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A BILL FOR AN ACT

RELATING TO CHAPTER 243, HAWAII REVISED STATUTES.

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

1           SECTION 1. The purpose of this Act is to make technical  
2 amendments relating to the administration of the fuel tax.  
3 First, this Act clarifies existing law that makes fuel tax  
4 information public by specifying that the entire fuel tax return  
5 is a public record available for public inspection. Second,  
6 this Act clarifies the statute of limitations for the assessment  
7 or refund of environmental response, energy, and food security  
8 tax.

9           SECTION 2. Section 243-3.5, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

11           "(b) Each distributor subject to the tax imposed by  
12 subsection (a), on or before the last day of each calendar  
13 month, shall file with the director, on forms prescribed,  
14 prepared, and furnished by the director, a return [statement] of  
15 the tax under this section for which the distributor is liable  
16 for the preceding month. The form and payment of the tax shall  
17 be transmitted to the department of taxation in the appropriate  
18 district. Returns filed under this section are public records."

1 SECTION 3. Section 243-10, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§243-10 [~~Statements~~] Returns and payments. Each  
4 distributor and each person subject to section 243-4(b), on or  
5 before the twentieth day of each calendar month, shall file with  
6 the director of taxation, on forms prescribed, prepared, and  
7 furnished by the director, a [~~statement,~~] return, authenticated  
8 as provided in section 231-15, [~~showing~~] reporting separately  
9 for each county and for the island of Lanai and the island of  
10 Molokai within which and whereon fuel is sold or used during  
11 each preceding month of the calendar year, the following:

12 (1) The total number of gallons of fuel refined,  
13 manufactured, or compounded by the distributor or  
14 person within the State and sold or used by the  
15 distributor or person, and if for ultimate use in  
16 another county or on either island, the name of that  
17 county or island;

18 (2) The total number of gallons of fuel acquired by the  
19 distributor or person during the month from persons  
20 not subject to the tax on the transaction or only  
21 subject to tax thereon at the rate of 1 cent per  
22 gallon, as the case may be, and sold or used by the

1 distributor or person, and if for ultimate use in  
2 another county or on either island, the name of that  
3 county or island;

4 (3) The total number of gallons of fuel sold by the  
5 distributor or person to the United States or any  
6 department or agency thereof, or to any other person  
7 or entity, or used in any manner, the effect of which  
8 sale or use is to exempt the fuel from the tax imposed  
9 by this chapter;

10 (4) Additional information relative to the acquisition,  
11 purchase, manufacture, or importation into the State,  
12 and the sale, use, or other disposition, of diesel oil  
13 by the distributor or person during the month, as the  
14 department of taxation by rule shall prescribe.

15 At the time of submitting the foregoing report to the  
16 department, each distributor and person shall pay the tax on  
17 each gallon of fuel (including diesel oil) sold or used by the  
18 distributor or person in each county and on the island of Lanai  
19 and the island of Molokai during the preceding month, as shown  
20 by the [~~statement~~] return and required by this chapter; provided  
21 that the tax shall not apply to any fuel exempted and so long as  
22 the same is exempted from the imposition of the tax by the

1 Constitution or laws of the United States; and the tax shall be  
2 paid only once upon the same fuel; provided further that a  
3 licensed distributor shall be entitled, in computing the tax the  
4 licensed distributor is required to pay, to deduct from the  
5 gallons of fuel reported for the month for each county or for  
6 the island of Lanai or the island of Molokai, as the case may  
7 be, one gallon for each ninety-nine gallons of like liquid fuel  
8 sold by retail dealers in that county or on that island during  
9 the month, as shown by certificates furnished by the retail  
10 dealers to the distributor and attached to the distributor's  
11 ~~[report.]~~ return. All taxes payable for any month shall be  
12 delinquent after the expiration of the twentieth day of the  
13 following month.

14 ~~[Statements]~~ Returns, including attachments thereto, filed  
15 under this section ~~[concerning the number of gallons of fuel~~  
16 ~~refined, manufactured, compounded, imported, sold or used by the~~  
17 ~~distributor or person]~~ are public records."

18 SECTION 4. Section 243-11, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§243-11 Failure to make and file [statements] returns and**  
21 **making false statement unlawful.** It shall be unlawful for any  
22 distributor, or any other person, to fail, neglect, or refuse to

1 make and file any [~~statement~~] return required by this chapter in  
2 the manner or within the time therein provided or to make any  
3 [~~such~~] return or statement which is false in any particular."

4 SECTION 5. Section 243-12, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§243-12 Procedure upon failure to file [~~statement~~]**  
7 **return; penalties.** If any distributor or other person fails,  
8 neglects, or refuses to file any [~~statement~~] return or report as  
9 herein provided, the director of taxation, immediately after the  
10 required time for such filing has expired, may proceed to inform  
11 oneself as best the director may regarding the matters and  
12 things required to be set forth in such [~~statement~~] return and  
13 from such information as the director is able to obtain shall:

- 14 (1) Make a [~~statement~~] return showing such matters and  
15 things; and  
16 (2) Determine and fix the amount of [~~license~~] tax due from  
17 the distributor or other person for such month, and  
18 proceed to collect the amount of the [~~license~~] tax  
19 with penalties and interest added thereto pursuant to  
20 section 231-39.

21 Upon request of the director, the attorney general (or the  
22 attorney general's deputies, including the county attorneys and

1 public prosecutor) shall commence and prosecute to final  
2 determination in any court of competent jurisdiction an action  
3 at law to collect any tax herein imposed which is delinquent and  
4 all penalties and interest accrued, or any other appropriate  
5 action at law or otherwise to enforce this chapter."

6 SECTION 6. Section 243-14, Hawaii Revised Statutes, is  
7 amended by amending subsections (b) and (c) to read as follows:

8 "(b) The amount of [~~license~~] taxes imposed by this chapter  
9 shall be assessed or levied, or the overpayment, if any, shall  
10 be credited within three years after filing of the monthly  
11 [~~statement,~~] return, or within three years of the due date  
12 prescribed for the filing of the [~~statement,~~] return, whichever  
13 is later. No proceeding in court without assessment for the  
14 collection of the taxes or the enforcement of the liability  
15 shall begin after the expiration of the three-year period.  
16 Where the assessment of the tax imposed by this chapter has been  
17 made within the period of limitation applicable thereto, the tax  
18 may be collected by levy or by a proceeding in court under  
19 chapter 231; provided that the levy is made or the proceeding  
20 was begun within fifteen years after the assessment of the tax.  
21 For any tax that has been assessed prior to July 1, 2009, the  
22 levy or proceeding shall be barred after June 30, 2024.

1           Notwithstanding any other provision to the contrary in this  
2 section, the limitation on collection after assessment in this  
3 section shall be suspended for the period:

- 4           (1) The taxpayer agrees to suspend the period;
- 5           (2) The assets of the taxpayer are in control or custody  
6           of a court in any proceeding before any court of the  
7           United States or any state, and for six months  
8           thereafter;
- 9           (3) An offer in compromise under section 231-3(10) is  
10           pending; and
- 11           (4) During which the taxpayer is outside the State if the  
12           period of absence is for a continuous period of at  
13           least six months; provided that if at the time of the  
14           taxpayer's return to the State the period of  
15           limitations on collection after assessment would  
16           expire before the expiration of six months from the  
17           date of the taxpayer's return, the period shall not  
18           expire before the expiration of the six months.

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

1 (c) In the case of a false or fraudulent [~~statement~~]  
2 return with intent to evade tax or liability, or of a failure to  
3 file a [~~statement,~~] return, the tax or liability may be assessed  
4 or levied at any time; provided that the burden of proof with  
5 respect to the issues of falsity or fraud and intent to evade  
6 tax shall be upon the State."

7 SECTION 7. Section 243-16, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "**§243-16 Rules and regulations.** Subject to chapter 91,  
10 the director of taxation shall have power to make rules and  
11 regulations relating to matters of procedure in the  
12 administration of this chapter and the manner and forms of  
13 records to be kept by distributors, and to prescribe standard  
14 forms of [~~statements~~] returns to be filed by distributors or  
15 other persons, affidavits, and any other statements or other  
16 written data required to be filed or furnished under this  
17 chapter. The rules and regulations shall have the force and  
18 effect of law."

19 SECTION 8. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

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H .B. NO. 1090

1 SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY: Calvin K. Jay

BY REQUEST

JAN 24 2011

**Report Title:**

Tax Administration; Fuel Tax

**Description:**

Amends the fuel tax law to clarify that the entire fuel tax return is a public record available for public inspection; clarifies the statute of limitations for the assessment or refund of the environmental response, energy, and food security tax.

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO CHAPTER 243, HAWAII REVISED STATUTES.

PURPOSE: To clarify that the entire fuel tax return is a public record available for public inspection; and to clarify the statute of limitations for assessment or refund of environmental response, energy, and food security tax.

MEANS: Amend sections 243-3.5(b), 243-10, 243-11, 243-12, 243-14(b) and (c), and 243-16, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This measure makes two clarifying amendments to the fuel tax law. First, this measure clarifies existing law that makes fuel tax returns public records. According to certain interpretations, current law can be construed narrowly to allow disclosure of only certain information contained on the fuel tax return. In the interest of making fuel tax data more transparent and to carry out the legislative intent to make the fuel tax returns public, this measure clarifies the law to ensure that the entire return is public. Likewise, information associated with the environmental response, energy, and food security tax is amended to be a public record. As additional programs in the pursuit of alternative energy production in Hawaii develop, additional public data on fuel usage will become more important. This bill ensures that the flow of data is available for policymakers and administrators.

Second, this bill clarifies the statute of limitations for the assessment or refund of environmental response, energy, and food

security tax by conforming to the three-year statute of limitations for the fuel tax contained in chapter 243, HRS.

Impact on the public: the public will experience increased transparency of the fuel tax. A majority of fuel tax data is public under current law. The information will be provided much more efficiently as amended by this measure. No material impacts are anticipated by clarifying the statute of limitations for assessment or refund of the environmental response, energy, and food security tax.

Impact on the department and other agencies: The Department of Taxation is charged with administering the fuel tax law. Other agencies, including the Department of Business, Economic Development, and Tourism and the University of Hawaii, will benefit from increased transparency in fuel tax data.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: Not applicable.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.