
A BILL FOR AN ACT

RELATING TO FIREWORKS.

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

1 SECTION 1. Chapter 132D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§132D- Licensee; reporting. Retailers of fireworks
5 licensed under section 132D-7 shall report annually on the
6 volume and type of consumer fireworks sold to the public for
7 each holiday or event specified under section 132D-3. The
8 report shall be submitted each January 30 to the county fire
9 chief in the county the retailer resides. Each county fire
10 chief shall compile the information submitted by the retailers
11 and submit the compilation to the governor and legislature by
12 February 30 of each year."

13 SECTION 2. Chapter 132D, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 "PART . CONSUMER FIREWORKS SURCHARGE TAX

17 §132D-A **Definitions.** As used in this part, unless the
18 context otherwise requires:



1 "Department" means the department of taxation.

2 "Director" means the director of taxation.

3 "Consumer fireworks" has the same meaning as defined in
4 section 132D-1.

5 "Surcharge tax" means the consumer fireworks surcharge tax
6 established under this part.

7 **§132D-B Consumer fireworks surcharge tax.** Notwithstanding
8 any other law to the contrary, there is levied and shall be
9 assessed and collected each month, a consumer fireworks
10 surcharge tax of fifty per cent of the cost of the consumer
11 fireworks sold. The surcharge tax shall be levied upon the
12 seller of the consumer fireworks.

13 **§132D-C Certificate of registration.** (a) Each licensed
14 retailer under section 132D-7, as a condition precedent to
15 engaging or continuing in the business of selling consumer
16 fireworks, shall register with the director and make a one-time
17 payment of \$20 to the department. Upon receipt of the payment,
18 the director shall issue a certificate of registration to the
19 person. The registration shall not be transferable and shall be
20 valid only for the person in whose name it is issued and for the
21 transaction of business at the place designated therein. The
22 registration, or in lieu thereof a notice stating where the



1 registration may be inspected and examined, shall at all times
2 be conspicuously displayed at the place for which it is issued.

3 (b) The registration shall be effective until canceled in
4 writing. Any application for the reissuance of a previously
5 canceled registration identification number shall be regarded as
6 a new registration application and shall be subject to the
7 payment of the one-time registration fee in subsection (a). The
8 director may revoke or cancel any certificate of registration
9 issued under this part for cause as provided by rule adopted
10 pursuant to chapter 91.

11 (c) If the registration fee is paid, the department shall
12 not refuse to issue a registration or revoke or cancel a
13 registration for the exercise of a privilege protected by the
14 first amendment of the Constitution of the United States, or for
15 the carrying on of interstate or foreign commerce, or for any
16 privilege the exercise of which, under the Constitution and laws
17 of the United States, cannot be restrained on account of
18 nonpayment of taxes, nor shall any provision of this part be
19 invoked to restrain the exercise of such a privilege, or the
20 carrying on of such commerce.

21 (d) Any person who may lawfully be required by the State,
22 and who is required by this part, to register as a condition



1 precedent to engaging or continuing in the business of selling
2 consumer fireworks to the public subject to taxation under this
3 part, who engages or continues in the business without
4 registering in conformity with this part, shall be guilty of a
5 misdemeanor. Any officer or director of a corporation who
6 permits, aids, or abets the corporation to engage or continue in
7 business without registering in conformity with this part, shall
8 likewise be guilty of a misdemeanor. The penalty for the
9 misdemeanors shall be that prescribed by section 231-34 for
10 violation of that section.

11 **§132D-D Return and payments; penalties.** (a) On or
12 before:

13 (1) The last day of July and January of each year; and

14 (2) The end of the month following Chinese new year or a
15 cultural event under section 132D-3;

16 every person taxable under this part shall file a sworn return
17 with the director in a form as the director shall prescribe
18 together with a remittance for the amount of the surcharge tax
19 in the form required under this part. Sections 237-30 and
20 237-32 shall apply to returns and penalties made under this part
21 to the same extent as if the sections were set forth
22 specifically in this section.



1 (b) If a person filing the return becomes delinquent in
2 either the filing of the return or the payment of the surcharge
3 taxes due thereon, the director, at any time, may revoke a
4 person's permit.

5 **§132D-E Remittances.** All remittances of surcharge taxes
6 imposed under this part shall be made by cash, bank draft,
7 cashier's check, money order, or certificate of deposit to the
8 office of the taxation district to which the return was
9 transmitted. The department shall deposit the moneys into the
10 state treasury to the credit of the consumer fireworks surcharge
11 special fund under this part.

12 **§132D-F Annual return.** On or before the twentieth day of
13 the fourth month following the close of the taxable year, every
14 person who has become liable for the payment of the surcharge
15 taxes under this part during the preceding tax year shall file a
16 return summarizing the person's liability under this part for
17 the year, in such form as the director prescribes. The person
18 shall transmit with the return a remittance covering the residue
19 of the surcharge tax chargeable to the person, if any, to the
20 office of the appropriate state district tax assessor designated
21 in this part. The return shall be signed by the person, if made
22 by an individual, or by the president, vice-president,



1 secretary, or treasurer of a corporation, if made on behalf of a
2 corporation. If made on behalf of a partnership, firm, society,
3 unincorporated association, group, hui, joint adventure, joint
4 stock company, corporation, trust estate, decedent's estate,
5 trust, or other entity, any individual delegated by the entity
6 shall sign the return on behalf of the person. If for any
7 reason it is not practicable for the individual person to sign
8 the return, it may be done by any duly authorized agent. The
9 department, for good cause shown, may extend the time for making
10 the return on the application of any person and grant a
11 reasonable additional time within which to make the return, as
12 the department may deem advisable. Section 232-2 applies to the
13 annual return.

14 **§132D-G Filing of returns.** All returns required under
15 this part shall be transmitted to the office of the taxation
16 district in which the person's place of business is situated or
17 to the office of the first taxation district in Honolulu.

18 **§132D-H Assessment of surcharge tax upon failure to make**
19 **return; limitation period; exceptions; extension by agreement.**

20 (a) If any person fails to make a return as required by this
21 part, the director shall make an estimate of the surcharge tax
22 liability of the person from any information the director



1 obtains, and according to the estimate so made, assess the
2 surcharge taxes, interest, and penalty due the State from the
3 person, give notice of the assessment to the person, and make
4 demand upon the person for payment. The assessment shall be
5 presumed to be correct until and unless, upon an appeal duly
6 taken as provided in this part, the contrary shall be clearly
7 proved by the person assessed, and the burden of proof upon the
8 appeal shall be upon the person assessed to disprove the
9 correctness of assessment.

10 (b) After a return is filed under this part, the director
11 shall examine the return and may conduct further audits or
12 investigations as the director considers necessary. If the
13 director determines that there is a deficiency with respect to
14 the payment of any surcharge tax due under this part, the
15 director shall assess the surcharge taxes, interest, and penalty
16 due the State, give notice of the assessment to the persons
17 liable, and make demand upon the persons for payment.

18 (c) Except as otherwise provided by this section, the
19 amount of surcharge taxes imposed by this part shall be assessed
20 or levied within three years after the annual return was filed,
21 or within three years of the due date prescribed for the filing
22 of the return, whichever is later, and no proceeding in court



1 without assessment for the collection of any such surcharge
2 taxes shall begin after the expiration of the period.

3 (d) In the case of a false or fraudulent return with
4 intent to evade the surcharge tax, or of a failure to file the
5 annual return, the surcharge tax may be assessed or levied at
6 anytime; provided that in the case of a return claimed to be
7 false or fraudulent with intent to evade the surcharge tax, the
8 determination as to the claim shall first be made by a judge of
9 the circuit court as provided in section 235-111(c) which shall
10 apply to the surcharge tax imposed by this part.

11 (e) Where, before the expiration of the period prescribed
12 in subsection (c), both the department of taxation and the
13 person have consented in writing to the assessment or levy of
14 the surcharge tax after the date fixed by subsection (c), the
15 surcharge tax may be assessed or levied at any time prior to the
16 expiration of the period agreed upon. The period so agreed upon
17 may be extended by subsequent agreements in writing made before
18 the expiration of the period previously agreed upon.

19 **§132D-I Overpayment; refunds.** Upon application by a
20 person, if the director determines that any surcharge tax,
21 interest, or penalty has been paid more than once, or has been
22 erroneously or illegally collected or computed, the surcharge



1 tax, interest, or penalty shall be credited by the director on
2 any surcharge taxes then due from the person under this part.
3 The director shall refund the balance to the person or the
4 person's successors, administrators, executors, or assigns in
5 accordance with section 231-23(d). No credit or refund shall be
6 allowed for any surcharge tax imposed by this part, unless a
7 claim for the credit or refund is filed as follows:

8 (1) If an annual return is timely filed, or is filed
9 within three years after the date prescribed for
10 filing the annual return, then the credit or refund
11 shall be claimed within three years after the date the
12 annual return was filed or the date prescribed for
13 filing the annual return, whichever is later.

14 (2) If an annual return is not filed, or is filed more
15 than three years after the date prescribed for filing
16 the annual return, a claim for credit or refund shall
17 be filed within:

- 18 (A) Three years after the payment of the tax; or
- 19 (B) Three years after the date prescribed for the
20 filing of the annual return,
21 whichever is later.



1 Paragraphs (1) and (2) are mutually exclusive. The preceding
2 limitation shall not apply to a credit or refund pursuant to an
3 appeal provided for in this part.

4 As to all tax payments for which a refund or credit is not
5 authorized by this section (including, without prejudice to the
6 generality of the foregoing, cases of unconstitutionality), the
7 remedies provided by appeal or by section 40-35 are exclusive.

8 **§132D-J Appeals.** Any person aggrieved by any assessment
9 of the surcharge tax may appeal from the assessment in the
10 manner and within the time and in all other respects as provided
11 in the case of income tax appeals by section 235-114.

12 **§132D-K Records to be kept; examination.** Every person
13 shall keep in the English language within the State, and
14 preserve for a period of three years, suitable records relating
15 to the surcharge tax levied and assessed under this part, and
16 any other books, records of account, and invoices that may be
17 required by the department and all books, records, and invoices
18 shall be open for examination at any time by the department or
19 the Multistate Tax Commission pursuant to chapter 255, or the
20 authorized representative thereof.

21 **§132D-L Disclosure of returns unlawful; destruction of**
22 **returns.** (a) All tax returns and return information required



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

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



- 1 (6) The personal representative, trustee, heir, or
- 2 beneficiary of an estate or trust in 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 or of any state or territory;
- 13 (11) The Multistate Tax Commission or its authorized
- 14 representative; and
- 15 (12) Members of a limited liability company.

16 Any violation of this subsection shall be a misdemeanor.

17 Nothing in this subsection shall prohibit the publication of
18 statistics so classified as to prevent the identification of
19 particular reports or returns and the items of the reports or
20 returns.

21 (b) The department may destroy any reports filed under
22 this part upon the expiration of three years after the end of



1 the calendar or fiscal year in which the surcharge taxes
2 accrued.

3 **§132D-M Collection by suit; injunction.** The department
4 may collect surcharge taxes due and unpaid under this part,
5 together with all accrued penalties, by action in assumpsit or
6 other appropriate proceedings in the circuit court of the
7 judicial circuit in which the surcharge taxes arose. After
8 delinquency shall have continued for sixty days, or if any
9 person fails, pursuant to this part, to apply for and secure a
10 certificate for a period of sixty days after the first date when
11 the person was required under this part to secure the
12 certificate, the department may proceed, in the circuit court of
13 the judicial circuit in which the consumer fireworks sales were
14 made, to obtain an injunction restraining further sales until
15 full payment is made of all surcharge taxes, penalties, and
16 interest due under this part, or until the certificate is
17 secured, or both, as the circumstances of the case may require.

18 **§132D-N Application of surcharge tax.** The surcharge tax
19 imposed by this part shall be in addition to any other taxes
20 imposed by any other laws of the State, except as otherwise
21 specifically provided in this part; provided that if it is held
22 by any court of competent jurisdiction that the surcharge tax



1 imposed by this part may not legally be imposed in addition to
2 any other tax or taxes imposed by any other law or laws with
3 respect to the same consumer fireworks, then this part shall be
4 deemed not to apply to such consumer fireworks under the
5 specific circumstances, but the other laws shall be given full
6 effect with respect to such consumer fireworks.

7 **§132D-0 Administration and enforcement; rules.** (a) The
8 director shall administer and enforce this part in respect of:

- 9 (1) The examination of books and records;
10 (2) Procedure and powers upon failure or refusal by a
11 person to make a return or proper return; and
12 (3) The general administration of this part.

13 All of the provisions of chapter 237 not inconsistent with this
14 part and that may appropriately be applied to the taxes,
15 persons, circumstances, and situations involved in this part,
16 including (without prejudice to the generality of the foregoing)
17 provisions as to penalties and interest, and provisions granting
18 administrative powers to the department, and provisions for the
19 assessment, levy, and collection of taxes, shall be applicable
20 to the surcharge taxes imposed by this part and to the
21 assessment, levy, and collection thereof.



1 (b) The director may adopt rules pursuant to chapter 91 to
2 effectuate this part.

3 **§132D-P Consumer fireworks; special fund.** (a) There is
4 established within the state treasury a special fund to be known
5 as the consumer fireworks surcharge special fund to be
6 administered and expended by the director of budget and finance.

7 (b) The proceeds of the fund shall be allocated back to
8 the county that collected the surcharge tax. The fire chief and
9 the police chief of each county shall divide the proceeds evenly
10 between them and expend the proceeds for the purposes of
11 enforcing the provisions of chapter 132D."

12 SECTION 3. The department of health shall conduct a study
13 to determine the health effects of consumer fireworks on
14 children under the age of eighteen. The study shall include an
15 investigation of the decibel level of consumer fireworks sold to
16 the public and the short- and long-term consequences, if any, of
17 the fireworks on the hearing ability and development of young
18 children.

19 The department of health shall submit its findings and
20 recommendations to the legislature, twenty days prior to the
21 convening of the regular session of 2010.

22 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval;
 2 provided that sections 1 and 2 shall take effect on January 1,
 3 2010, and shall apply to taxable years beginning after
 4 December 31, 2009.
 5

INTRODUCED BY: Marilyn B. Lee

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JAN 26 2009



Report Title:

Fireworks; Surcharge Tax

Description:

Assesses a surcharge tax on the sale of consumer fireworks. Also requires retailers to report on fireworks sold and requires the DOH to report on the effects of fireworks on young children.

