
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 part to be appropriately designated and
3 to read as follows:

4 **"PART . CONSUMER FIREWORKS SURCHARGE TAX**

5 **§132D- Definitions.** As used in this part, unless the
6 context otherwise requires:

7 "Department" means the department of taxation.

8 "Director" means the director of taxation.

9 "Consumer fireworks" has the same meaning as defined in
10 section 132D-2.

11 **§132D- Consumer fireworks surcharge tax.**

12 Notwithstanding any other law to the contrary, there is levied
13 and shall be assessed and collected each month, a consumer
14 fireworks surcharge tax of fifty per cent of the cost of the
15 consumer fireworks sold. The surcharge tax shall be levied upon
16 the seller of the consumer fireworks.

17 **§132D- Certificate of registration.** (a) Each licensed
18 retailer under section 132D-7, as a condition precedent to



1 engaging or continuing in the business of selling consumer
2 fireworks, shall register with the director and make a one-time
3 payment of \$20 to the department. Upon receipt of the payment,
4 the director shall issue a certificate of registration to the
5 person. The registration shall not be transferable and shall be
6 valid only for the person in whose name it is issued and for the
7 transaction of business at the place designated therein. The
8 registration, or in lieu thereof a notice stating where the
9 registration may be inspected and examined, shall at all times
10 be conspicuously displayed at the place for which it is issued.

11 (b) The registration shall be effective until canceled in
12 writing. Any application for the reissuance of a previously
13 canceled registration identification number shall be regarded as
14 a new registration application and shall be subject to the
15 payment of the one-time registration fee in subsection (a). The
16 director may revoke or cancel any certificate of registration
17 issued under this part for cause as provided by rule adopted
18 pursuant to chapter 91.

19 (c) If the registration fee is paid, the department shall
20 not refuse to issue a registration or revoke or cancel a
21 registration for the exercise of a privilege protected by the
22 first amendment of the Constitution of the United States, or for



1 the carrying on of interstate or foreign commerce, or for any
2 privilege the exercise of which, under the Constitution and laws
3 of the United States, cannot be restrained on account of
4 nonpayment of taxes, nor shall any provision of this part be
5 invoked to restrain the exercise of such a privilege, or the
6 carrying on of such commerce.

7 (d) Any person who may lawfully be required by the State,
8 and who is required by this part, to register as a condition
9 precedent to engaging or continuing in the business of selling
10 consumer fireworks to the public subject to taxation under this
11 part, who engages or continues in the business without
12 registering in conformity with this part, shall be guilty of a
13 misdemeanor. Any officer or director of a corporation who
14 permits, aids, or abets the corporation to engage or continue in
15 business without registering in conformity with this part, shall
16 likewise be guilty of a misdemeanor. The penalty for the
17 misdemeanors shall be that prescribed by section 231-34 for
18 violation of that section.

19 **§132D- Return and payments; penalties.** (a) On or
20 before:

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



1 (2) The end of the month following Chinese new year or a
2 cultural event under section 132D-3;
3 every person taxable under this part shall file a sworn return
4 with the director in a form as the director shall prescribe
5 together with a remittance for the amount of the surcharge tax
6 in the form required under this part. Sections 237-30 and
7 237-32 shall apply to returns and penalties made under this part
8 to the same extent as if the sections were set forth
9 specifically in this section.

10 (b) If a person filing the return becomes delinquent in
11 either the filing of the return or the payment of the surcharge
12 taxes due thereon, the director, at any time, may revoke a
13 person's permit.

14 **§132D- Remittances.** All remittances of surcharge taxes
15 imposed under this part shall be made by cash, bank draft,
16 cashier's check, money order, or certificate of deposit to the
17 office of the taxation district to which the return was
18 transmitted. The department shall deposit the moneys into the
19 state treasury to the credit of the consumer fireworks surcharge
20 special fund under this part.

21 **§132D- Annual return.** On or before the twentieth day
22 of the fourth month following the close of the taxable year,



1 every person who has become liable for the payment of the
2 surcharge taxes under this part during the preceding tax year
3 shall file a return summarizing the person's liability under
4 this part for the year, in such form as the director prescribes.
5 The person shall transmit with the return a remittance covering
6 the residue of the surcharge tax chargeable to the person, if
7 any, to the office of the appropriate state district tax
8 assessor designated in this part. The return shall be signed by
9 the person, if made by an individual, or by the president, vice-
10 president, secretary, or treasurer of a corporation, if made on
11 behalf of a corporation. If made on behalf of a partnership,
12 firm, society, unincorporated association, group, hui, joint
13 adventure, joint stock company, corporation, trust estate,
14 decedent's estate, trust, or other entity, any individual
15 delegated by the entity shall sign the return on behalf of the
16 entity. If for any reason it is not practicable for the
17 individual person to sign the return, it may be done by any duly
18 authorized agent. The department, for good cause shown, may
19 extend the time for making the return on the application of any
20 person and grant a reasonable additional time within which to
21 make the return, as the department may deem advisable. Section
22 232-2 applies to the annual return.



1 **§132D- Filing of returns.** All returns required under
2 this part shall be transmitted to the office of the taxation
3 district in which the person's place of business is situated or
4 to the office of the first taxation district in Honolulu.

5 **§132D- Assessment of surcharge tax upon failure to make**
6 **return; limitation period; exceptions; extension by agreement.**

7 (a) If any person fails to make a return as required by this
8 part, the director shall make an estimate of the surcharge tax
9 liability of the person from any information the director
10 obtains, and according to the estimate so made, assess the
11 surcharge taxes, interest, and penalty due the State from the
12 person, give notice of the assessment to the person, and make
13 demand upon the person for payment. The assessment shall be
14 presumed to be correct until and unless, upon an appeal duly
15 taken as provided in this part, the contrary shall be clearly
16 proved by the person assessed, and the burden of proof upon the
17 appeal shall be upon the person assessed to disprove the
18 correctness of the assessment.

19 (b) After a return is filed under this part, the director
20 shall examine the return and may conduct further audits or
21 investigations as the director considers necessary. If the
22 director determines that there is a deficiency with respect to



1 the payment of any surcharge tax due under this part, the
2 director shall assess the surcharge taxes, interest, and penalty
3 due the State, give notice of the assessment to the persons
4 liable, and make demand upon the persons for payment.

5 (c) Except as otherwise provided by this section, the
6 amount of surcharge taxes imposed by this part shall be assessed
7 or levied within three years after the annual return was filed,
8 or within three years of the due date prescribed for the filing
9 of the return, whichever is later, and no proceeding in court
10 without assessment for the collection of any such surcharge
11 taxes shall begin after the expiration of the period.

12 (d) In the case of a false or fraudulent return with
13 intent to evade the surcharge tax, or of a failure to file the
14 annual return, the surcharge tax may be assessed or levied at
15 anytime; provided that in the case of a return claimed to be
16 false or fraudulent with intent to evade the surcharge tax, the
17 determination as to the claim shall first be made by a judge of
18 the circuit court as provided in section 235-111(c) which shall
19 apply to the surcharge tax imposed by this part.

20 (e) Where, before the expiration of the period prescribed
21 in subsection (c), both the department and the person have
22 consented in writing to the assessment or levy of the surcharge



1 tax after the date fixed by subsection (c), the surcharge tax
2 may be assessed or levied at any time prior to the expiration of
3 the period agreed upon. The period so agreed upon may be
4 extended by subsequent agreements in writing made before the
5 expiration of the period previously agreed upon.

6 **§132D- Overpayment; refunds.** Upon application by a
7 person, if the director determines that any surcharge tax,
8 interest, or penalty has been paid more than once, or has been
9 erroneously or illegally collected or computed, the surcharge
10 tax, interest, or penalty shall be credited by the director on
11 any surcharge taxes then due from the person under this part.
12 The director shall refund the balance to the person or the
13 person's successors, administrators, executors, or assigns in
14 accordance with section 231-23(d). No credit or refund shall be
15 allowed for any surcharge tax imposed by this part, unless a
16 claim for the credit or refund is filed as follows:

17 (1) If an annual return is timely filed, or is filed
18 within three years after the date prescribed for
19 filing the annual return, then the credit or refund
20 shall be claimed within three years after the date the
21 annual return was filed or the date prescribed for
22 filing the annual return, whichever is later; or



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

5 (A) Three years after the payment of the tax; or

6 (B) Three years after the date prescribed for the
7 filing of the annual return,

8 whichever is later.

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

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

16 **§132D- Appeals.** Any person aggrieved by any assessment
17 of the surcharge tax may appeal from the assessment in the
18 manner and within the time and in all other respects as provided
19 in the case of income tax appeals by section 235-114.

20 **§132D- Records to be kept; examination.** Every person
21 shall keep in the English language within the state, and
22 preserve for a period of three years, suitable records relating



1 to the surcharge tax levied and assessed under this part, and
 2 any other books, records of account, and invoices that may be
 3 required by the department and all books, records, and invoices
 4 shall be open for examination at any time by the department or
 5 the Multistate Tax Commission pursuant to chapter 255, or the
 6 authorized representative thereof.

7 **§132D- Disclosure of returns unlawful; destruction of**
 8 **returns.** (a) All tax returns and return information required
 9 to be filed under this part, and the report of any investigation
 10 of the return or of the subject matter of the return, shall be
 11 confidential. It shall be unlawful for any person or any
 12 officer or employee of the State to intentionally make known
 13 information imparted by any tax return or return information
 14 filed pursuant to this part, or any report of any investigation
 15 of the return or of the subject matter of the return, or to
 16 wilfully permit any tax return, return information, report, or
 17 any copy thereof to be seen or examined by any person; provided
 18 that for surcharge tax purposes only, the seller or the seller's
 19 authorized agent, or persons with a material interest in the
 20 return, return information, or report may examine them. Unless
 21 otherwise provided by law, persons with a material interest in
 22 the return, return information, or 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 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 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
- 22 (12) Members of a limited liability company.



1 Any violation of this subsection shall be a misdemeanor.
2 Nothing in this subsection shall prohibit the publication of
3 statistics so classified as to prevent the identification of
4 particular reports or returns and the items of the reports or
5 returns.

6 (b) The department may destroy any reports filed under
7 this part upon the expiration of three years after the end of
8 the calendar or fiscal year in which the surcharge taxes
9 accrued.

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



1 interest due under this part, or until the certificate is
2 secured, or both, as the circumstances of the case may require.

3 **§132D- Application of surcharge tax.** The surcharge tax
4 imposed by this part shall be in addition to any other taxes
5 imposed by any other laws of the State, except as otherwise
6 specifically provided in this part; provided that if it is held
7 by any court of competent jurisdiction that the surcharge tax
8 imposed by this part may not legally be imposed in addition to
9 any other tax or taxes imposed by any other law or laws with
10 respect to the same consumer fireworks, then this part shall be
11 deemed not to apply to such consumer fireworks under the
12 specific circumstances, but the other laws shall be given full
13 effect with respect to such consumer fireworks.

14 **§132D- Administration and enforcement; rules.** (a) The
15 director shall administer and enforce this part in respect of:

- 16 (1) The examination of books and records;
17 (2) Procedure and powers upon failure or refusal by a
18 person to make a return or proper return; and
19 (3) The general administration of this part.

20 All of the provisions of chapter 237 not inconsistent with this
21 part and that may appropriately be applied to the taxes,
22 persons, circumstances, and situations involved in this part,



1 including (without prejudice to the generality of the foregoing)
2 provisions as to penalties and interest, and provisions granting
3 administrative powers to the department, and provisions for the
4 assessment, levy, and collection of taxes, shall be applicable
5 to the surcharge taxes imposed by this part and to the
6 assessment, levy, and collection thereof.

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

9 **§132D- Consumer fireworks; special fund.** (a) There is
10 established within the state treasury a special fund to be known
11 as the consumer fireworks surcharge special fund to be
12 administered and expended by the director of budget and finance.

13 (b) The proceeds of the fund shall be allocated back to
14 the county that collected the surcharge tax. The fire chief and
15 the police chief of each county shall divide the proceeds evenly
16 between them and expend the proceeds for the purposes of
17 enforcing the provisions of chapter 132D."

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

21 **"§132D- Licensee; reporting.** Retailers of fireworks
22 licensed under section 132D-7 shall report annually on the



1 volume and type of consumer fireworks sold to the public for
2 each holiday or event specified under section 132D-3. The
3 report shall be submitted each January 30 to the county fire
4 chief in the county the retailer resides. Each county fire
5 chief shall compile the information submitted by the retailers
6 and submit the compilation to the governor and legislature by
7 February 28 of each year."

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

15 The department of health shall submit its findings and
16 recommendations to the legislature no later than twenty days
17 prior to the convening of the regular session of 2010.

18 SECTION 4. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval;
20 provided that sections 1 and 2 shall apply to taxable years
21 beginning after December 31, 2009.



Report Title:

Fireworks; Surcharge Tax

Description:

Assesses a surcharge tax on the sale of consumer fireworks. Requires retailers to report on fireworks sold and requires the Department of Health to report on the effects of fireworks on young children. (HB397 HD1)

