

MAR 13 2013

SENATE RESOLUTION

DIRECTING THE DIRECTOR OF TAXATION TO REVIEW SECTION 237-25(c), HAWAII REVISED STATUTES, TO DETERMINE IF THERE IS A RATIONAL BASIS FOR THE APPARENT DISPARITY BETWEEN THE APPLICATION OF THAT PROVISION AND OTHER SECTIONS OF CHAPTER 237, HAWAII REVISED STATUTES.

1 WHEREAS, sections 237-14, 237-14.5, 237-18, 237-21,
2 237-23(a)(7), and 237-23(b)(3), Hawaii Revised Statutes, allow
3 taxpayers to segregate, divide, allocate, apportion, or
4 specifically classify gross proceeds so as to apply different
5 tax rates, or no tax at all, to determine the appropriate amount
6 of excise tax due; and
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8 WHEREAS, the aforementioned sections are all of the
9 sections in chapter 237, Hawaii Revised Statutes, that provide
10 for specific classification and reporting of the gross proceeds
11 as described therein except for section 237-25(c), Hawaii
12 Revised Statutes; and
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14 WHEREAS, section 237-25(c), Hawaii Revised Statutes,
15 provides as follows:
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17 "(c) Nothing in this section shall be deemed to
18 exempt any person engaging or continuing in a service
19 business or calling from any part of the tax imposed upon
20 the person for such activity, and the person shall not be
21 entitled to deduct any amount for tangible personal
22 property furnished in conjunction therewith even though the
23 person separately bills or otherwise shows the amount of
24 the gross income of the business derived from the
25 furnishing of the property" (emphasis added); and
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27 WHEREAS, section 235-25(c), Hawaii Revised Statutes, is
28 directly contrary to all the other sections listed above in
29 chapter 237, Hawaii Revised Statutes, which allow the
30 segregation, division, allocation, apportionment, or specific
31 classification of reported gross proceeds in order to apply
32 different tax rates as appropriate; and
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1 WHEREAS, this body is concerned that this apparent
2 disparity in the application of the law could cause legal
3 problems for the State; and
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5 WHEREAS, a government policy providing for fair and
6 balanced application of tax law is beneficial to all of the
7 people of Hawaii; and
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9 WHEREAS, in this era of technical capability, it is not a
10 difficult task to segregate, divide, allocate, apportion, or
11 specifically classify gross proceeds so as to apply different
12 tax rates, or no tax at all, to determine the appropriate amount
13 of excise tax due; now, therefore,
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15 BE IT RESOLVED by the Senate of the Twenty-seventh
16 Legislature of the State of Hawaii, Regular Session of 2013,
17 that the Director Of Taxation is directed to review section 237-
18 25(c), Hawaii Revised Statutes, to determine if there is any
19 rational basis for the apparent disparity between the
20 application of that provision and the aforementioned sections of
21 chapter 237, Hawaii Revised Statutes; and
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23 BE IT FURTHER RESOLVED that if the Director of Taxation
24 determines that there is no rational basis for the apparent
25 disparity of application, the Director of Taxation is urged to
26 administratively suspend the application of section 237-25(c),
27 Hawaii Revised Statutes; and
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29 BE IT FURTHER RESOLVED that the Director of Taxation report
30 findings and recommendations to the Legislature no later than
31 twenty days prior to the convening of the Regular Session of
32 2014; and
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34 BE IT FURTHER RESOLVED that a certified copy of this
35 Resolution be transmitted to the Director of Taxation.
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OFFERED BY:

