231-1
HAWAII ADMINISTRATIVE RULES

TITLE 18
DEPARTMENT OF TAXATION

CHAPTER 231
ADMINISTRATION OF TAXES

§18-231-1 to §18-231-3-9 (Reserved.)

HRS §231-3(10)

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

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

(2) Basis for compromise. An offer to compromise a tax liability may be considered only if there is doubt as to liability, doubt as to collectibility, or both. No liability shall be compromised if the liability is established by a valid judgment or is certain, and there is no doubt as to the State's ability to collect the tax.

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

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

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

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

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

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

(d) Procedure.

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

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

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

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

refunds, or post security to protect the State's interest.

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

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

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

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

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

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

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

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

HRS §231-3(14)

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

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

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

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

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

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

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

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

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

HRS §231-3(14) **§18-231-3-14.17 Revocation of licenses because of abandonment.** (a) The definitions in section 18-231-3-14.16(a) apply to this section.

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

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

(d) Before the director may revoke a license because of abandonment, the director shall:

(1) Mail a notice of intention to revoke the license to the licensee at its last known address appearing in the records of the department (unless the department has been notified by the U.S. Postal Service that the address is invalid and there is no forwarding address for the taxpayer), and then

(2) Give notice of intention to revoke the license by publishing the notice once in each of two successive weeks (two publications) in a newspaper of general circulation published in the State.

(e) If a person whose license is revoked:

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

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

the licensee shall petition the director in writing setting forth reasons why revocation should not occur, no later than ninety days after the second publication of the notice described in subsection (d)(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The records shall include:

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

(2) All bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account;
(3) All schedules or working papers used in preparation of tax returns; and
(4) Any records that may be required under any specific tax chapter to which the taxpayer may be subject (such as those described in sections 243-9, 244D-9, or 245-8, HRS). [Eff 8/18/94] (Auth: HRS §§231-3(9)) (Imp: HRS §§237-41, 237D-12, 238-9, 243-9, 244D-9, 245-8, 251-11)

HRS §231-3(14) **§18-231-3-14.23 Microfilm, microfiche, and similar records.** Records, including general books of account, such as cash books, journals, voucher registers, ledgers, and like documents may be maintained by microfilm, microfiche, computer imaging, or another method approved by the department in writing, if the following requirements are satisfied:

(1) Appropriate facilities shall be provided for preservation of the films or media for the periods required;
(2) Microfilm rolls, fiche, or other approved media shall be systematically filed, indexed, cross-referenced and labeled to show beginning and ending numbers or to show beginning and ending alphabetical listing of documents included;
(3) Taxpayer shall make available upon request of the department, at the examination site or other mutually agreeable location, facilities for the ready inspection and location of particular records, such as a reader, printer, projector, or terminal in good working order for viewing and copying the records;
(4) Taxpayer shall set forth in writing the procedures governing the establishment of its data storage and retrieval system and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the corporate board of directors, general partners, or owners;
(5) The data storage and retrieval system shall be complete and shall be used consistently in the regular conduct of the business;
(6) Taxpayer shall establish procedures with appropriate documentation so that an original document can be traced through the data storage and retrieval system;
(7) Taxpayer shall establish internal procedures for inspection and quality assurance of the data storage and retrieval system;
(8) Taxpayers shall be responsible for the effective identification, processing, storage, and preservation of microfilm, microfiche, or other approved media, making the media readily available for inspection or testing by the department as long as the contents may become material in the administration of any state tax law;
(9) Taxpayer shall keep a record identifying where, when, by whom, and on what equipment the microfilm, microfiche, or other approved media was produced;
(10) The material displayed, or reproduced on paper, by the data retrieval equipment shall exhibit a high degree of legibility and readability, where legible means the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals, and readability means the quality of a group of letters or numerals being recognizable as words or complete numbers; and
(11) The data storage and retrieval system, including processing duplication, quality control, storage, identification, and inspection shall meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards. [Eff 8/18/94] (Auth: HRS §§231-3(9)) (Imp: HRS §§237-41, 237D-12, 238-9, 243-9, 244D-9, 245-8, 251-11)

HRS §231-3(14) **§18-231-3-14.24 Records prepared by automated data processing systems.** (a) An automatic data processing (ADP) tax accounting system may be used to provide the records required to verify tax liability. All ADP systems used for this purpose shall include a method of producing legible and readable records to verify tax liability, reporting, and payment. The following requirements apply to any taxpayer maintaining records on an ADP system:

(1) The ADP system shall be able to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the system shall have the ability to reconstruct these transactions. The system shall be made available upon request to the department for inspection and testing.
(2) A general ledger, with source references, shall be prepared to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers also shall be prepared.

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

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

(A) The application being performed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Tax credits

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

(d) The fee amounts charged under this section shall be determined by those amounts actually charged to and incurred by the department for the production and distribution of each published report. Each fee charged under this section shall be separately imposed and more than one fee may apply.[Eff 3/03/97] (Auth: HRS §§231-3(9), 231-3.4(b)(1)) (Imp: HRS §231-3.4(b)(1), (Act 250, Section 2, SLH 1996))

§18-231-4 to §18-231-9 (Reserved.)

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

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

"Department" means the department of taxation

"Director" means the director of taxation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

administrative or court proceeding involving the Department or the State.

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

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

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

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

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

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

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

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

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

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

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

(C) Collecting the amount charged or debited with respect to payment of the tax liability;

(D) Returning funds to the taxpayer in accordance with §18-231-9.4-06 of this section;

(E) Sending receipts or confirmation of a transaction to the taxpayer, including secured electronic transmissions and facsimiles; and

(F) Providing information necessary to make a payment to other state or local government agencies, as explicitly authorized by the taxpayer (e.g., name, address, taxpayer identification number).

(2) Card issuers, financial institutions or other persons participating in the credit card or debit card transaction may use and disclose such information for the purpose and in direct furtherance of any of the following activities—

(A) Assessment of statistical risk and profitability;

(B) Transfer of receivables or accounts or any interest therein;

(C) Audit of account information;
(D) Compliance with federal, state, or local law; and
(E) Cooperation in properly authorized civil, criminal, or regulatory investigations by federal, state, or local authorities.

(b) Notwithstanding the provisions of paragraph (a) of this section, use or disclosure of information relating to credit card and debit card transactions for purposes related to any of the following is not authorized—

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

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

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

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

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

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

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

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

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

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

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

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

"Department" means the department of taxation.

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

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

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

"Payor" means the taxpayer.

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

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

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

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

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

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

HRS §231-9.9

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

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

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

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

(c) The department shall contact any taxpayer selected for the EFT program at its address on file with the department. Once selected for the EFT program with respect to a tax type, the taxpayer shall transmit all periodic payments for that tax type by EFT. Annual reconciliation returns for that tax type shall be filed, and any required remittance shall be made, in the same manner as if the taxpayer were not in the EFT program. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

HRS §231-9.9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) To assure the timely receipt of payment of tax, a taxpayer shall initiate the payment transaction with the Data Collection Center in time for the payment to be deposited to the state treasury on or before the appropriate due date. Thus, in general, the taxpayer shall report payment information to the Data Collection Center, by the approved means of communication, no later than the end of the call-in period on the business day before the due date of the payment.
(2) After establishing contact with the Data Collection Center, the taxpayer may communicate payment information for more than one tax type or tax period. However, the taxpayer must initiate payment information for each tax type and for each tax period for which a payment is due.

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

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

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

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

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

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

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

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

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

Example: A taxpayer uses the ACH credit method to remit the March, 1996 payment of general excise and use tax. The taxpayer first determines that the total amount of tax due is $12,345. At a time arranged between the taxpayer and the taxpayer's financial institution, the taxpayer provides the financial institution with the information necessary to initiate a transfer of the March, 1996 tax payment and an accompanying addenda record that will be posted to the state treasury on April 30, 1996. To be timely, the ACH credit transfer of March, 1996 general excise and use tax must be deposited to the state treasury as collected funds on or before April 30, 1996. The taxpayer shall also file its monthly return in the normal manner, except that the taxpayer shall follow procedures established by the department to coordinate the EFT payment with the proper return, instead of attaching a check or money order to the return. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.9)

HRS §231-9.9

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

Example 1: X, a taxpayer participating in the EFT program for withholding taxes, is required to remit a payment of withholding taxes on or before May 10, 1997. X authorizes the

EFT before the end of the call-in period on May 9, 1997. May 10, 1997 is a Saturday, so the transfer of funds is made on Monday, May 12, 1997. Because the payment is due on Monday, May 12, 1997, the EFT payment is timely.

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

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

(b) The following shall be considered reasonable cause for failure to make a timely EFT payment:
(1) The inability to access the EFT system on the required date because of a system failure beyond the reasonable control of the taxpayer;
(2) The failure of the EFT system to properly apply a payment;
(3) The failure of the EFT system to issue proper verification of receipt of payment information; or
(4) The failure to make a timely payment was caused by an error made by the Data Collection Center, the state treasury, or the department.

(c) During the first six-month period a taxpayer is required to remit tax by EFT, the department may waive otherwise applicable penalties if the taxpayer demonstrates that:
(1) A good faith effort to comply was made;
(2) Circumstances beyond the taxpayer's reasonable control prevented compliance by the required date; or
(3) A mistake or inadvertence prevented timely payment when the taxpayer attempted to correctly and timely initiate an EFT transaction. In determining whether to grant a waiver of penalties under this subsection, the department may consider the taxpayer's payment history, experience with EFT payments in this and other jurisdictions, and the taxpayer's prior compliance with these rules. [Eff 12/16/95] (Auth: HRS §231-3(9)) (Imp: HRS §§231-21, 231-9.9, 231-39)

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

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

§18-231-10 to §18-231-19 (Reserved)

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

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

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

"Communication in connection with collection activities" means all communication undertaken by the department of this nature, including any inquiry into the financial resources of any person liable for tax; any levy, lien, garnishment, or seizure of any taxpayer's property; any certificate of discharge of a levy, lien, garnishment, or seizure of any taxpayer's property; and any certification of the absence of delinquent tax liability, including a tax

clearance or a bulk sale certificate. A communication in connection with collection activities may be to any person and need not relate to the tax return of the person to whom the communication is addressed. A communication in connection with collection activities does not constitute a written opinion for purposes of section 231-19.5, HRS.

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

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

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

"Department" means the department of taxation.

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

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

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

"Person to whom the written opinion pertains" means:

(1) A taxpayer who requests the written opinion;
(2) Any successor or assign of the taxpayer with respect to the transaction that is the subject of the written opinion, if the department is informed of the successor or assign in the request for the written opinion, or in subsequent correspondence to the department's technical review office; or
(3) Another person authorized by law to act for or on behalf of the taxpayer, but only in that person's representative capacity.

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

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

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

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

(1) The United States Constitution;
(2) The Hawaii Constitution;
(3) The Hawaii Revised Statutes;
(4) The Hawaii Administrative Rules;

(5) The Internal Revenue Code of 1986, as amended, to the extent incorporated in the Hawaii Revised Statutes or in the Hawaii Administrative Rules;
(6) The Treasury Regulations (title 26, Code of Federal Regulations), as amended, to the extent incorporated in the Hawaii Revised Statutes or in the Hawaii Administrative Rules;
(7) Federal legislation or treaties that are binding upon this State;
(8) Published opinions in final decisions of the Hawaii appellate courts, or of federal appellate courts applying Hawaii law;
(9) Final decisions of the Hawaii tax appeal court;
(10) Opinions of the Supreme Court of the United States interpreting any provision described in paragraphs (1) to (7);
(11) Opinions of the department of attorney general that are filed under section 28-3, HRS;
(12) Published determinations of the department such as tax information releases and tax memoranda (but not including tax forms, instructions, and informational pamphlets); or
(13) Written opinions that have been disclosed to the public.

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

(1) Establishes, alters, modifies, or clarifies an interpretation or principle of tax law;
(2) Calls attention to an interpretation or principle of tax law, whether or not it is a well-established interpretation or principle of tax law, that appears to have been generally overlooked; or
(3) Addresses a legal or factual issue of unique public interest or substantial public importance.

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

HRS §231-19.5

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

(1) A communication from the department to any person granting or denying permission to change that person's method of accounting, taxable year, or annual accounting period, under section 442 or 446 of the Internal Revenue Code of 1986, as amended, as operative under chapter 235, 239, or 241, HRS;
(2) An approval or denial of a withholding certificate under section 235-68, HRS;
(3) An approval or denial of an application for exemption from general excise tax under section 237-23(b), HRS;
(4) An approval or denial of an exemption from conveyance tax under section 247-3, HRS; and
(5) An approval or denial of an extension of the time to file any tax return, under section 235-62, 235-98, 237-33, 237D-7, or 251-6, HRS.

(b) Determination letters also include any class of communication that is:

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

(c) In any determination letter other than one described in subsection (a) or (b), the department shall:

(1) State that the letter is a determination letter; and
(2) Set forth the well-established interpretations or principles of tax law that are being applied, including citations to the sources of the interpretations or principles that are being applied. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5

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

(b) In each written opinion, the department shall:

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

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

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

HRS §231-19.5 **§18-231-19.5-04 Written opinions; segregation of information not to be disclosed.** (a) The department shall segregate the following information from the text of any written opinion open to public inspection:

(1) Confidential, commercial, or financial information, as defined in subsection (b);
(2) Identifying details, as defined in subsection (c);
(3) Personal privacy information, as defined in subsection (d); and
(4) Trade secrets, as defined in subsection (e).

(b) "Confidential, commercial, or financial information" means:

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

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

(c) "Identifying details" mean:

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

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

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

(d) "Personal privacy information" means any information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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

(e) "Trade secret" means any formula, pattern, device, or compilation of information that is used in a person's business, and that gives the person an opportunity to obtain an advantage over competitors who do not

know or use it.

(1) "Formula, pattern, device, or compilation of information", as used in this subsection, includes a formula for a chemical compound; a process of manufacturing, treating, or preserving materials; a pattern for a machine or other device; or a list of customers.

(2) The subject of a trade secret must not be of public knowledge, or of general knowledge in the trade or business.

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

HRS §231-19.5 **§18-231-19.5-05 Written opinions; notice of intention to disclose.** (a) At the time of issuing any written opinion, the department shall mail a notice of intention to disclose to any person to whom the written opinion pertains. The notice shall:

(1) State that the department intends to make all or part of the written opinion available for public inspection and copying;

(2) Notify the recipients of when the written opinion will become public, and of the administrative remedies that are available under section 18-231-19.5-07; and

(3) Prominently indicate the date on which the notice was mailed.

(b) Notwithstanding subsection (a), the department shall not be required to mail a notice of intention to disclose to:

(1) All shareholders of a widely held corporation, all employees of a business entity that may be involved in a plan, individual members of an unincorporated association, or similar persons whose interests would be fairly and adequately represented by an entity;

(2) Any person at an address other than that specified in the request for the written opinion, or in subsequent correspondence to the department's technical review office; or

(3) Any person not identified by name and address in the request for the written opinion. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

HRS §231-19.5 **§18-231-19.5-06 Written opinions; time for and manner of disclosure, inspection, and copying.** (a) A written opinion shall be made available for inspection and copying no earlier than seventy-five days, and no later than ninety days, after the notice of intention to disclose described in section 18-231-19.5-05 is mailed, except as otherwise provided in this section.

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

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

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

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

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

disclose was mailed.

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

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

(b) The petition shall contain:

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

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

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

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

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

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

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

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

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

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

(b) The petition shall contain:

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

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

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

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

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

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

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

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

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

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

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

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

HRS §231-19.5

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

(1) The person desiring to take the appeal has submitted a petition for further segregation or petition for further disclosure to the department;

(2) The department has issued its determination on the petition; and

(3) The appeal is filed not more than sixty days after the date the department issues its determination; provided that if more than forty-five days have elapsed after the date the department received the petition, and the department has not mailed a determination on the petition to the petitioner, then the petitioner may take an appeal as if the department had denied the petition.

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

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

(2) The disclosure of any information if the petitioner has not proposed that it be disclosed.

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

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

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

(1) Frivolous, or

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

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

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

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

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

(1) A number uniquely identifying each written opinion;
(2) The date on which the written opinion was issued;
(3) Sufficient information to identify the contents of the written opinion; and
(4) A list of section numbers of the Hawaii Revised Statutes and the Hawaii Administrative Rules that the opinion analyzes, explains, or interprets. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

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

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

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

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

including documents or other material submitted with any such communication.

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

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

(1) A recommendation for legislation within the meaning of section 231-3(7), HRS;
(2) A report to the governor under section 231-3(8), HRS;
(3) An agreement in compromise within the meaning of section 231-3(10), HRS;
(4) A remission of penalty or interest within the meaning of section 231-3(12), HRS;
(5) A closing agreement within the meaning of section 231-3(13), HRS; and

(6) A notification to any taxpayer of setoff against any tax refund under section 231-53, HRS. [Eff 11/25/94] (Auth: HRS §§231-3(9), 231-19.5) (Imp: HRS §231-19.5)

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

§18-231-20 to §18-231-25 (Reserved)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If the department determines that a collection of tax is in jeopardy as defined in section 231-24(a), HRS, the department may charge a fee set forth in this section for any collection action undertaken after the written

notice in subsection (c) is given. In this instance, subsection (d) shall not apply.

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

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

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

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

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

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

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

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

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

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

(b) As used in this section:

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

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

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

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

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

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

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

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

(b) As used in this section:

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

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

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

HRS §231-25.5

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

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

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

§18-231-26 to §18-231-59 (Reserved)