

Hawaii Supreme Court Affirms Imposition Of 50% Penalty Rate On Late Filers

On March 17, 2015, the Hawaii Supreme Court unanimously affirmed the Tax Appeal Court's determination that the State of Hawaii, Department of Taxation, had appropriately assessed late filers with a 25% penalty for late filing and a 25% penalty for failure to pay. See, *In the Matter of the Tax Appeal of Travelocity.com, L.P.*, [here](#) (State of Hawaii Judiciary Website) at pages 61-66.

Commentary:

The Hawaii Supreme Court's decision reduces the ambiguity of Hawaii's delinquent return penalty provisions.

Late filers are now subject to the imposition of a "failure to file" penalty at a rate of 5% per month on the unpaid balance, to a maximum of 25% percent, plus an additional penalty "up to" 25% of the underpayment if any part of the penalty is due to negligence or intentional disregard of rules. See, Page 63.

As a practical matter, many delinquent filers do not pay prior to the filing deadline. Any balance due can now be assessed both "failure to file" and "failure to pay" penalties. See, HRS [231-39\(b\)\(1\)](#) and HRS [231-39\(b\)\(2\)\(A.\)](#) While the "failure to file" is 5% per month to a maximum of 25% of the unpaid balance, there is no similar limitation on the "failure to pay" provision.

The Supreme Court further stated that Hawaii law provides that the Department of Taxation's assessments are "prima facie correct" and that there is "an evidentiary presumption that the failure to pay was due to negligence or intentional disregard of the rules by the taxpayer." Page 66.

This note is not intended as legal advice or to be relied upon as legal authority or applicable to any particular situation.

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