

JAN 24 2013

A BILL FOR AN ACT

RELATING TO THE UNLAWFUL DISCLOSURE OF TAX RETURNS AND TAX
RETURN INFORMATION.

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

1 SECTION 1. Chapter 231, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§231- Unlawful disclosure of returns and return
5 information. (a) All tax returns and return information
6 required to be filed under title 14, including any copy of any
7 portion of a federal return that may be attached to a state tax
8 return or any information reflected in the copy of such federal
9 return and the report of any investigation of the return or of
10 the subject matter of the return, shall be confidential. It
11 shall be unlawful for any person or any officer or employee of
12 the State to knowingly or intentionally make known information
13 imparted by any tax return or estimate made under chapter 235 or
14 return information filed pursuant to title 14, or any report of
15 any investigation of the return or of the subject matter of the
16 return, or to knowingly or intentionally permit any return,
17 estimate made under chapter 235, return information, or report

1 so made, or any copy thereof, to be seen or examined by any
2 person other than the taxpayer, the taxpayer's authorized agent,
3 persons duly authorized by the State or county in connection
4 with their official duties, and the Multistate Tax Commission or
5 the authorized representative thereof, except as provided by
6 law; provided that for tax purposes only, persons with a
7 material interest in a return, return information, or report
8 filed under chapter 237, chapter 237D, and chapter 251 may
9 examine them. Unless otherwise provided by law, persons with a
10 material interest in the return, return information, or report
11 shall include:

- 12 (1) Trustees;
- 13 (2) Partners who were members of such partnership during
14 any part of the period covered by the return in the
15 case of a partnership return;
- 16 (3) Any person designated by resolution of its board of
17 directors or other similar governing body in the case
18 of a corporate return;
- 19 (4) Any bona fide shareholders of record owning one per
20 cent or more of the outstanding stock of such
21 corporation in the case of a corporate return;
- 22 (5) The person authorized to act for a corporation in
23 dissolution;

- 1 (6) Any person who was a shareholder during any part of
2 the period covered by such return during which an
3 election under Internal Revenue Code section 1362(a)
4 was in effect in the case of a S Corporation;
- 5 (7) The personal representative, trustee, heir, or
6 beneficiary of an estate or trust in case of the
7 estate's or decedent's return;
- 8 (8) The committee, trustee, or guardian of any person in
9 paragraphs (1) to (6) who is incompetent;
- 10 (9) The trustee in bankruptcy or receiver, and the
11 attorney-in-fact of any person in paragraphs (1) to
12 (7);
- 13 (10) Persons duly authorized by the State in connection
14 with their official duties;
- 15 (11) Any duly accredited tax official of the United States,
16 any state or territory, or of any county of this
17 State;
- 18 (12) Members of a limited liability company who were
19 members of such limited liability company during any
20 part of the period covered by the return; and
- 21 (13) A person contractually obligated to pay the taxes
22 assessed against another when the latter person is
23 under audit by the department.

1 (b) Any violation of subsection (a) shall be a felony
2 punishable upon conviction by a fine in any amount not exceeding
3 \$5,000, or imprisonment of not more than five years, or both,
4 together with the costs of prosecution and in addition to any
5 other punishment, be dismissed from office or discharged from
6 employment upon conviction for such offense.

7 (c) The following exceptions apply to duly authorized
8 government personnel:

9 (1) Returns and return information shall, without written
10 request, be open to inspection by or disclosure to
11 officers and employees of the department whose
12 official duties require such inspection or disclosure
13 for tax administration purposes.

14 (2) In a matter involving tax administration, a return or
15 return information shall be open to inspection by or
16 disclosure to officers and employees of the Department
17 of the Attorney General and county prosecutors
18 personally and directly engaged in, and solely for
19 their use in, any proceeding before a grand jury or
20 preparation for any proceeding (or investigation which
21 may result in such a proceeding) before a grand jury
22 or any federal or state court.

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1 (A) However, such return or return information may
2 only be disclosed pursuant to this paragraph if:
3 (i) The taxpayer is or may be a party to the
4 proceeding, or the proceeding arose out of,
5 or in connection with, determining the
6 taxpayer's civil or criminal liability, or
7 the collection of such civil liability in
8 respect of any tax imposed under title 14;
9 (ii) The treatment of an item reflected on such
10 return is or may be related to the
11 resolution of an issue in the proceeding or
12 investigation; or
13 (iii) Such return or return information relates or
14 may relate to a transactional relationship
15 between a person who is or may be a party to
16 the proceeding and the taxpayer which
17 affects, or may affect, the resolution of an
18 issue in such proceeding or investigation.
19 (B) In any case in which the director of taxation is
20 authorized to disclose a return or return
21 information to the Department of the Attorney
22 General or to a county prosecutor in accordance
23 with the provisions of this subsection:

1 (i) If the director of taxation has referred the
2 case to the Department of the Attorney
3 General; or
4 (ii) If the director of taxation receives a
5 written request from the Department of the
6 Attorney General or a county prosecutor for
7 a return of, or return information relating
8 to, a person named in such request and
9 setting forth the need for the disclosure,
10 the director of taxation shall disclose the return
11 or return information so requested.

12 (3) A return or return information may be disclosed in a
13 federal or state judicial or administrative proceeding
14 pertaining to tax administration, but only:

15 (A) If the taxpayer is a party to the proceeding, or
16 the proceeding arose out of, or in connection
17 with, determining the taxpayer's civil or
18 criminal liability, or the collection of such
19 civil liability, in respect of any tax imposed
20 under title 14;

21 (B) If the treatment of an item reflected on such
22 return is directly related to the resolution of
23 an issue in the proceeding;

1 (C) If such return or return information directly
2 relates to a transactional relationship between a
3 person who is a party to the proceeding and the
4 taxpayer which directly affects the resolution of
5 an issue in the proceeding; or

6 (D) To the extent required by order of a court which
7 is authorized in the issuance of such order to
8 give due consideration to legislative policy
9 favoring the confidentiality of returns and
10 return information as set forth in this title.

11 However, such return or return information shall not
12 be disclosed as provided in subparagraph (A), (B), or
13 (C) if the director of taxation determines that such
14 disclosure would identify a confidential informant or
15 seriously impair a civil or criminal tax
16 investigation.

17 (4) In general, any return or return information with
18 respect to any specified taxable period or periods
19 shall, pursuant to and upon the grant of an ex parte
20 order by a court judge or magistrate, be open (but
21 only to the extent necessary as provided in such
22 order) to inspection by, or disclosure to, officers

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1 and employees of any state or county agency who are
2 personally and directly engaged in:

3 (A) Preparation for any judicial or administrative
4 proceeding pertaining to the enforcement of a
5 specifically designated state criminal statute
6 (not involving tax administration) to which the
7 State or County, or an agency thereof is or may
8 be a party;

9 (B) Any investigation that may result in such a
10 proceeding; or

11 (C) Any grand jury proceeding pertaining to
12 enforcement of such a criminal statute to which
13 the State or County, or an agency thereof is or
14 may be a party,

15 solely for the use of such officers and employees in
16 such preparation, investigation, or grand jury
17 proceeding.

18 (d) For the purpose of this section:

19 (1) "Return" means any tax or information return,
20 declaration of estimated tax, or claim for refund
21 required by, or provided for or permitted under, the
22 provisions of title 14 which is filed with the
23 department by, on behalf of, or with respect to any

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1 person, and any amendment or supplement thereto,
2 including supporting schedules, attachments, or lists
3 which are supplemental to, or part of, the return so
4 filed.

5 (2) "Return information" means a taxpayer's identity, the
6 nature, source, or amount of the taxpayer's income,
7 payments, receipts, deductions, exemptions, credits,
8 assets, liabilities, net worth, tax liability, tax
9 withheld, deficiencies, overassessments, or tax
10 payments, whether the taxpayer's return was, is being,
11 or will be examined or subject to other investigation
12 or processing, or any other data, received by,
13 recorded by, prepared by, furnished to, or collected
14 by the department with respect to a return or with
15 respect to the determination of the existence, or
16 possible existence, of liability (or the amount
17 thereof) of any person under title 14 for any tax,
18 penalty, interest, fine, forfeiture, or other
19 imposition, or offense."

20 SECTION 2. Section 237-34, Hawaii Revised Statutes, is
21 amended to read as follows:

22 **"§237-34 Filing of returns; [~~disclosure of returns~~**
23 **~~unlawful, penalty,]~~ destruction of returns. (a) All monthly**

1 and annual returns shall be transmitted to the office of the
2 taxation district in which the privilege upon which the tax
3 accrued is exercised. Where the privilege is exercised in more
4 than one taxation district the returns shall be transmitted to
5 the office of the first district.

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

22 ~~(1) Trustees;~~

23 ~~(2) Partners;~~

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- 1 ~~(3) Persons named in a board resolution or a one per cent~~
- 2 ~~shareholder in 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 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 (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 ~~(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;~~
- 20 ~~(12) Members of a limited liability company; and~~
- 21 ~~(13) A person contractually obligated to pay the taxes~~
- 22 ~~assessed against another when the latter person is~~
- 23 ~~under audit by the department.~~

1 ~~Any violation of this subsection shall be a misdemeanor.~~

2 ~~(e)]~~ (b) The department may destroy the monthly returns
3 filed pursuant to section 237-30, or any of them, upon the
4 expiration of three years after the end of the calendar year in
5 which the taxes so returned accrued."

6 SECTION 3. Section 237D-13, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§237D-13 [~~Disclosure of returns unlawful; destruction~~]

9 Destruction of returns. [~~(a) All tax returns and return~~
10 ~~information required to be filed under this chapter, and the~~
11 ~~report of any investigation of the return or of the subject~~
12 ~~matter of the return, shall be confidential. It shall be~~
13 ~~unlawful for any person or any officer or employee of the State~~
14 ~~to intentionally make known information imparted by any tax~~
15 ~~return or return information filed pursuant to this chapter, or~~
16 ~~any report of any investigation of the return or of the subject~~
17 ~~matter of the return, or to wilfully permit any return, return~~
18 ~~information, or report so made, or any copy thereof, to be seen~~
19 ~~or examined by any person; provided that for tax purposes only~~
20 ~~the taxpayer, the taxpayer's authorized agent, or persons with a~~
21 ~~material interest in the return, return information, or report~~
22 ~~may examine them. Unless otherwise provided by law, persons~~

1 ~~with a material interest in the return, return information, or~~
2 ~~report shall include:~~

3 ~~(1) Trustees;~~

4 ~~(2) Partners;~~

5 ~~(3) Persons named in a board resolution or a one per cent~~
6 ~~shareholder in case of a corporate return;~~

7 ~~(4) The person authorized to act for a corporation in~~
8 ~~dissolution;~~

9 ~~(5) The shareholder of an S corporation;~~

10 ~~(6) The personal representative, trustee, heir, or~~
11 ~~beneficiary of an estate or trust in case of the~~
12 ~~estate's or decedent's return;~~

13 ~~(7) The committee, trustee, or guardian of any person in~~
14 ~~paragraphs (1) to (6) who is incompetent;~~

15 ~~(8) The trustee in bankruptcy or receiver, and the~~
16 ~~attorney-in-fact of any person in paragraphs (1) to~~
17 ~~(7);~~

18 ~~(9) Persons duly authorized by the State in connection~~
19 ~~with their official duties;~~

20 ~~(10) Any duly accredited tax official of the United States,~~
21 ~~any state or territory, or of any county of this~~
22 ~~State;~~

1 ~~(11) The Multistate Tax Commission or its authorized~~
2 ~~representative; and~~

3 ~~(12) Members of a limited liability company.~~

4 ~~Any violation of this subsection shall be a misdemeanor.~~

5 ~~Nothing in this subsection shall prohibit the publication of~~
6 ~~statistics so classified as to prevent the identification of~~
7 ~~particular reports or returns and the items of the reports or~~
8 ~~returns.~~

9 ~~(b)] The department may destroy the monthly, quarterly, or~~
10 ~~semiannual returns filed pursuant to section 237D-6, or any of~~
11 ~~them, upon the expiration of three years after the end of the~~
12 ~~calendar or fiscal year in which the taxes so returned accrued."~~

13 SECTION 4. Section 251-12, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§251-12** ~~[Disclosure of returns unlawful; destruction]~~

16 **Destruction of returns.** ~~[(a) All tax returns and return~~
17 ~~information required to be filed under this chapter, and the~~
18 ~~report of any investigation of the return or of the subject~~
19 ~~matter of the return, shall be confidential. It shall be~~
20 ~~unlawful for any person or any officer or employee of the State~~
21 ~~to intentionally make known information imparted by any tax~~
22 ~~return or return information filed pursuant to this chapter, or~~
23 ~~any report of any investigation of the return or of the subject~~

1 ~~matter of the return, or to wilfully permit any such tax return,~~
2 ~~return information, or report so made, or any copy thereof, to~~
3 ~~be seen or examined by any person; provided that for surcharge~~
4 ~~tax purposes only the lessor or tour vehicle operator, the~~
5 ~~lessor's or tour vehicle operator's authorized agent, or persons~~
6 ~~with a material interest in the return, return information, or~~
7 ~~report may examine them. Unless otherwise provided by law,~~
8 ~~persons with a material interest in the return, return~~
9 ~~information, or report shall include:~~

10 ~~(1) Trustees;~~

11 ~~(2) Partners;~~

12 ~~(3) Persons named in a board resolution or a one per cent~~
13 ~~shareholder in case of a corporate return;~~

14 ~~(4) The person authorized to act for a corporation in~~
15 ~~dissolution;~~

16 ~~(5) The shareholder of an S corporation;~~

17 ~~(6) The personal representative, trustee, heir, or~~
18 ~~beneficiary of an estate or trust in case of the~~
19 ~~estate's or decedent's return;~~

20 ~~(7) The committee, trustee, or guardian of any person in~~
21 ~~paragraphs (1) to (6) who is incompetent;~~

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1 ~~(8) The trustee in bankruptcy or receiver, and the~~
2 ~~attorney-in-fact of any person in paragraphs (1) to~~
3 ~~(7);~~

4 ~~(9) Persons duly authorized by the State in connection~~
5 ~~with their official duties;~~

6 ~~(10) Any duly accredited tax official of the United States~~
7 ~~or of any state or territory;~~

8 ~~(11) The Multistate Tax Commission or its authorized~~
9 ~~representative; and~~

10 ~~(12) Members of a limited liability company.~~

11 ~~Any violation of this subsection shall be a misdemeanor.~~

12 ~~Nothing in this subsection shall prohibit the publication of~~
13 ~~statistics so classified as to prevent the identification of~~
14 ~~particular reports or returns and the items of the reports or~~
15 ~~returns.~~

16 ~~(b)]~~ The department may destroy the monthly, quarterly, or
17 semiannual returns filed pursuant to section 251-4, or any of
18 them, upon the expiration of three years after the end of the
19 calendar or fiscal year in which the surcharge taxes so returned
20 accrued."

21 SECTION 5. Section 235-116, Hawaii Revised Statutes, is
22 repealed.

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

18 SECTION 6. Section 842-12, Hawaii Revised Statutes, is
19 repealed.

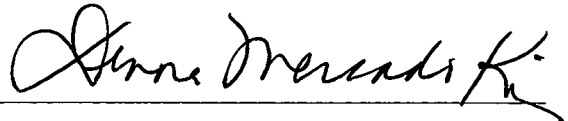
20 [~~"§842-12 Inspection of tax records by chiefs of police.~~
21 ~~The chiefs of police of the several counties or their authorized~~
22 ~~representatives may apply to any judge for an order allowing~~
23 ~~inspection and examination of the tax returns and records on~~

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1 ~~file with the department of taxation of persons suspected of~~
2 ~~willful failure to pay or report taxes, provided that such order~~
3 ~~shall issue only upon a showing of probable cause."]~~

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.

7
8 INTRODUCED BY: 

9 BY REQUEST

10

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Report Title:

Unlawful Disclosure of Tax Returns and Tax Return Information

Description:

Consolidates and clarifies unlawful disclosure of tax returns and tax return information requirements under chapter 231, Hawaii Revised Statutes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO THE UNLAWFUL DISCLOSURE OF TAX RETURNS AND TAX RETURN INFORMATION.

PURPOSE: The purpose of this bill is to amend chapter 231, Hawaii Revised Statutes, to combine the unlawful disclosure statutes found in various chapters in title 14, Hawaii Revised Statutes.

MEANS: Add a new section to chapter 231, amend sections 237-34, 237D-13, and 251-12, and repeals sections 235-116 and 842-12, Hawaii Revised Statutes.

JUSTIFICATION: Existing provisions of title 14, Hawaii Revised Statutes, generally prohibit the disclosure tax returns and return information any person other than the taxpayer and the taxpayer's authorized representative and persons within the Department who need access to such information as part of their official duties. By combining the existing unlawful disclosure statutes, there will be uniformity that will apply to all tax returns and tax return information under title 14. This bill clarifies that tax returns and information filed with or submitted to the department is confidential notwithstanding an express statutory exception.

Impact on the public: One unlawful disclosure statute in chapter 231 will assist the public to be aware of and understand the prohibited conduct. Further protects the confidentiality of tax return and tax return information.

Impact on the department and other agencies: This bill will allow consistent application

of law regardless of which Hawaii Revised Statutes chapter the tax return or tax return information falls under. Provides statutory clarity as to what information the department will be allowed to disclose when the department receives requests from person other than the taxpayer or the taxpayer's representative.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.