

A BILL FOR AN ACT

RELATING TO THE OFFICE OF THE OMBUDSMAN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Under current law, the ombudsman is authorized
2 to investigate administrative acts of agencies. In so doing,
3 the ombudsman may make inquiries and obtain relevant information
4 as the ombudsman deems fit. A recent opinion by the state
5 attorney general, though narrow in its interpretation, concluded
6 that state law prohibited the ombudsman from obtaining state tax
7 returns and return information in connection with the official
8 duties of the ombudsman.

9 Allowing the ombudsman access to the state tax returns and
10 return information of a taxpayer who files a complaint with the
11 ombudsman regarding the processing of the taxpayer's tax return
12 would fulfill the ombudsman's duty to investigate complaints
13 without compromising the confidentiality of tax return
14 information of taxpayers not involved in the investigation.

15 The purpose of this Act is to permit the ombudsman to
16 obtain state tax returns and return information in connection



1 with a taxpayer's complaint about an administrative act of the
2 department of taxation.

3 SECTION 2. Chapter 231, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§231- Authority and access to records. In an
7 investigation of a taxpayer's complaint about an administrative
8 act of the department of taxation, the ombudsman shall have
9 access to the complainant's tax returns and return information
10 required to be filed pursuant to title 14."

11 SECTION 3. Section 235-116, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§235-116 Disclosure of returns unlawful; penalty. All
14 tax returns and return information required to be filed under
15 this chapter shall be confidential, including any copy of any
16 portion of a federal return [~~which~~] that may be attached to a
17 state tax return, or any information reflected in the copy of
18 [~~such~~] the federal return. It shall be unlawful for any
19 person[7] or any officer or employee of the State to
20 intentionally make known [~~intentionally~~] information imparted by
21 any income tax return or estimate made under sections 235-92,



1 235-94, 235-95, and 235-97 or wilfully [~~to~~] permit any income
 2 tax return or estimate [~~so made~~] or copy thereof, to be seen or
 3 examined by any person other than the taxpayer or the taxpayer's
 4 authorized agent, persons duly authorized by the State in
 5 connection with their official duties, the ombudsman pursuant to
 6 section 231- , the Multistate Tax Commission or the authorized
 7 representative thereof, except as provided by law, and any
 8 offense against the foregoing provisions shall be [~~punished~~]
 9 punishable by a fine not exceeding \$500 or by imprisonment not
 10 exceeding one year, or both."

11 SECTION 4. Section 237-34, Hawaii Revised Statutes, is
 12 amended by amending subsection (b) to read as follows:

13 "(b) All tax returns and return information required to be
 14 filed under this chapter, and the report of any investigation of
 15 the return or of the subject matter of the return, shall be
 16 confidential. It shall be unlawful for any person or any
 17 officer or employee of the State to intentionally make known
 18 information imparted by any tax return or return information
 19 filed pursuant to this chapter, or any report of any
 20 investigation of the return or of the subject matter of the
 21 return, or to wilfully permit any [~~such~~] return, return



1 information, or report [~~so made~~], or any copy thereof, to be
2 seen or examined by any person; provided that for tax purposes
3 only, the taxpayer, the taxpayer's authorized agent, or persons
4 with a material interest in the return, return information, or
5 report may examine them. Unless otherwise provided by law,
6 persons with a material interest in the return, return
7 information, or report shall include:

- 8 (1) Trustees;
- 9 (2) Partners;
- 10 (3) Persons named in a board resolution or a one per cent
11 shareholder in the case of a corporate return;
- 12 (4) The person authorized to act for a corporation in
13 dissolution;
- 14 (5) The shareholder of an S corporation;
- 15 (6) The personal representative, trustee, heir, or
16 beneficiary of an estate or trust in the case of the
17 estate's or decedent's return;
- 18 (7) The committee, trustee, or guardian of any person in
19 paragraphs (1) to (6) who is incompetent;



1 (8) The trustee in bankruptcy or receiver, and the
2 attorney-in-fact of any person in paragraphs (1) to
3 (7);

4 (9) Persons duly authorized by the State in connection
5 with their official duties;

6 (10) Any duly accredited tax official of the United States
7 or of any state or territory;

8 (11) The Multistate Tax Commission or its authorized
9 representative;

10 (12) Members of a limited liability company; [~~and~~]

11 (13) The ombudsman pursuant to section 231- ; and

12 [~~(13)~~] (14) A person contractually obligated to pay the
13 taxes assessed against another when the latter person
14 is under audit by the department.

15 Any violation of this subsection shall be a misdemeanor."

16 SECTION 5. Section 237D-13, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) All tax returns and return information required to be
19 filed under this chapter, and the report of any investigation of
20 the return or of the subject matter of the return, shall be
21 confidential. It shall be unlawful for any person or any



1 officer or employee of the State to intentionally make known
2 information imparted by any tax return or return information
3 filed pursuant to this chapter, or any report of any
4 investigation of the return or of the subject matter of the
5 return, or to wilfully permit any return, return information, or
6 report [~~se made~~], or any copy thereof, to be seen or examined by
7 any person; provided that for tax purposes only, the taxpayer,
8 the taxpayer's authorized agent, or persons with a material
9 interest in the return, return information, or report may
10 examine them. Unless otherwise provided by law, persons with a
11 material interest in the return, return information, or report
12 shall include:

- 13 (1) Trustees;
- 14 (2) Partners;
- 15 (3) Persons named in a board resolution or a one per cent
16 shareholder in the case of a corporate return;
- 17 (4) The person authorized to act for a corporation in
18 dissolution;
- 19 (5) The shareholder of an S corporation;



- 1 (6) The personal representative, trustee, heir, or
2 beneficiary of an estate or trust in the case of the
3 estate's or decedent's return;
- 4 (7) The committee, trustee, or guardian of any person in
5 paragraphs (1) to (6) who is incompetent;
- 6 (8) The trustee in bankruptcy or receiver, and the
7 attorney-in-fact of any person in paragraphs (1) to
8 (7);
- 9 (9) Persons duly authorized by the State in connection
10 with their official duties;
- 11 (10) Any duly accredited tax official of the United States,
12 any state or territory, or of any county of this
13 State;
- 14 (11) The Multistate Tax Commission or its authorized
15 representative; [~~and~~]
- 16 (12) The ombudsman pursuant to section 231- ; and
17 [~~(12)~~] (13) Members of a limited liability company.
- 18 Any violation of this subsection shall be a misdemeanor.
19 Nothing in this subsection shall prohibit the publication of
20 statistics so classified as to prevent the identification of



1 particular reports or returns and the items of the reports or
2 returns."

3 SECTION 6. Section 251-12, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) All tax returns and return information required to be
6 filed under this chapter, and the report of any investigation of
7 the return or of the subject matter of the return, shall be
8 confidential. It shall be unlawful for any person or any
9 officer or employee of the State to intentionally make known
10 information imparted by any tax return or return information
11 filed pursuant to this chapter, or any report of any
12 investigation of the return or of the subject matter of the
13 return, or to wilfully permit any [~~such~~] tax return, return
14 information, or report [~~so made~~], or any copy thereof, to be
15 seen or examined by any person; provided that for surcharge tax
16 purposes only, the lessor or tour vehicle operator, the lessor's
17 or tour vehicle operator's authorized agent, or persons with a
18 material interest in the return, return information, or report
19 may examine them. Unless otherwise provided by law, persons
20 with a material interest in the return, return information, or
21 report shall include:



- 1 (1) Trustees;
- 2 (2) Partners;
- 3 (3) Persons named in a board resolution or a one per cent
- 4 shareholder in the case of a corporate return;
- 5 (4) The person authorized to act for a corporation in
- 6 dissolution;
- 7 (5) The shareholder of an S corporation;
- 8 (6) The personal representative, trustee, heir, or
- 9 beneficiary of an estate or trust in the case of the
- 10 estate's or decedent's return;
- 11 (7) The committee, trustee, or guardian of any person in
- 12 paragraphs (1) to (6) who is incompetent;
- 13 (8) The trustee in bankruptcy or receiver, and the
- 14 attorney-in-fact of any person in paragraphs (1) to
- 15 (7);
- 16 (9) Persons duly authorized by the State in connection
- 17 with their official duties;
- 18 (10) Any duly accredited tax official of the United States
- 19 or of any state or territory;
- 20 (11) The Multistate Tax Commission or its authorized
- 21 representative; [~~and~~]



1 (12) The ombudsman pursuant to section 231- ; and
2 [~~(12)~~] (13) Members of a limited liability company.
3 Any violation of this subsection shall be a misdemeanor.
4 Nothing in this subsection shall prohibit the publication of
5 statistics so classified as to prevent the identification of
6 particular reports or returns and the items of the reports or
7 returns."

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on July 1, 2006.



Report Title:

Ombudsman; State Tax Return Information

Description:

Authorizes the ombudsman to obtain state tax returns and return information in connection with an investigation of a taxpayer's complaint about an administrative act of the department of taxation. Effective date July 1, 2006. (HB439 CD1)

