

JAN 25 2006

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The purpose of this Act is to authorize a
2 county, electing to exercise the authority to adopt a county
3 surcharge on state tax, to collect the county surcharge on state
4 tax and make other clarifying amendments to the Hawaii Revised
5 Statutes.

6 SECTION 2. Section 237-1, Hawaii Revised Statutes, is
7 amended by adding two new definitions to be appropriately
8 inserted and to read as follows:

9 "Department of taxation" or "department" means the state
10 department of taxation or a county department of finance of a
11 county electing to exercise the authority to adopt a county
12 surcharge on state tax, unless otherwise indicated; provided
13 that a county department of finance may only exercise the powers
14 in this chapter with respect to a county surcharge on state tax.

15 "Director of taxation" or "director" means the state
16 director of the department of taxation or the director of a
17 county department of finance of a county electing to exercise
18 the authority to adopt a county surcharge on state tax, unless



1 otherwise indicated; provided that a director of a county
 2 department of finance may only exercise the powers in this
 3 chapter with respect to a county surcharge on state tax."

4 SECTION 3. Section 46-16.8, Hawaii Revised Statutes, is
 5 amended by amending subsections (b), (c), and (d) to read as
 6 follows:

7 "(b) A county electing to exercise the authority granted
 8 under this section shall notify the director of taxation within
 9 ten days after the county has adopted a surcharge on state tax
 10 ordinance and, beginning no earlier than January 1, 2007, the
 11 [~~director of taxation~~] county shall levy, assess, collect, and
 12 otherwise administer the county surcharge on state tax.

13 (c) Each county with a population greater than five
 14 hundred thousand that adopts a county surcharge on state tax
 15 ordinance pursuant to subsection (a) shall use the surcharges
 16 received [~~from the State~~] for:

- 17 (1) Operating or capital costs of a locally preferred
- 18 alternative for a mass transit project; and
- 19 (2) Expenses in complying with the Americans with
- 20 Disabilities Act of 1990 with respect to paragraph
- 21 (1).



1 The county surcharge on state tax shall not be used to build or
2 repair public roads or highways, bicycle paths, or support
3 public transportation systems already in existence prior to the
4 effective date of this Act.

5 (d) Each county with a population equal to or less than
6 five hundred thousand that adopts a county surcharge on state
7 tax ordinance pursuant to subsection (a) shall use the
8 surcharges [~~received from the State~~] for:

9 (1) Operating or capital costs of public transportation
10 within each county for public transportation systems,
11 including public roadways or highways, public buses,
12 trains, ferries, pedestrian paths or sidewalks, or
13 bicycle paths; and

14 (2) Expenses in complying with the Americans with
15 Disabilities Act of 1990 with respect to paragraph
16 (1)."

17 SECTION 4. Section 235-116, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§235-116 Disclosure of returns unlawful; penalty.** All
20 tax returns and return information required to be filed under
21 this chapter shall be confidential, including any copy of any
22 portion of a federal return which may be attached to a state tax



1 return, or any information reflected in the copy of such federal
2 return. It shall be unlawful for any person, or any officer or
3 employee of the State to make known intentionally information
4 imparted by any income tax return or estimate made under
5 sections 235-92, 235-94, 235-95, and 235-97 or wilfully to
6 permit any income tax return or estimate so made or copy thereof
7 to be seen or examined by any person other than the taxpayer or
8 the taxpayer's authorized agent, persons duly authorized by the
9 State in connection with their official duties, persons duly
10 authorized by a county in connection with their official duties
11 relating to a county surcharge on state tax pursuant to section
12 46-16.8, the Multistate Tax Commission or the authorized
13 representative thereof, except as provided by law, and any
14 offense against the foregoing provisions shall be punished by a
15 fine not exceeding \$500 or by imprisonment not exceeding one
16 year, or both."

17 SECTION 5. Section 237-8.6, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (c) to read as follows:

20 "(c) The county surcharge on state tax, if adopted, shall
21 be imposed on the gross proceeds or gross income of all written
22 contracts [~~that require the passing on of the taxes imposed~~



1 ~~under this chapter; provided that if the gross proceeds or gross~~
2 ~~income are received as payments beginning in the taxable year in~~
3 ~~which the taxes become effective, on contracts entered into~~
4 ~~before June 30 of the year prior to the taxable year in which~~
5 ~~the taxes become effective, and the written contracts do not~~
6 ~~provide for the passing on of increased rates of taxes, the~~
7 ~~county surcharge on state tax shall not be imposed on the gross~~
8 ~~proceeds or gross income covered under the written contracts.~~
9 ~~The county surcharge on state tax shall be imposed on the gross~~
10 ~~proceeds or gross income from all contracts entered into on or~~
11 ~~after June 30 of the year prior to the taxable year in which the~~
12 ~~taxes become effective,], including written contracts in effect~~
13 ~~at the time the county surcharge on state tax becomes effective,~~
14 ~~regardless of whether the contract allows for the passing on of~~
15 ~~any tax or any tax increases."~~

16 2. By amending subsection (g) to read as follows:

17 "(g) The penalties provided by section 231-39 for failure
18 to file a tax return shall be imposed on the amount of surcharge
19 due on the return being filed for the failure to file the
20 schedule required to accompany the return. In addition, there
21 shall be added to the tax an amount equal to [~~ten~~] five per cent
22 of the amount of the surcharge and tax due on the return being



1 filed for the failure to file the schedule or the failure to
2 correctly report the assignment of the general excise tax by
3 taxation district on the schedule required under this
4 subsection."

5 SECTION 6. Section 237-31, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§237-31 Remittances.** All remittances of taxes imposed by
8 this chapter shall be made by money, bank draft, check,
9 cashier's check, money order, or certificate of deposit to the
10 office of the department of taxation, or in case of a county
11 surcharge on state tax, to the county department of finance or
12 the department's designee to which the return was transmitted.

13 The department shall issue its receipts therefor to the taxpayer
14 and shall pay the moneys into the state treasury as a state
15 realization, or in the case of a county department of finance,
16 into the county treasury as a county realization, to be kept and
17 accounted for as provided by law; provided that:

- 18 (1) The sum from all general excise tax revenues realized
19 by the State that represents the difference between
20 \$45,000,000 and the proceeds from the sale of any
21 general obligation bonds authorized for that fiscal
22 year for the purposes of the state educational

1 facilities improvement special fund shall be deposited
2 in the state treasury in each fiscal year to the
3 credit of the state educational facilities improvement
4 special fund;

5 (2) A sum, not to exceed \$5,000,000, from all general
6 excise tax revenues realized by the State shall be
7 deposited in the state treasury in each fiscal year to
8 the credit of the compound interest bond reserve fund;
9 and

10 (3) A sum, not to exceed the amount necessary to meet the
11 obligations of the integrated tax information
12 management systems performance-based contract may be
13 retained and deposited in the state treasury to the
14 credit of the integrated tax information management
15 systems special fund. The sum retained by the
16 director of taxation for deposit to the integrated tax
17 information management systems special fund for each
18 fiscal year shall be limited to amounts appropriated
19 by the legislature. This paragraph shall be repealed
20 on July 1, 2005."

21 SECTION 7. Section 237-34, Hawaii Revised Statutes, is
22 amended by amending subsections (a) and (b) to read as follows:



1 "(a) All monthly and annual returns shall be transmitted
2 to the office of the taxation district, or in the case of a
3 county surcharge on state tax, to the county department of
4 finance in the county or the director's designee, in which the
5 privilege upon which the tax accrued is exercised. Where the
6 privilege is exercised in more than one taxation district the
7 returns shall be transmitted to the office of the first
8 district.

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



1 with a material interest in the return, return information, or
2 report shall include:

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



1 county surcharge on state tax pursuant to section 46-
2 16.8;

3 (11) The Multistate Tax Commission or its authorized
4 representative;

5 (12) Members of a limited liability company; and

6 (13) A person contractually obligated to pay the taxes
7 assessed against another when the latter person is
8 under audit by the department."

9 SECTION 8. Section 238-1, Hawaii Revised Statutes, is
10 amended by adding two new definitions to be appropriately
11 inserted and to read as follows:

12 "Department of taxation" or "department" means the state
13 department of taxation or a county department of finance of a
14 county electing to exercise the authority to adopt a county
15 surcharge on state tax, unless otherwise indicated; provided
16 that a county department of finance may only exercise the powers
17 in this chapter with respect to a county surcharge on state tax.

18 "Director of taxation" or "director" means the state
19 director of the department of taxation or the director of a
20 county department of finance of a county electing to exercise
21 the authority to adopt a county surcharge on state tax, unless
22 otherwise indicated; provided that a director of a county



1 department of finance may only exercise the powers in this
2 chapter with respect to a county surcharge on state tax."

3 SECTION 9. Section 238-2.6, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The county surcharge on state tax, upon the adoption
6 of a county ordinance and in accordance with the requirements of
7 section 46-16.8, shall be levied, assessed, and collected as
8 provided in this section on the value of property [~~and~~],
9 services, and contracting taxable under this chapter. No county
10 shall set the surcharge on state tax at a rate greater than one-
11 half per cent of the value of property taxable under this
12 chapter. All provisions of this chapter shall apply to the
13 county surcharge on state tax. With respect to the surcharge,
14 the director shall have all the rights and powers provided under
15 this chapter. In addition, the director of taxation shall have
16 the exclusive rights and power to determine the county or
17 counties in which a person imports or purchases tangible
18 personal property and, in the case of a person importing or
19 purchasing tangible property in more than one county, the
20 director shall determine, through apportionment or other means,
21 that portion of the surcharge on state tax attributable to the
22 importation or purchase in each county."



1 SECTION 10. Section 248-2.6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"[+]§248-2.6[+] County surcharge on state tax; disposition**
4 **of proceeds.** (a) If adopted by county ordinance, all county
5 surcharges on state tax [~~collected by the director of taxation~~
6 ~~shall be paid into the state treasury quarterly, within ten~~
7 ~~working days after collection, and shall be placed by the~~
8 ~~director of finance in special accounts. Out of the revenues~~
9 ~~generated by county surcharges on state tax paid into each~~
10 ~~respective state treasury special account, the director of~~
11 ~~finance shall deduct ten per cent of the gross proceeds of a~~
12 ~~respective county's surcharge on state tax to reimburse the~~
13 ~~State for the costs of assessment, collection, and disposition~~
14 ~~of the county surcharge on state tax incurred by the State.~~
15 ~~Amounts retained shall be general fund realizations of the~~
16 ~~State.~~

17 ~~(b) The amounts deducted for costs of assessment,~~
18 ~~collection, and disposition of county surcharges on state tax~~
19 ~~shall be withheld from payment to the counties by the State out~~
20 ~~of the county surcharges on state tax collected for the current~~
21 ~~calendar year.~~



1 ~~(c) For the purpose of this section, the costs of~~
2 ~~assessment, collection, and disposition of the county surcharges~~
3 ~~on state tax shall include any and all costs, direct or~~
4 ~~indirect, that are deemed necessary and proper to effectively~~
5 ~~administer this section and sections 237-8.6 and 238-2.6.~~

6 ~~(d) After the deduction and withholding of the costs under~~
7 ~~subsections (a) and (b), the director of finance shall pay the~~
8 ~~remaining balance on quarterly basis to the director of finance~~
9 ~~of each county that has adopted a county surcharge on state tax~~
10 ~~under section 46-16.8. The quarterly payments shall be made~~
11 ~~after the county surcharges on state tax have been paid into the~~
12 ~~state treasury special accounts or after the disposition of any~~
13 ~~tax appeal, as the case may be. All county surcharges on state~~
14 ~~tax collected shall be distributed by the director of finance to~~
15 ~~the county in which the county surcharge on state tax is~~
16 ~~generated and shall be a general fund realization of the county,~~
17 ~~to be used for the purposes specified in section 46-16.8 by each~~
18 ~~of the counties.] shall be collected by the department of~~
19 ~~finance of the county electing to exercise the authority to~~
20 ~~adopt a county surcharge on state tax. Out of the revenues~~
21 ~~generated by county surcharges on state tax paid, a county that~~
22 ~~has imposed a county surcharge on state tax may use up to ten~~

1 per cent of the gross proceeds of a respective county's
2 surcharges on state tax to pay for the costs of assessment,
3 collection, and disposition of the county surcharge on state
4 tax.

5 (b) For the purpose of this section, the costs of
6 assessment, collection, and disposition of the county surcharges
7 on state tax shall include any and all costs, direct or
8 indirect, that are deemed necessary and proper to effectively
9 administer this section and sections 237-8.6 and 238-2.6.

10 (c) After the deduction of the costs under subsection (a),
11 the county surcharges on state tax collected shall be a general
12 fund realization of the county, to be used for the purposes
13 specified in section 46-16.8 by each of the counties.

14 (d) A county imposing a county surcharge on state tax
15 pursuant to sections 237-8.6 and 238-2.6 may contract with a
16 private entity for the collection of such surcharges."

17 SECTION 11. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$, or so
19 much thereof as may be necessary for fiscal year 2006-2007, to
20 carry out the purposes of this Act, including the hiring of
21 necessary staff.



1 SECTION 12. The sum appropriated shall be expended by the
2 department of taxation for the purposes of this Act.

3 SECTION 13. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 14. This Act shall take effect upon its approval,
6 except that sections 11 and 12 shall take effect on July 1,
7 2006.

8

INTRODUCED BY: 

Report Title:

GET; County Surcharge on State Tax

Description:

Authorizes a county electing to exercise the authority to adopt a county surcharge on state tax to collect the county surcharge on state tax.

