold was situated, and the form of notice to be published shall provide a brief description of the property which was sold.

(c) All expenses incurred by the officer shall be met out of the surplus moneys realized from the sale. [L 1989, c 14, pt of §1(1)]

### CIVIL COMPLIANCE; SPECIAL ENFORCEMENT SECTION

#### Note

Part repealed on June 30, 2014. L 2009, c 134, §13(3).

The 2013 amendment repeals Section 13(3) of Act 134, SLH 2009 effective April 30, 2013. Deletes the sunset provisions for the special enforcement section of the department of taxation. L 2013, c 58, §3.

**§231-81 Special enforcement section; created.** [(a)] There is created within the department of taxation the special enforcement section to carry out civil enforcement efforts as directed by the director of taxation. The director may staff the section as the exigencies of the public service may require.

[(b)] The department of taxation shall report to the legislature no later than thirty days prior to the convening of each regular session the state resources committed to implementing [Act 134, Session Laws of Hawaii 2009] and the additional revenues raised therefor. [L 2009, c 134, pt of §2, §9; am L 2013, c 58, §1]

#### Revision Note

L 2009, c 134, §9 is codified to this section pursuant to §23G-15.

**§231-82 Special enforcement section; functions, powers, and duties.** The special enforcement section shall have the following functions, powers, and duties:

- (1) Investigate reported or suspected violations of tax laws for civil enforcement purposes, including through covert means, with a stated priority of investigating cash-based businesses as defined in section 231-93;
- (2) Enforce the tax laws by issuing, enforcing, or executing citations, fines, infractions, assessments, liens, levies, writs, warrants, injunctions, or other process;
- (3) Serve as fraud referral specialists to assist in the development and review of fraud cases for appropriate disposition of potentially fraudulent activities, including referral to criminal investigators and assessment of civil fraud penalties; provided that personnel assigned to the special enforcement section may not participate in any criminal investigation;
- (4) Organize and hold public informational meetings on issues of tax laws, including compliance deficiencies in segments of the economy, and undertake any other activities to encourage taxpayers, practitioners, or others to maintain responsibility and compliance with their tax obligations;
- (5) Coordinate with other sections or divisions within the department of taxation, other departments or branches of the state government, any branches of the county government, or the federal government on matters relating to civil enforcement of the tax laws, including joint investigations, information-sharing, arrangements, or concurrent collection efforts; provided that personnel assigned to the special enforcement section may not participate in any criminal investigation;
- (6) Compile information received by third parties, including taxpayers, competitors, government agencies, confidential sources, or public sources and delegate this information within the department for proper handling. Proper handling may include referral internally to other civil or criminal enforcement sections;
- (7) Conduct investigations, research, and studies of matters relevant to the complex or sensitive civil enforcement of the tax laws; and
- (8) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section or as otherwise directed by the director of taxation. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**§231-83 Investigators and personnel, appointment and power.** (a) The director of taxation may appoint, commission, or detail to the special enforcement section one or more persons as investigators, investigator assistants, and other support staff as the exigencies of the public service may require. Investigators may be legal or accounting professionals; provided that their primary duty is to conduct investigations pursuant to the authorities of the special enforcement section and they shall not conduct or participate in criminal investigations of the tax laws or render legal advice. Investigators may serve process and apply for and execute search warrants or writs of entry pursuant to section 231-84 but shall not otherwise have the powers of a police officer or deputy sheriff.

(b) Notwithstanding any other law to the contrary relating to employment, bargaining, labor, or compensation rights or duties, any person appointed, commissioned, or detailed to the special enforcement section:

- (1) May be an employee of the department in any capacity, including exempt from or subject to chapters 76 and 89 as an employee of the department;
- (2) Shall be exempt from chapters 76 and 89 for purposes of their appointment, commission, or detail capacity as investigator, whether full-time, part-time, or temporary;
- (3) May be appointed, commissioned, or detailed in any capacity, and whose appointment, commission, or detail may be dismissed at the pleasure of the director of taxation;
- (4) If appointed, commissioned, or detailed on a temporary basis, shall have the right to return to the person's same position or to a related position in the same class or division within the department when the person's appointment expires. The return rights provided under this section shall apply to persons exempt from or subject to chapters 76 and 89; and
- (5) May be paid overtime as prescribed by an applicable collective bargaining agreement or existing policy for excluded employees. The compensation rights under this section shall apply to persons exempt from or subject to chapters 76 and 89. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**§231-84 Right to inspection of books, records, and premises; warrants and writs; levy and seizure.** (a) Upon presenting credentials, the special enforcement section may examine any books, papers, records, and any article or item of business transacted of any person engaged in business in this State to verify the accuracy of the reporting and payment of the taxes imposed by law. Every person in possession of any books, papers, records, or articles or items of business transacted, and the person's agents and employees, shall provide the special enforcement section the means, facilities, and opportunities for the examinations upon request, to the extent reasonably possible under the circumstances.

(b) The special enforcement section may inspect the operations, premises, and storage areas of any person engaged in business in this State during regular business hours.

(c) The special enforcement section may inspect the operations, premises, and storage areas of any person engaged in business in this State at any time, without notice, upon the issuance of a warrant or writ of entry based upon probable cause of a violation under title 14. The determination of probable cause for purposes of this section shall be made based upon the standard of probable cause for an administrative or civil search or seizure. Application for a search warrant or writ of entry under this section shall be made by making a declaration, under oath, which includes the following:

- (1) The taxpayer's form of business;
- (2) The taxpayer's interest in and address of the premises sought to be searched;
- (3) Whether permission to search the premises has been requested in advance of requesting the warrant or writ;
- (4) The particular books, records, items, articles, assets, or contraband reasonably believed to be on the premises; and
- (5) The alleged violation reasonably believed to have occurred, including nonpayment of taxes; and, if searching or seizing in furtherance of collection, identification of the assets reasonably believed to be on the premises.

The special enforcement section may apply to the circuit court where the person is located for issuance of such warrant or writ. The special enforcement section may execute warrants or writs of entry. Any police officer, criminal investigator, or deputy sheriff of this State or any county shall be required to render assistance and aid to the special enforcement section in executing warrants and writs, upon request. Criminal law enforcement agencies that assist the special enforcement section may be compensated, as determined by the director; provided that no person or agency shall be compensated on the basis of a specific percentage or fraction of the money collected from taxpayers.

(d) The special enforcement section's ability to inspect shall include inspection of all statements, books, papers, and records in whatever format, including electronic format, articles or items of business transacted, including inventory, supplies, stock, and cash on hand, pertaining to the sales or other business activities of any person to verify the accuracy of the reporting and payment of taxes imposed by law.

(e) The special enforcement section may seize and levy any assets in the custody or control of any person pursuant to this chapter, and subject to all rights of appeal set forth herein. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**§231-85 Identification of cash-economy cases; retention of funds.** Notwithstanding any law to the contrary, each fiscal year, the special enforcement section may identify any taxpayer, assessment, investigation, or collection matter as a matter of the special enforcement section. All revenues collected from special enforcement section matters shall be deposited into the tax administration special fund. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**§231-86 Violent interference with a tax official.** Any person who interferes, hinders, obstructs, prevents, or impedes any investigator or employee of the department with violence or threat of violence, shall be guilty of a class C felony and, upon conviction, shall be subject to one or any combination of the following:

- (1) A fine of not more than \$4,000;
- (2) Imprisonment for not more than three years; or
- (3) Probation;

provided that a corporation shall be fined not less than \$10,000.



This section shall be construed in accordance with regulations and judicial interpretations given to similar provisions of the Internal Revenue Code. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

### CASH ECONOMY ENFORCEMENT; CITATIONS

#### Note

Part repealed on June 30, 2014. L 2009, c 134, §13(3).

The 2013 amendment repeals Section 13(3) of Act 134, SLH 2009 effective April 30, 2013. Deletes the sunset provisions for the special enforcement section of the department of taxation. L 2013, c 58, §3.

**18-231-91 §231-91 Citations for violations; deposits.** (a) The special enforcement section may issue cease and desist citations to any person if the special enforcement section has cause to believe the person has violated, is violating, or is about to violate any provision of title 14 or administrative rule adopted thereunder. A cease and desist citation may include a monetary fine for any unlawful act.

(b) The department may recommend legislation defining the circumstances and the civil monetary fines citable for unlawful actions under title 14.

(c) Any fine assessed under this section shall be a matter of the special enforcement section under section 231-85 and shall be retained and deposited into the tax administration special fund.

(d) Any fine assessed shall be due and payable thirty days after issuance, subject to appeal rights provided under subsection (e); provided that if payment of the fine is determined to be in jeopardy, such fine shall be payable immediately and shall be immediately collected. A finding of jeopardy shall be made in writing, setting forth the specific reasons for the finding. The finding of jeopardy shall be subject to immediate appeal under subsection (e), and at the taxpayer's request the appeal shall be expedited and heard as soon as reasonably practicable. Any amount of fine collected under jeopardy shall only be returned upon a finding by the director of taxation or the circuit court that there was no violation of title 14 pursuant to appeal rights provided under subsection (e).

(e) Cease and desist citations may be appealed to the director of taxation or the director's designee, and the determination of the director may be appealed to the circuit court, pursuant to chapter 91. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

#### Cross Reference

[Tax Information Release No. 2013-01, "Advanced Notice of Proposed Administrative Rules Relating to Cash Economy Enforcement"](#)

**§231-92 Cash-based businesses; injunction.** The special enforcement section, with the director of taxation's approval, may bring civil actions in the circuit court where the cash-based business is located to enjoin any unlawful act under title 14, including any administrative rule adopted thereunder, by a cash-based business. To the extent provided by statute, the special enforcement section may include in any action an assessment of a monetary fine. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

#### Cross Reference

[Tax Information Release No. 2013-01, "Advanced Notice of Proposed Administrative Rules Relating to Cash Economy Enforcement"](#)

**§231-93 Cash-based business; defined.** For purposes of sections 231-91 to 231-100, "cash-based business" means any person who operates a business, including for-profit or not-for-profit, where transactions in goods or services are exchanged substantially for cash and where the business is found, based upon reasonable cause including observation or evidence, to have met one of the following factors:

- (1) Is found to have substantially underreported or misrepresented the proper amount of tax liability on any return or other submission to the department. For purposes of this paragraph, an amount has been substantially underreported if the amount properly includible on the return or submission is in excess of twenty-five per cent of the amount stated on the return or submission;
- (2) Is required to be licensed, registered, or permitted under title 14 and is in fact not so licensed, registered, or permitted;
- (3) Has a past pattern of noncompliance of obligations under title 14;
- (4) Does not have a fixed and permanent principal place of business;
- (5) Has not obtained any required tax clearance;
- (6) Has failed to maintain adequate books and records, or those records required to be maintained by law or administrative rule;
- (7) Does not accept checks or electronic payment devices for business transactions; provided that a business may establish reasonable criteria for accepting personal checks;

- (8) Offers price differentials or otherwise deviates from usual business practices when the business transaction substantially involves payment of cash, except where there is a bona fide business reason for a price differential, such as the avoidance of merchant fees imposed by credit card companies; or
- (9) Any other factor relevant to describing a cash-based business capable of noncompliance as determined by the director of taxation and issued pursuant to a tax information release;

provided that a business shall not be deemed to have met any of these factors while a genuine dispute as to that factor is pending in a contested case before any administrative agency or in any court. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**Cross Reference**

[Tax Information Release No. 2013-01, "Advanced Notice of Proposed Administrative Rules Relating to Cash Economy Enforcement"](#)

**18-231-94 §231-94 Failure to produce license upon demand.** Every person required to be licensed or permitted under title 14, whether or not so licensed or permitted, shall be required to produce the license or permit upon demand by the special enforcement section. Failure to produce the license or permit upon demand shall be unlawful. Any person who violates this section shall be subject to a fine not to exceed \$500; provided that if the person is a cash-based business, the fine shall not exceed \$1,000. It shall be 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 associated with the number is true and accurate. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**Cross Reference**

[Tax Information Release No. 2013-01, "Advanced Notice of Proposed Administrative Rules Relating to Cash Economy Enforcement"](#)

**18-231-95 §231-95 Failure to keep adequate books and records.** It shall be unlawful for any person required under title 14 to keep books or records to fail to produce the books or records upon demand by the special enforcement section, or as soon thereafter as is reasonable under the circumstances. Any person who violates this section shall be subject to a fine not to exceed \$1,000; provided that if the person is a cash-based business, the fine shall not exceed \$2,000. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**Cross Reference**

[Tax Information Release No. 2013-01, "Advanced Notice of Proposed Administrative Rules Relating to Cash Economy Enforcement"](#)

**18-231-96 §231-96 Failure to record transaction.** (a) It shall be unlawful for any person doing business under chapter 237, other than casual sales, to conduct any transaction in cash and fail to:

- (1) Offer a receipt or other record of the transaction; and
- (2) Maintain a contemporaneously generated record of all business transactions conducted each day,

whether handwritten or generated by a manually operated or electronic cash register. Each day a person is in violation of this section shall be treated as a separate violation.

(b) Except as provided in subsection (c), any person who violates this section shall be subject to a fine not to exceed \$1,000; provided that if the person is a cash-based business, the fine shall not exceed \$2,000.

(c) If the person, including a cash-based business, is otherwise in compliance with title 14 at the time of violation of this section, the fine for a violation of this section shall be commensurate with the violation, as determined by the department in accordance with rules adopted pursuant to chapter 91. [L 2009, c 134, pt of §2; am L 2011, c 102, §1; am L 2013, c 58, §1 and c 162, §1]

**Cross Reference**

[Tax Information Release No. 2013-01, "Advanced Notice of Proposed Administrative Rules Relating to Cash Economy Enforcement"](#)

[§231-97] **REPEALED.** L 2011, c 102, §2.

**18-231-98 §231-98 Tax avoidance price fixing.** It shall be unlawful for any person to sell, offer to sell, or otherwise convey more than one price for any business to be transacted when the lower price is offered if the transaction is paid for in cash. It shall not be an offense under this section if a business charges a higher price for legitimate business purposes, such as for the purpose of recovering any charges assessed the business, including for facilitating electronic payment. Any person who violates this section shall be subject to a fine not to exceed \$2,000; provided that if the person is a cash-based business, the fine shall not exceed \$3,000. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**Cross Reference**

[Tax Information Release No. 2013-01, "Advanced Notice of Proposed Administrative Rules Relating to Cash Economy Enforcement"](#)

**§231-99 Possession of currency for tax avoidance purposes.** It shall be unlawful for any person engaged in business in this State to possess currency in the form of coin or note, where the possession is for tax avoidance purposes. It shall be the department's burden to establish that currency is possessed for tax avoidance purposes; provided that circumstantial evidence may be used by the department in any proceeding. Any person who violates this section shall be subject to a fine not to exceed \$2,000; provided that if the person is a cash-based business, the fine shall not exceed \$3,000. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**Cross Reference**

[Tax Information Release No. 2013-01, "Advanced Notice of Proposed Administrative Rules Relating to Cash Economy Enforcement"](#)

**18-231-100 §231-100 Interference with a tax official.** It is unlawful for any person to intentionally interfere with, hinder, obstruct, prevent, or impede 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 the department. Any person who violates this section shall be subject to a fine of not more than \$2,000. It shall be an absolute defense to the fine under this section that the person acted with good cause. [L 2009, c 134, pt of §2; am L 2013, c 58, §1]

**Cross Reference**

[Tax Information Release No. 2013-01, "Advanced Notice of Proposed Administrative Rules Relating to Cash Economy Enforcement"](#)

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