

Hawai'i Tax Code -- Criminal Tax Sanctions

Prepared By **Richard Paul McClellan III**
www.taxsolutionslawyer.com
February 2012

Common Hawai'i Tax Charges:

<u>Name of Charge</u>		<u>Classification</u>
Tax Evasion	HRS section 231-34	Class C Felony
Failure To File	HRS section 231-35	Special Misdemeanor
Fraud and False Statements	HRS section 231-36	Class C Felony
Theft (before July 1, 2009)		
Failure To Pay Over Withholding Tax	HRS section 231-36.4	Class C Felony

Federal Tax Charges With Similar Provisions In Hawai'i Tax Law:

Section 7201	Attempt To Evade or Defeat
Section 7202	Willful Failure To Collect Or Pay Over
Section 7203	Willful Failure To File Return
Section 7206	Fraud and False Statements
Section 7206(2)	Fraud And False Statements; Aiding And Assisting
Section 7213	Unauthorized Disclosure
Section 7216	Disclosure Or Use By Preparers Of Returns

Common Hawaii Taxes With Criminal Penalty Provisions:

Income Tax (HRS 235)
General Excise Tax (HRS 237)
Transient Accommodations Tax (HRS 237D)
Use Tax (HRS 238)
Fuel Tax (HRS 243)
Motor Vehicle and Tour Vehicle Surcharge Tax (HRS 251)
Nursing Home Tax

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
Tax Evasion, Evasion of Assessment, Evasion of Payment	HRS § 231-34 Attempt to evade or defeat tax	<p>§ 231-34 Attempt to evade or defeat tax. Any person who wilfully attempts in any manner to evade or defeat any tax imposed under title 14, or its payment, in addition to other penalties provided by law, shall be guilty of a class C felony and, upon conviction, shall be subject to one or any combination of the following:</p> <p>(1) A fine of not more than \$100,000;</p> <p>(2) Imprisonment of not more than five years; or</p> <p>(3) Probation;</p> <p>provided that a corporation shall be fined not more than \$500,000.</p>	Any sanction for a Class C Felony; fine of not more than \$100,000 for individual offender, up to \$500,000 for corporate offender; incarceration or probation for up to five years	26 U.S.C. § 7201 “Attempt To Evade Or Defeat Tax”
Failure To File Tax Return	HRS § 231-35 Wilful Failure to file return, supply information, or secure a license.	<p>§ 231-35 Wilful failure to file return, supply information, or secure a license. Any person required to make a return, make a report, keep any records, supply any information, or secure any license required under title 14, who wilfully fails to make the return, make the report, keep the records, supply the information, or secure the license, at the time or times required by law, shall in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction, shall be subject to one or any combination of the following:</p>	Any sanction available for a misdemeanor; Fine of up to \$25,000 for an individual, \$100,000 for a corporation, and imprisonment or probation for not more than one year.	26 U.S.C. § 7203 “Willful Failure To File Return, Supply Information, Or Pay Tax”

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>(1) A fine of not more than \$25,000;</p> <p>(2) Imprisonment of not more than one year; or</p> <p>(3) Probation;</p> <p>provided that a corporation shall be fined not more than \$100,000.</p>		
Tax Fraud	HRS §231-36 False and fraudulent statements; aiding and abetting	<p>§ 231-36 False and fraudulent statements; aiding and abetting. (a) Any person who wilfully makes and subscribes any return, statement, or other document required to be made under title 14, except chapter 238, which contains or is verified by a written declaration that it is true and correct as to every material matter, and which the person does not believe to be true and correct as to every material matter shall be guilty of a class C felony and, upon conviction, shall be subject to one or any combination of the following:</p> <p>(1) A fine of not more than \$100,000;</p> <p>(2) Imprisonment of not more than three years; or</p> <p>(3) Probation;</p> <p>provided that a corporation shall be fined not more than \$500,000; and provided further that, if the person wilfully makes and subscribes any return, statement, or other document required to be made</p>	<p>For false statements (other than Chapter 238 statements) and aiding and abetting: Any sanction available for a Class C felony; fine of up to \$100,000 for an individual and \$500,000 for a corporation; imprisonment or probation for up to three years.</p> <p>For Chapter 238 false statements: any sanction for a misdemeanor;</p>	<p>26 U.S.C. § 7206 “Fraud And False Statements”</p> <p>26 U.S.C. Section 7206(2) Aiding & Assisting</p>

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>under chapter 238, which contains or is verified by a written declaration that it is true and correct as to every material matter and which the person does not believe to be true and correct, then the person shall be guilty of a misdemeanor and, upon conviction, shall be subject to one or any combination of the following:</p> <p>(1) A fine of not more than \$2,000;</p> <p>(2) Imprisonment of not more than one year; or</p> <p>(3) Probation.</p> <p>(b) Any person who wilfully aids or assists in, or procures, counsels, or advises the preparation or presentation of any tax return, affidavit, claim, or other document required to be made under title 14, which is fraudulent or is false as to any material matter, regardless of whether the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document shall be guilty of a class C felony and, upon conviction, shall be subject to one or any combination of the following:</p> <p>(1) A fine of not more than \$100,000;</p> <p>(2) Imprisonment of not more than three years; or</p> <p>(3) Probation;</p>	<p>fine of up to \$2,000; and imprisonment or probation for up to one year.</p> <p>[Chapter 238 is Hawai'i "Use Tax" law.]</p>	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		provided that a corporation shall be fined not more than \$500,000.		
Theft	HRS § 708-830 (1) or (6) Theft and Related Offenses	<p>§ 708-830 Theft. A person commits theft if the person does any of the following:</p> <p>(1) Obtains or exerts unauthorized control over property. A person obtains or exerts unauthorized control over the property of another with intent to deprive the other of the property.</p> <p>(6) Failure to make required disposition of funds.</p> <p>(a) A person intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from the person's own property reserved in equivalent amount, and deals with the property as the person's own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition. A person's status as an officer or employee of the government or a financial institution is prima facie evidence that the person knows the person's legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon</p>	Degree of offense is determined by amount in question. More than \$20,000 is a Class B felony – section 708-830.5. More than \$300 but less than \$20,000 is a Class C felony – section 708-831.	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that the officer or employee has intentionally dealt with the property as the officer's or employee's own.		
Failure to Pay Over Employment ⁱ Taxes	HRS § 231-36.4 Wilful Failure to collect and pay over tax.	<p>§ 231-36.4 Wilful failure to collect and pay over tax. Any person required to collect, account for, and pay over any tax imposed by title 14, who wilfully fails to collect or truthfully account for and pay over such tax shall be guilty of a class C felony, in addition to other penalties provided by law and, upon conviction, shall be subject to one or any combination of the following:</p> <p>(1) A fine of not more than \$100,000;</p> <p>(2) Imprisonment of not more than five years; or</p> <p>(3) Probation;</p> <p>provided that a corporation shall be fined not more than \$500,000.</p>	Any sanction available for a Class C felony; a fine of up to \$100,000 for an individual, \$500,000 for a corporation; imprisonment or probation for not more than five years.	26 U.S.C. § 7202 “Willful Failure To Collect Or Pay Over Tax”
Neglect of Duty By Officer	HRS § 231-237 Neglect of duty, etc., misdemeanor	§ 231-37 Neglect of duty, etc., misdemeanor. Any officer of the department of taxation, the state director of finance, any person duly authorized by the director of taxation, or any police officer, on whom duties are imposed under this chapter, who wilfully fails or refuses or neglects to perform faithfully any duty or duties of him required by this	Any sanction available for a misdemeanor	26 U.S.C. § 7214 “Unlawful Acts of Revenue Officers Or Agents” especially §

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		chapter, shall be deemed guilty of a misdemeanor.		7214 (a)(3)
Unauthorized Disclosure or Use Of Information	HRS § 231-15.5 Disclosure by Return Preparers	§ 231-15.5 Disclosure by return preparers. Any person who is engaged in the business of preparing, or providing services in connection with the preparation of tax returns or any person who for compensation prepares any such return for any other person and who, without the written consent or request of such other person, discloses any information furnished to him for, or in connection with, the preparation of any such return or uses any such information for any purpose other than to prepare, or assist in preparing any such return, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.	Unauthorized Disclosure or Use Of Information	26 U.S.C. § 7216 “Disclosure Or Use Of Information By Preparers Of Returns”
Unauthorized Disclosure	§ 237-34 Filing of returns; disclosure of returns unlawful, penalty; destruction of returns.	§ 237-34 Filing of returns; disclosure of returns unlawful, penalty; destruction of returns. (a) All monthly and annual returns shall be transmitted to the office of the taxation district in which the privilege upon which the tax accrued is exercised. Where the privilege is exercised in more than one taxation district the returns shall be transmitted to the office of the first district. (b) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be	Any sanction available for a misdemeanor	26 U.S.C. § 7213 “Unauthorized Disclosure Of Information”

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any such return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:</p> <ol style="list-style-type: none"> (1) Trustees; (2) Partners; (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return; (4) The person authorized to act for a corporation in dissolution; (5) The shareholder of an S corporation; (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate's or decedent's return; (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent; (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7); (9) Persons duly authorized by the State in connection with their official duties; 		

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>(10) Any duly accredited tax official of the United States or of any state or territory;</p> <p>(11) The Multistate Tax Commission or its authorized representative;</p> <p>(12) Members of a limited liability company; and</p> <p>(13) A person contractually obligated to pay the taxes assessed against another when the latter person is under audit by the department.</p> <p>Any violation of this subsection shall be a misdemeanor.</p>		
Failure to make bulk sales return	HRS § 237-43 Bulk sales; transfers; penalties.	<p>§ 237-43 Bulk sales; transfers; penalties. (a) In any case of the sale or transfer in bulk of the whole, or a large part of a stock of merchandise and fixtures, or merchandise, or fixtures, or other assets or property of a business, otherwise than in the ordinary course of trade, business, commerce, or sales, the seller shall make a written and verified report of the bulk sale or transfer to the department not later than ten days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser. The report shall contain the name and address of the purchaser, a brief description of the property sold and the purchase price, the date when the sale or transfer is to be or was consummated, and such other facts as the department may require. The purchaser may make the report for the seller.</p> <p>(b) The purchaser of the property shall withhold</p>	Any sanction available for a misdemeanor: incarceration of up to one year, fine of up to \$5,000, or both.	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>payment of the purchase price until the receipt of a certificate from the department to the effect that all taxes, penalties, and interest levied or accrued under title 14 for taxes administered by the department against the seller, or constituting a lien upon the property, have been paid. A certificate shall not be issued while the department investigates (including by audit) whether taxes have been levied or accrued against the seller. The certificate shall show on its face that the department has had notice of the bulk sale or transfer, and shall also show the names of the seller and purchaser, a brief description of the property sold or transferred, and the date of consummation of the sale or transfer, together with such other information as the department shall prescribe.</p> <p>(c) If the required report of the bulk sale or transfer is not made, or if the taxes, penalties, and interest shall not be paid within twenty days after the sale or transfer, or within such further time as the department may allow, the purchaser shall be personally liable to pay to the State the amount of all taxes, penalties, and interest levied or accrued under title 14 for taxes administered by the department against the seller or constituting a lien upon the property, together with penalties and interest thereafter accruing, not exceeding, however, the amount of the purchase price. The issuance of a certificate in the prescribed form shall be a complete defense to the bulk sale or transfer liability imposed in the preceding sentence, but</p>		

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>shall not be a defense to any liability of the purchaser under any other provision of law for liabilities and obligations. Any purchaser succeeding to the liabilities of the seller under this section shall make a written report thereof upon the next due date for the reporting of gross income taxes.</p> <p>(d) For purposes of this section: "Property" means anything that may be the subject of ownership, including every kind of asset, whether real or personal, tangible or intangible, and without limitation, such as land and buildings, goodwill, notes, accounts, and other intangible property. The term "property" shall not include any interest in residential real property. "Purchase price" means the total fair market value, as of the date of sale or transfer, of all property transferred, whether or not money or property is exchanged therefor. "Purchaser" means any person who receives property in a bulk sale or transfer, whether or not money or property is exchanged therefor. "Sale" means the transfer of property for compensation. "Seller" means any person who sells or transfers any property in a bulk sale or transfer, whether or not money or property is exchanged therefor. "Transfer" means the sale, conveyance, or distribution by any mode, direct or indirect, absolute or conditional, voluntary or involuntary, of title to or beneficial ownership in property, or interest therein. The term "transfer" does not</p>		

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>include a bona fide, arm's length:</p> <p>(1) Creation, modification, or termination of a lease interest;</p> <p>(2) Creation, modification, or release of a lien or encumbrance; or</p> <p>(3) Transfer occurring as a result of the enforcement of a lien.</p> <p>(e) Failure to make the report required by this section shall be punishable by a fine of not more than \$100. Any seller who wilfully fails to make the report required by this section shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.</p> <p>(f) The purchaser shall have the purchaser's remedy against the seller for the amount of taxes, penalties, or interest paid by the purchaser.</p> <p>(g) This section supplements and does not displace any remedies available to the department under the Uniform Fraudulent Transfer Act and the principles of law and equity.</p>		
Failure to obtain Certificate of Registration for furnishing transient accommodations or resort time share vacation	HRS § 237D-4 Certificate of registration	§ 237D-4 Certificate of registration. (a) Each operator or plan manager as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or in business as a resort time share vacation plan shall register with the director the name and address of each place of business within the State subject to this chapter. The operator or plan manager shall	Same as HRS § 231-34 with respect to penalties; however, 231-34 is a felony while 237D-4 is expressly made a	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
plan		<p>make a one-time payment as follows:</p> <ul style="list-style-type: none"> (1) \$5 for each registration for transient accommodations consisting of one to five units; (2) \$15 for each registration for transient accommodations consisting of six or more units; and (3) \$15 for each resort time share vacation plan within the State; <p>upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the operator or plan manager in whose name it is issued and for the transaction of business at the place designated therein.</p> <p>The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued.</p> <p>Acquisition of additional transient accommodation units after payment of the one-time fee shall not result in additional fees.</p> <p>The registration provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number shall be regarded as a new registration application and shall be subject to the payment of the one-time registration fee. The director may revoke or cancel any license issued under this chapter for cause as</p>	misdemeanor	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>provided by rule under chapter 91.</p> <p>(b) If the license fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237D-14 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.</p> <p>(c) Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or as a plan manager subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section 231-34 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.</p>		

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
Unlawful disclosure	HRS §237D-13 Disclosure of returns unlawful	<p>§ 237D-13 Disclosure of returns unlawful; destruction of returns. (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:</p> <ol style="list-style-type: none"> (1) Trustees; (2) Partners; (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return; (4) The person authorized to act for a corporation in dissolution; (5) The shareholder of an S corporation; (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate's or decedent's return; (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent; 	Any sanction available for a misdemeanor	26 U.S.C. § 7213 "Unauthorized Disclosure Of Information"

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>(8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);</p> <p>(9) Persons duly authorized by the State in connection with their official duties;</p> <p>(10) Any duly accredited tax official of the United States, any state or territory, or of any county of this State;</p> <p>(11) The Multistate Tax Commission or its authorized representative; and</p> <p>(12) Members of a limited liability company.</p> <p>Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.</p> <p>(b) The department may destroy the monthly, quarterly, or semiannual returns filed pursuant to section 237D-6, or any of them, upon the expiration of three years after the end of the calendar or fiscal year in which the taxes so returned accrued.</p>		
Failure to pay use tax	HRS § 238-6	§ 238-6 Collection of tax by seller; penalty. (a) For purposes of the taxes due under sections 238-2 and 238-2.3, every seller having in the State, regularly or intermittently, any property, tangible or intangible, any place of business, or any representation as hereinabove defined, (and irrespective of the seller's having or not having qualified to do business in the State) shall, if the	Five times the amount not paid over at the time due, or imprisoned at hard labor for up to ten years	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>seller makes sales of property, services, or contracting for use in the State (whether or not the sales are made in the State), collect from the purchaser the taxes imposed by sections 238-2 and 238-2.3, on the use of the property, services, or contracting so sold by the seller, if the seller is not subject to the use tax under this chapter on the importation of the property into the State. The collection shall be made within twenty days after the accrual of the tax or within such other period as shall be fixed by the director of taxation upon the application of the seller, and the seller shall give to the purchaser a receipt therefor in the manner and form prescribed by the director; provided that this subsection shall not apply to vehicles registered under section 286-50.</p> <p>(b) The director, in the director's discretion, upon application therefor and under terms and conditions prescribed by the director, may relieve any seller of the duty of collecting and paying over the tax imposed by subsection (a) above, if the director is satisfied that the tax can be effectively collected by other means. Exemption from the duty of collecting the tax may be canceled at any time when the director finds that the tax cannot be effectively collected by other means. The director likewise may terminate the duty and authority of any seller to collect and pay over the tax imposed by subsection (a) above if the director finds, as to such seller, that the tax cannot be effectively collected by such means.</p> <p>(c) The director, in the director's discretion, upon</p>		

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>application therefor and under terms and conditions prescribed by the director, may authorize the collection of the tax imposed by this chapter by a seller not otherwise required to collect the tax. The seller, when so authorized, shall have the duty of collecting and paying over the tax in the same manner and subject to the same requirements as set out in subsection (a). The authority may be canceled at any time when, in the judgment of the director, the tax can more effectively be collected by other means.</p> <p>(d) In case any seller required or authorized to collect the tax under this chapter fails to collect the same, or having collected the tax fails to pay over the same as provided by this chapter, the seller shall nevertheless be personally liable to the State for the amount of the tax, but it shall be a defense to such liability that the indebtedness for the price is a worthless account actually charged off for income tax purposes, if and to the extent that the collections of the price do not equal the tax.</p> <p>(e) Every seller required or authorized to collect the tax shall make returns and payments of the tax at the same time and in the same manner as is provided with respect to taxpayer by section 238-5. All provisions of this chapter with respect to returns, reports, records, payments, penalties, and interest, appeals, investigations, and audits, assessments, tax collections procedure, criminal offenses, and the general administrative powers and duties of the director, shall apply to such sellers the same as to taxpayers.</p>		

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>(f) The tax collected pursuant to this section shall be held in trust for the State and for payment to the proper collecting officer in the manner and at the time required by this chapter. Any person collecting such tax who appropriates or converts the same to the person's own use or to any use other than the payment of the tax as herein provided, and who fails to pay over the amount of tax so collected at the time required by this chapter, shall be deemed guilty of an embezzlement of property of the State and shall be fined more than five times the amount of money so embezzled or imprisoned at hard labor not more than ten years, and any failure by the person so collecting the tax to pay the same over within the time provided by this chapter, after demand therefor, shall be taken and held to be prima facie evidence of the embezzlement.</p>		
Fraudulent application for fuel tax certificate	HRS § 243-3 Retail dealers, permits; certificates	<p>§ 243-3 Retail dealers, permits; certificates. (b) Any person who makes a false or fraudulent application or certificate or false statement in an application or certificate provided for by this chapter, with intent to defraud the State or to obtain, for a licensed distributor, an unauthorized credit, or who in any manner intentionally deceives or attempts to deceive the department in relation to an application or certificate provided for by this chapter, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.</p>	Fine of \$5,000 or imprisonment of up to one year, or both	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
Failure to Obtain Certificate of Registration for Rental Motor Vehicle And Tour Vehicle Surcharge	HRS § 251-3 Certificate of registration	§ 251-3 Certificate of registration. (d) Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of providing rental motor vehicles or tour vehicles to the public subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any officer or director of a corporation who permits, aids, or abets the corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section 231-34 for violation of that section.	Same as HRS § 231-34 with respect to penalties; however, 231-34 is a felony while 237D-4 is expressly made a misdemeanor	
Unauthorized disclosure	HRS § 251-12 Disclosure of returns unlawful	§ 251-12 Disclosure of returns unlawful; destruction of returns. (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any such tax return, return	Any sanction available for a misdemeanor	26 U.S.C. § 7213 “Unauthorized Disclosure Of Information”

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for surcharge tax purposes only the lessor or tour vehicle operator, the lessor's or tour vehicle operator's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:</p> <ol style="list-style-type: none"> (1) Trustees; (2) Partners; (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return; (4) The person authorized to act for a corporation in dissolution; (5) The shareholder of an S corporation; (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate's or decedent's return; (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent; (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7); (9) Persons duly authorized by the State in connection with their official duties; (10) Any duly accredited tax official of the United States or of any state or territory; (11) The Multistate Tax Commission or its authorized representative; and (12) Members of a limited liability company. 		

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.		
Failure to keep Nursing Home Tax Records On Accrual Basis and Preserve Records; aiding and abetting	HRS § 346E-9	<p>§ 346E-9 Records to be kept; examination; penalties. (a) Every operator shall keep, in the English language, within the State, and preserve for a period of three years, suitable records relating to nursing facility income taxed under this chapter, and such other books, records of account, and invoices as may be required by the department. All such books, records, and invoices shall be open for examination at any time by the department or the department of taxation, or the authorized representative thereof. For the purposes of determining the amount of taxes due under this chapter, every operator shall keep its books and records of account on the accrual basis.</p> <p>(b) Any operator violating this section shall be guilty of a misdemeanor; and any officer, director, president, secretary, or treasurer of a corporation who permits, aids, or abets the corporation to violate this section shall likewise be guilty of a misdemeanor. The penalty for this misdemeanor shall be that prescribed by section 231-34 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.</p>	Any sanction available for a misdemeanor plus sanctions available for 231-34 (a felony)	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
Unauthorized Disclosure	HRS § 346E-10	<p>§346E-10 Disclosure of returns unlawful; destruction of returns. (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any such return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the operator, the operator's authorized agent, or persons with a material interest in the return, return information, or report may examine the same. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:</p> <ul style="list-style-type: none"> (1) Trustees; (2) Partners; (3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return; 	Any sanction available for a misdemeanor	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
		<p>(4) The person authorized to act for a corporation in dissolution;</p> <p>(5) A shareholder of an S corporation;</p> <p>(6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return;</p> <p>(7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;</p> <p>(8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);</p> <p>(9) Persons duly authorized by the State in connection with their official duties; and</p> <p>(10) Any duly accredited tax official of the United States or any state or territory.</p> <p>Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.</p>		
Evasion of Nursing Home Tax, failure to	HRS § 346E-16	§ 346E-16 Evasion of tax, etc.; penalties. It shall be unlawful:	Same as 231-34 (a felony with special fines)	

Common Name	Reference	Text of Provision	Penalty	Federal Reference or Comparison
file Nursing Home Tax return, fraud or false statements with respect to Nursing Home Tax, aiding and abetting of same		<p>(1) For any operator to:</p> <p>(A) Refuse to make the return required in section 346E-5;</p> <p>(B) Make any false or fraudulent return or false statement in any return, with intent to defraud the State or to evade the payment of any tax imposed by this chapter; and</p> <p>(C) For any reason to aid or abet another in any attempt to evade the payment of any tax imposed by this chapter; or</p> <p>(2) For the president, vice-president, secretary, or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required by this chapter, with the intent to evade the payment of any tax imposed by this chapter.</p> <p>Any person violating this section or section 231-34 in relation to the tax imposed by this chapter, shall be punished as provided in section 231-34. Any corporation for which a false return, or return containing a false statement is made, shall be fined in the amount provided in section 231-34.</p>		

ⁱ Legislative history states that this section was intended to apply to withholding taxes and provides a “conformity provision to IRC section 7202. See, Testimony Regarding HB 1739 HD 1 Proposed SD 1 “Relating to Tax Administration,” By Kurt Kawafuchi, Director of Taxation, pp 4-5, 3/24/2009.