



GOV. MSG. NO. **1145**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

May 5, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

I am transmitting herewith HB382 HD2 SD2, without my approval, and with the statement of objections relating to the measure.

HB382 HD2 SD2

RELATING TO THE AUDITOR

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

May 5, 2011

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 382

Honorable Members
Twenty-Sixth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 382, entitled "A Bill for an Act Relating to the Auditor."

The purpose of this bill is to specifically allow the Auditor to inspect the documents, confidential tax returns, and financial affairs of the Department of Taxation and to require the Auditor to implement internal policies to protect confidentiality of private personal information contained in tax returns.

This bill is objectionable because the Auditor currently has statutory authority to inspect the records of agencies pursuant to section 23-5, Hawaii Revised Statutes. Moreover, section 23-5(c)(1), Hawaii Revised Statutes, authorizes the Auditor to issue subpoenas that are subject to judicial review. This bill appears to give the Auditor unrestricted access to taxpayers' tax returns and return information "only to the extent necessary in the auditor's duties within the scope of the audit," but leaves it to the Auditor to determine what is within the scope of the Auditor's duties.

America's taxation system, as well as Hawaii's taxation system, relies and rests on a bedrock principle of voluntary compliance and self assessment. In return for a taxpayer's voluntary act of self-assessment, federal and state laws provide stringent confidentiality requirements that provide a strong

incentive for taxpayers to report all of their income. See, generally, Federal Savings and Loan Insurance Corporation v. Krueger, 55 F.R.D. 512, 514 (D.C. Ill. 1972); see also United States v. Tucker, 316 F. Supp. 822, 825 (D. Conn. 1970) (statutes forbidding unauthorized disclosure of income tax return information encourages the full and accurate reporting of income for tax purposes).

Currently, with respect to tax returns or return information, sections 235-116 and 237-34, Hawaii Revised Statutes, make it a criminal offense for any officer or employee of the Department of Taxation to disclose tax returns or return information to any other person by the taxpayer or the taxpayer's authorized representative, with certain other limited exceptions. Similarly, sections 6103(a) and 7213 of the Internal Revenue Code generally prohibit the disclosure of federal income tax returns. Moreover, federal law in section 6103(i)(8)(C) of the Internal Revenue Code contains a provision for disclosures to the Comptroller General for auditing purposes, but this statute also contains the following pre-condition for disclosure for audit purposes:

(C) Disapproval by Joint Committee on Taxation

Returns and return information shall not be open to inspection or disclosed under subparagraph (A) or (B) with respect to an audit-

(i) unless the Comptroller General of the United States notifies in writing the Joint Committee on Taxation of such audit, and

(ii) if the Joint Committee on Taxation disapproves such audit by a vote of at least two-thirds of its members within the 30-day period beginning on the day the Joint Committee on Taxation receives such notice.

The bill lacks this important and essential provision that would safeguard and serve as an oversight function on the

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Auditor. In addition, the bill is silent on the Department of Taxation's ability to assert the attorney-client or executive privilege for certain communications and documents.

For the foregoing reasons, I am returning House Bill No. 382 without my approval.

Respectfully,

A handwritten signature in black ink that reads "Neil Abercrombie". The signature is written in a cursive style with a prominent initial "N".

NEIL ABERCROMBIE
Governor of Hawaii

VETO

A BILL FOR AN ACT

RELATING TO THE AUDITOR.

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

1 SECTION 1. Section 23-5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) The auditor may examine and inspect all accounts,
4 books, records, files, papers, and documents and all financial
5 affairs of every department, office, agency, and political
6 subdivision[-], including the department of taxation. Upon
7 request by the auditor, the department of taxation shall provide
8 to the auditor access to tax returns and the accounts, books,
9 records, files, papers, documents, and financial affairs of the
10 department of taxation only to the extent necessary in the
11 administration of the auditor's duties and within the scope of
12 an audit; provided that for examinations and inspections
13 relating to the department of taxation, the auditor shall adopt
14 and implement internal policies to protect the confidentiality
15 of private personal information contained in tax returns and
16 return information."

17 SECTION 2. Section 231-18, Hawaii Revised Statutes, is
18 amended to read as follows:



1 "§231-18 ~~[Federal or other tax officials]~~ Officials
2 permitted to inspect returns; reciprocal provisions.
3 Notwithstanding the provisions of any law making it unlawful for
4 any person, officer, or employee of the State to make known
5 information imparted by any tax return or permit any tax return
6 to be seen or examined by any person, it shall be lawful to
7 permit a duly accredited tax official of the United States, any
8 state or territory, any county of this State, [or] the
9 Multistate Tax Commission, or the auditor to inspect any tax
10 return of any taxpayer, or to furnish to an official,
11 commission, or the authorized representative thereof an abstract
12 of the return or supply the official, commission, or the
13 authorized representative thereof with information concerning
14 any item contained in the return or disclosed by the report of
15 any investigation of the return or of the subject matter of the
16 return for tax or auditing purposes only. The Multistate Tax
17 Commission may make the information available to a duly
18 accredited tax official of the United States, any state or
19 territory, or the authorized representative thereof, for tax
20 purposes only."

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



1 "**§235-116 Disclosure of returns unlawful; penalty.** All
2 tax returns and return information required to be filed under
3 this chapter shall be confidential, including any copy of any
4 portion of a federal return [~~which~~] that may be attached to a
5 state tax return, or any information reflected in the copy of
6 [~~such~~] the federal return. It shall be unlawful for any person,
7 or any officer or employee of the State, including the auditor
8 or the auditor's agent, to make known intentionally information
9 imparted by any income tax return or estimate made under
10 sections 235-92, 235-94, 235-95, and 235-97 or wilfully to
11 permit any income tax return or estimate so made or copy thereof
12 to be seen or examined by any person other than the taxpayer or
13 the taxpayer's authorized agent, persons duly authorized by the
14 State in connection with their official duties, the Multistate
15 Tax Commission or the authorized representative thereof, except
16 as provided by law, and any offense against the foregoing
17 provisions shall be punished by a fine not exceeding \$500 or by
18 imprisonment not exceeding one year, or both."

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

21 "(b) All tax returns and return information required to be
22 filed under this chapter, and the report of any investigation of



1 the return or of the subject matter of the return, shall be
2 confidential. It shall be unlawful for any person or any
3 officer or employee of the State, including the auditor or the
4 auditor's agent, to intentionally make known information
5 imparted by any tax return or return information filed pursuant
6 to this chapter, or any report of any investigation of the
7 return or of the subject matter of the return, or to wilfully
8 permit any [~~such~~] return, return information, or report so made,
9 or any copy thereof, to be seen or examined by any person;
10 provided that for tax purposes only the taxpayer, the taxpayer'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 the 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 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~~] through (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 through (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;
- 15 (12) Members of a limited liability company; and
- 16 (13) A person contractually obligated to pay the taxes
17 assessed against another when the latter person is
18 under audit by the department.

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

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



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

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



- 1 (5) The shareholder of an S corporation;
- 2 (6) The personal representative, trustee, heir, or
3 beneficiary of an estate or trust in the case of the
4 estate's or decedent's return;
- 5 (7) The committee, trustee, or guardian of any person in
6 paragraphs (1) [~~te~~] through (6) who is incompetent;
- 7 (8) The trustee in bankruptcy or receiver, and the
8 attorney-in-fact of any person in paragraphs (1) [~~te~~]
9 through (7);
- 10 (9) Persons duly authorized by the State in connection
11 with their official duties;
- 12 (10) Any duly accredited tax official of the United States,
13 any state or territory, or of any county of this
14 State;
- 15 (11) The Multistate Tax Commission or its authorized
16 representative; and
- 17 (12) 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 [~~se~~] that are classified [~~as~~] to prevent the
21 identification of particular reports or returns and the items of
22 the reports or returns."



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

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

20 (1) Trustees;

21 (2) Partners;



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

21 Any violation of this subsection shall be a misdemeanor.

22 Nothing in this subsection shall prohibit the publication of



