

# TAX FOUNDATION OF HAWAII

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October 8, 2014

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Re: **Comments on Proposed Amendments to HAR § 18-231-3-10  
Public Hearing: October 24, 2014, 9:15 a.m.**

Ladies and Gentlemen:

The Tax Foundation of Hawaii applauds the Department's efforts to establish reasonable and fair rules regarding compromises of liability to promote effective tax administration. We support the general philosophy in the rules to conform to federal practice.

Section 231-3(10), HRS, allows the Department to entertain offers in compromise.

Section 18-231-3-10(a)(2), HAR, states that an offer to compromise a tax liability may be considered only if there is doubt as to liability, doubt as to collectibility, or both. Doubt as to liability does not exist 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. The Administrative Rules were last amended in 1990.

IRC section 7122, which governs compromises of Federal taxes, has similar provisions and authorizes the Secretary of the Treasury to establish standards for compromises. However, the IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, directed the Secretary of the Treasury to consider factors other than doubt as to liability or collectibility in determining whether to compromise the income tax liabilities of individual taxpayers. Accordingly, in 2002, the Treasury, in T.D. 9007 (Sept. 18, 2002), modified the Treasury Regulations to include a third ground for compromise, namely to promote effective tax administration. The Preamble to T.D. 9007 stated:

The IRS recognizes that it is both sound business practice and good tax policy to settle some cases for less than the total amount due. Prior to issuance of the temporary regulations, the IRS had a longstanding practice of compromising where there was doubt as to the existence or amount of the tax liability or doubt that the total amount due could be collected. The final regulations continue these traditional grounds for compromise. In addition, to reflect the changes made by RRA 1998, the final regulations allow compromise where there is no doubt as to liability or as to collectibility, but where compromise would promote effective tax

administration because either (1) collection of the liability would create economic hardship, or (2) compelling public policy or equity considerations provide a sufficient basis for compromising the liability. Compromise based on these hardship and public policy/equity bases, however, may not be authorized if compromise would undermine compliance with the tax laws.

Section 301.7122-1(b) of the Treasury Regulations provides that a compromise may be authorized on the basis of doubt as to liability, doubt as to collectibility, or to promote effective tax administration. The regulation states that although collection in full could be achieved, the Service may compromise to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability as where, due to exceptional circumstances, collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner. Examples of such exceptional circumstances in the Internal Revenue Manual include scenarios where a Government employee provided erroneous information to a taxpayer and the taxpayer incurred tax liability after acting on that information. See Internal Revenue Manual 5.8.11.2.2.1.<sup>1</sup>

In matters pertaining to collection of the net income tax, section 235-3(a), HRS, directs the Department to conform to the Internal Revenue Code as nearly as possible:

It is the intent of this chapter, in addition to the essential purpose of raising revenue, to conform the income tax law of the State as closely as may be with the Internal Revenue Code in order to simplify the filing of returns and minimize the taxpayer's burdens in complying with the income tax law. The rules and regulations, forms and procedures adopted and established under this chapter shall conform as nearly as possible, and unless there is good reason to the contrary, to the rules and regulations, forms and procedures adopted and established under the Internal Revenue Code.

The proposed rule amendment allows the Department to compromise liabilities on the basis of effective tax administration as well as is now done under federal practice.

In order to lessen ambiguity as to the meaning of the phrase “promoting effective tax administration,” the Department may wish to add provisions in the rule that either adopt or acknowledge the guidance of the federal regulations (Treas. Reg. §301.7122-1), as the Department did in its rules on penalties and fines adopted on November 18, 2010.

Thank you for the opportunity to submit comments.

Very truly yours,

  
Thomas Yamachika  
President

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<sup>1</sup> Available at [http://www.irs.gov/irm/part5/irm\\_05-008-011.html](http://www.irs.gov/irm/part5/irm_05-008-011.html)