L E G I S L A T I V E

# TAXBILLSERVICE

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SUBJECT: INCOME, Waiver for wagering winnings

BILL NUMBER: SB 5; HB 66 (Identical) **LATE TESTIMONY**

INTRODUCED BY: SB by Nishihara; HB by Choy

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a taxpayer to acquire a written waiver from the department of taxation that exempts the taxpayer from reporting all wagering or gambling winnings that were acquired legally outside the state that would have been otherwise reportable under this chapter and that were accrued during the period of the waiver. Provides that: (1) the cost of the waiver shall be $___ for a specific consecutive five-day period during the taxable year for which the waiver applies; (2) multiple periods may be acquired; (3) the $___ fee applies to each period acquired; (4) the waiver shall be acquired by the taxpayer at least 24 hours before the commencement of the waiver period; (5) the waiver shall apply to all taxpayers, whether or not the taxpayer itemizes tax deductions; (6) the waivers shall not be transferrable and may not be combined with any waiver acquired by other taxpayers.

Requires the department of taxation to adopt rules pursuant to HRS chapter 91 to effectuate this section; provided that: (1) the waivers shall be acquired and paid on the department's website or other web-based system established by the department by credit card using appropriate web-based security technology; and (2) the rules shall be in effect by January 1, 2012.

EFFECTIVE DATE: January 1, 2012 applicable to tax years beginning after December 31, 2011

STAFF COMMENTS: All wagering or gambling winnings are taxable under federal and state income tax laws. However, since gambling winnings of under $1,200 from slot machines or bingo and winnings of under $1,500 from keno and $5,000 in poker tournaments are not required to comply with income tax withholding provisions of Form W-2G, most winnings under these amounts are not reported.

This measure would allow a taxpayer to purchase a waiver prior to a "gambling" trip and allow the taxpayer to be exempt from reporting their winnings on their state income tax return. While this measure may result in enforcement and verification difficulties for the state department of taxation, it is questionable whether the proposed fee is sufficient to cover the added duties of the department of taxation. If the intent of this measure is to generate additional revenue for the state, consideration must be given to the loss of revenue generated as a result of exempting winnings realized during the permitted period.

It should be remembered that any of the taxpayer's winnings would still be required to be reported on the taxpayer's federal income tax return. As there is no similar provision on the federal level, the adoption of this measure would run contrary to the state's intent to conform to the federal Internal Revenue Code.

Digested 2/8/11