
SENATE RESOLUTION

REQUESTING THE DEPARTMENT OF TAXATION TO CONDUCT AUDITS OF THE PRODUCERS OF LIQUID FUEL FOR THEIR COMPLIANCE IN REPORTING THE ENVIRONMENTAL RESPONSE TAX AND LIQUID FUEL LICENSE TAX.

1 WHEREAS, section 243-3.5, Hawaii Revised Statutes, imposes
2 a state environmental response tax of "5 cents on each barrel or
3 fractional part of a barrel of petroleum product sold by a
4 distributor to any retail dealer or end user, other than a
5 refiner, of petroleum product"; and
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7 WHEREAS, the federal government and other states have
8 similar laws that impose a tax to address oil spills and other
9 environmental issues; and
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11 WHEREAS, Internal Revenue Service *Publication 510 (2008)*,
12 *Excise Taxes: Part Two, Excise Taxes Other Than Fuel Taxes*,
13 states that no one is exempt from the federal environmental
14 taxes; and
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16 WHEREAS, our State's law is supposedly mirrored after the
17 federal law; and
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19 WHEREAS, chapter 128D, Hawaii Revised Statutes, that is
20 referenced in section 243-3.5, Hawaii Revised Statutes, was
21 enacted to support the State's responsibilities under the
22 Federal Emergency Planning and Community Right-to-Know Act; and
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24 WHEREAS, for the implementation of the tax, section 243-1,
25 Hawaii Revised Statutes, defines pertinent terms as follows:
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- 27 (1) "Barrel" means "forty-two United States gallons of
28 crude oil or petroleum product";
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- 30 (2) "Petroleum product" means "any liquid hydrocarbon at
31 standard temperature and pressure that is the product
32 of the fractionalization, distillation, or other
33 refining or processing of crude oil";
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1 (3) "End user" means "any person or government entity who
2 acquires petroleum products for their own use and not
3 for resale"; and
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5 (4) "Retail dealer" means "a person who purchases liquid
6 fuel from a licensed distributor, and sells the liquid
7 fuel at retail. Only sales of liquid fuel for
8 consumption or used by the purchaser, and not for
9 resale, are sales at retail"; and
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11 WHEREAS, the statutes clearly indicate that the
12 environmental response tax is intended to be imposed on each
13 forty-two-gallon barrel of "liquid hydrocarbon" that is the
14 product of the "refining or processing" of "crude oil" and sold
15 to a "retail dealer" or "end user"; and
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17 WHEREAS, publicly available data, however, appear to
18 display some discrepancies in the tax collections; and
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20 WHEREAS, for example, data from the Department of Taxation
21 for 2008 show that the environmental response tax generated
22 \$1,695,000 on a tax base of 33,909,000 barrels of petroleum
23 products; and
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25 WHEREAS, multiplying the 33,909,000 barrel tax base by
26 forty-two gallons results in a product of 1,424,178,000 gallons;
27 and
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29 WHEREAS, the same data from the Department of Taxation,
30 however, show that the liquid fuel license tax base was
31 997,200,000 gallons in 2008; and
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33 WHEREAS, the difference is substantial, suggesting that
34 either the environmental response tax was over-collected or the
35 liquid fuel tax was under-collected; and
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37 WHEREAS, data for 2005 also raise a question about the
38 environmental response tax collection:
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40 (1) According to the Department of Taxation, the
41 environmental response tax base in 2005 was 36,200,000
42 barrels of petroleum products in forty-two gallon
43 barrels;
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1 (2) According to the Department of Business, Economic
2 Development, and Tourism, 51,262,000 barrels of
3 petroleum in fifty-five gallon barrels were imported
4 into the State;

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6 (3) Some of the imported petroleum was refined into non-
7 liquid products or refined into liquid products and
8 then exported, thereby excluding those barrels from
9 the environmental response tax; and

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11 (4) Nevertheless, the difference between the data is very
12 large, and the reason for the difference requires
13 examination; and
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15 WHEREAS, thus, the Legislature finds that audits of the
16 producers of liquid fuel for their compliance in reporting the
17 environmental response tax and liquid fuel license tax should be
18 conducted; now, therefore,

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20 BE IT RESOLVED by the Senate of the Twenty-fifth
21 Legislature of the State of Hawaii, Regular Session of 2009,
22 that the Department of Taxation is requested to audit those
23 taxpayers that are required to voluntarily report information
24 regarding the environmental response tax and the liquid fuel
25 license tax to determine their compliance in reporting such
26 information; and
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28 BE IT FURTHER RESOLVED that the Department of Taxation is
29 requested to submit the results of such audits to the
30 Legislature at least twenty days before the convening of the
31 Regular Session of 2010; and
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33 BE IT FURTHER RESOLVED that a certified copy of this
34 Resolution be transmitted to the Director of Taxation.