

Overview of Hawai'i's Seven-Year Statute of Limitations On Select Hawai'i Tax Crimes

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The Hawai'i tax crimes of:

[Wilful Failure to File Return](#) (HRS 231-35);

[Attempt to Evade or Defeat Tax](#) ("Tax Evasion") (HRS 231-34);

[False And Fraudulent Statements](#) ("Tax Fraud") (231-36); and

[Failure To Collect And Pay Over Tax](#) (HRS 231-26.4)

are subject to a seven (7) year statute of limitations. See, [Hawaii Revised Statutes \("HRS"\) 231-41](#).

The limitations period starts from the commission of the offense. [HRS 231-41](#). Generally, this means when the offense is "complete." Determining when a tax offense is complete is sufficiently complicated to prevent a simple explanation.

Nonetheless, certain guidelines can be useful:

1. The failure to file limitations period generally starts when the subject return was due and not filed, that is, on the filing due date;
2. The false and fraudulent statements limitations period generally starts from the date the fraudulent return was submitted (filed) or the due date of the return, whichever is later (more recent);
3. The tax evasion limitations period generally starts from the last affirmative act of evasion (most recent act);
4. The failure to pay over limitations period is slightly more complicated as the statute contains (at least) two crimes: failure to collect and account, and, failure to pay over.
 - a. Failure to collect and account for apparently starts from the due date of the employment tax return. See, Department of Justice Criminal Tax Manual 2008.
 - b. Failure to pay over would generally start when the required payment to the Department of Taxation was wilfully not made.
 - c. In Hawaii, an annual withholding tax return is usually due on or about February 28 of the following year, that is, a 2010 annual withholding tax return is due February 28, 2011. See page 5, [here](#) (Section 2). Withholding taxes, however, must be remitted on a periodic basis as established by the State of Hawai'i Department of Taxation. [Id.](#) (Section 3)

Persons concerned about the potential application of Hawai'i law to their situation should consult a licensed legal professional. This analysis is not intended as legal advice and is a general overview.