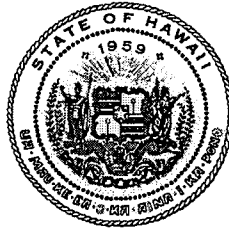


HB 382

HD2, SD1



**TESTIMONY BY MARION M. HIGA, STATE AUDITOR,
ON HOUSE BILL NO. 382, HOUSE DRAFT 2, SENATE DRAFT 1,
RELATING TO THE AUDITOR**

Senate Committee on Ways and Means

April 1, 2011

Good morning Chair Ige and Members of the Committee:

I am Marion Higa, State Auditor, and I am in strong support of House Bill No. 382, House Draft 2, Senate Draft 1, and request that the effective date be amended to reflect "upon approval." This measure provides explicit authority to the Auditor to inspect all accounts, books, records, files, papers, and documents and all financial affairs of the state Department of Taxation. It also requires me to implement internal policies to protect confidentiality of private personal information contained in tax returns and provides penalty provisions applicable to the Auditor or Auditor's agent for disclosure of tax information.

This measure is needed to facilitate my Hawai'i State Constitutional and statutory responsibility "to conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions." The Department of Taxation is one of these departments.

We respectfully request that you pass this measure out of committee with the suggested amendment. Thank you for the opportunity to express strong support for House Bill No. 382, House Draft 2, Senate Draft 1.

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SUBJECT: ADMINISTRATION, Audit of the department of taxation

BILL NUMBER: HB 382, SD-1

INTRODUCED BY: Senate Committee on Judiciary and Labor

BRIEF SUMMARY: Amends HRS section 23-5 to direct the state auditor to inspect all accounts, books, records, files, papers, and documents and all financial affairs of the state department of taxation provided that internal policies to protect the confidentiality of private personal information contained in tax returns shall be implemented. Requires the department of taxation, upon request of the auditor, to provide access to tax returns and all accounts, books, records, files, papers, and document and all financial affairs of the department.

Amends HRS section 235-116 to provide that the penalty provisions relating to the disclosure of tax return information shall be applicable to the state auditor.

Makes conforming amendments to HRS sections 231-18, 237D-13 and 251-12.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: While the current law requires the state auditor to review all state departments, this measure would grant explicit authority to the auditor to conduct a review of the state department of taxation and require the auditor to implement policies to insure the confidentiality of tax return information. While the Auditor and the legislature may believe that it is critical to the examination of the operations of the department of taxation, caution should still be exercise as the confidentiality of information on income tax returns is mandated by the federal government should Hawaii wish to continue income tax information sharing between the Internal Revenue Service and the department.

Under section 6103(p)(8) of the Internal Revenue Code, which was added by the Tax Reform Act of 1976 (P.L. 94-455), the disclosure of federal tax return information to states requiring the filing or reporting of federal tax information would be prohibited after December 31, 1978 if the state did not adopt legal provisions protecting the confidentiality of the federal tax return information.

Until 1978 HRS Section 235-116, in general, made it unlawful for a state employee to intentionally make a disclosure of a return or return information except as authorized by law. Thus, in 1978, upon the advice of the IRS Regional Counsel Western Region, it was their opinion that HRS Section 235-116 did not meet the standards of Internal Revenue Section 6103(p) (8) because it did not specifically provide that returns are confidential. As a result, HRS 235-116 was amended by Act 172, SLH 1978, to specify that disclosure of income tax information was prohibited except specifically authorized by law. Before adopting the amendments made by this measure, lawmakers should check to see if this measure meets the standard of authorization required by the IRS.

Digested 3/30/11