

S.B. NO. 2779

JAN 23 2014

A BILL FOR AN ACT

RELATING TO FINANCIAL AUDIT OF THE STATE OF HAWAII BY THE
LEGISLATIVE AUDITOR.

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

1 SECTION 1. The purpose of this bill is to specifically
2 authorize the department of taxation to release certain
3 otherwise confidential information to the legislative auditor or
4 the legislative auditor's authorized agents, for the purpose of
5 conducting the annual certified financial audit pursuant to
6 section 23-5, Hawaii Revised Statutes, while also requiring the
7 legislative auditor and its authorized agents to keep the
8 information confidential.

9 SECTION 2. Section 23-5, Hawaii Revised Statutes, is
10 amended by amending section (a) to read as follows:

11 "(a) The auditor may examine and inspect all accounts,
12 books, records, files, papers, and documents and all financial
13 affairs of every department, office, agency, and political
14 subdivision[-], including tax return information of the
15 department of taxation, solely with respect to the audit of the
16 comprehensive annual financial report of the State of Hawaii.

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1 Upon written request by the auditor, the department of taxation
2 shall provide to the auditor access to tax returns and the
3 accounts, books, records, files, papers, documents, and
4 financial affairs of the department of taxation but only to the
5 extent necessary and relevant to the scope of annual financial
6 audit of the State. Return information provided to the auditor
7 by the department of taxation shall be considered working papers
8 of the auditor pursuant to section 23-9.5."

9 SECTION 3. Section 231-18, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§231-18 [~~Federal or other tax officials~~] Tax and other
12 officials permitted to inspect returns; reciprocal provisions.

13 Notwithstanding the provisions of any law making it unlawful for
14 any person, officer, or employee of the State to make known
15 information imparted by any tax return or permit any tax return
16 to be seen or examined by any person, it shall be lawful to
17 permit a duly accredited tax official of the United States, any
18 state or territory, any county of this State, [e] the
19 Multistate Tax Commission to inspect any tax return of any
20 taxpayer, or to furnish to an official, commission, or the
21 authorized representative thereof an abstract of the return or
22 supply the official, commission, or the authorized
23 representative thereof with information concerning any item

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1 contained in the return or disclosed by the report of any
2 investigation of the return or of the subject matter of the
3 return for tax purposes only[-], or, in the case of the
4 legislative auditor, only in connection with performing a
5 financial audit of the State, but only to the extent necessary
6 and relevant to the scope of the financial audit. The
7 Multistate Tax Commission may make the information available to
8 a duly accredited tax official of the United States, any state
9 or territory, or the authorized representative thereof, for tax
10 purposes only."

11 SECTION 4. Section 235-116, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§235-116 Disclosure of returns unlawful; penalty. All
14 tax returns and return information required to be filed under
15 this chapter shall be confidential, including any copy of any
16 portion of a federal return [~~which~~] that may be attached to a
17 state tax return, or any information reflected in the copy of
18 [~~such~~] the federal return. It shall be unlawful for any person,
19 or any officer or employee of the State, including the
20 legislative auditor or the legislative auditor's agent in
21 connection with a financial audit of the State pursuant to
22 section 23-5, to make known intentionally information imparted
23 by any income tax return or estimate made under sections 235-92,

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1 235-94, 235-95, and 235-97 or willfully to permit any income tax
2 return or estimate so made or copy thereof to be seen or
3 examined by any person other than the taxpayer or the taxpayer's
4 authorized agent, persons duly authorized by the State in
5 connection with their official duties, the Multistate Tax
6 Commission or the authorized representative thereof, except as
7 provided by law, and any offense against the foregoing
8 provisions shall be punished by a fine not exceeding \$500 or by
9 imprisonment not exceeding one year, or both."

10 SECTION 5. Section 237-34, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) All tax returns and return information required to be
13 filed under this chapter, and the report of any investigation of
14 the return or of the subject matter of the return, shall be
15 confidential. It shall be unlawful for any person or any
16 officer or employee of the State, including the legislative
17 auditor or the legislative auditor's agent conducting a
18 financial audit of the State pursuant to section 23-5, to
19 intentionally make known information imparted by any tax return
20 or return information filed pursuant to this chapter, or any
21 report of any investigation of the return or of the subject
22 matter of the return, or to willfully permit any ~~such~~ return,
23 return information, or report so made, or any copy thereof, to

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1 be seen or examined by any person; provided that for tax
2 purposes only, the taxpayer, the taxpayer's authorized agent, or
3 persons with a material interest in the return, return
4 information, or report may examine them. Unless otherwise
5 provided by law, persons with a material interest in the return,
6 return information, or report shall include:

7 (1) Trustees;

8 (2) Partners;

9 (3) Persons named in a board resolution or a one per cent
10 shareholder in the case of a corporate return;

11 (4) The person authorized to act for a corporation in
12 dissolution;

13 (5) The shareholder of an S corporation;

14 (6) The personal representative, trustee, heir, or
15 beneficiary of an estate or trust in the case of the
16 estate's or decedent's return;

17 (7) The committee, trustee, or guardian of any person in
18 paragraphs (1) [~~to~~] through (6) who is incompetent;

19 (8) The trustee in bankruptcy or receiver, and the
20 attorney-in-fact of any person in paragraphs (1) [~~to~~]
21 through (7);

22 (9) Persons duly authorized by the State in connection
23 with their official duties;

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1 (10) Any duly accredited tax official of the United States
2 or of any state or territory;

3 (11) The Multistate Tax Commission or its authorized
4 representative;

5 (12) Members of a limited liability company; and

6 (13) A person contractually obligated to pay the taxes
7 assessed against another when the latter person is
8 under audit by the department.

9 Any violation of this subsection shall be a misdemeanor."

10 SECTION 6. Section 237D-13, Hawaii Revised Statutes, is
11 amended by amended subsection (a) to read as follows:

12 "(a) All tax returns and return information required to be
13 filed under this chapter, and the report of any investigation of
14 the return or of the subject matter of the return, shall be
15 confidential. It shall be unlawful for any person or any
16 officer or employee of the State, including the legislative
17 auditor or the legislative auditor's agent conducting a
18 financial audit of the State pursuant to section 23-5, to
19 intentionally make known information imparted by any tax return
20 or return information filed pursuant to this chapter, or any
21 report of any investigation of the return or of the subject
22 matter of the return, or to willfully permit any return, return
23 information, or report so made, or any copy thereof, to be seen

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1 or examined by any person; provided that for tax purposes only
2 the taxpayer, the taxpayer's authorized agent, or persons with a
3 material interest in the return, return information, or report
4 may examine them. Unless otherwise provided by law, persons
5 with a material interest in the return, return information, or
6 report shall include:

- 7 (1) Trustees;
- 8 (2) Partners;
- 9 (3) Persons named in a board resolution or a one per cent
10 shareholder in the case of a corporate return;
- 11 (4) The person authorized to act for a corporation in
12 dissolution;
- 13 (5) The shareholder of an S corporation;
- 14 (6) The personal representative, trustee, heir, or
15 beneficiary or an estate or trust in the case of the
16 estate's or decedent's return;
- 17 (7) The committee, trustee, or guardian of any person in
18 paragraphs (1) [~~to~~] through (6) who is incompetent;
- 19 (8) The trustee in bankruptcy or receiver, and the
20 attorney-in-fact of any person in paragraphs (1) [~~to~~]
21 through (7);
- 22 (9) Persons duly authorized by the State in connection
23 with their official duties;

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1 (10) Any duly accredited tax official of the United States
2 or of any state or territory, or of any county of
3 this State;

4 (11) The Multistate Tax Commission or its authorized
5 representative; and

6 (12) Members of a limited liability company.

7 Any violation of this subsection shall be a misdemeanor.

8 Nothing in this subsection shall prohibit the publication of
9 statistics [sø] that are classified [as] to prevent the
10 identification of particular reports or returns and the items of
11 the reports or returns."

12 SECTION 7. Section 251-12, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) All tax returns and return information required to be
15 filed under this chapter, and the report of any investigation of
16 the return or of the subject matter of the return, shall be
17 confidential. It shall be unlawful for any person or any
18 officer or employee of the State, including the legislative
19 auditor or the legislative auditor's agent conducting a
20 financial audit of the State pursuant to section 23-5, to
21 intentionally make known information imparted by any tax return
22 or return information filed pursuant to this chapter, or any
23 report of any investigation of the return or of the subject

1 matter of the return, or to willfully permit any [~~such~~] tax
2 return, return information, or report so made, or any copy
3 thereof, to be seen or examined by any person; provided that for
4 surcharge tax purposes only the lessor or tour vehicle operator,
5 the lessor's or tour vehicle operator's authorized agent, or
6 persons with a material interest in the return, return
7 information, or report may examine them. Unless otherwise
8 provided by law, persons with a material interest in the return,
9 return 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 the 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 the case of
19 the estate's or decedent's return;
- 20 (7) The committee, trustee, or guardian of any person in
21 paragraphs (1) [~~to~~] through (6) who is incompetent;
- 22 (8) The trustee in bankruptcy or receiver, and the
23 attorney-in-fact of any person in paragraphs (1) [~~to~~]

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1 through (7);

2 (9) Persons duly authorized by the State in connection
3 with their official duties;

4 (10) Any duly accredited tax official of the United States
5 or of any state or territory;

6 (11) The Multistate Tax Commission or its authorized
7 representative; and

8 (12) Members of a limited liability company.

9 Any violation of this subsection shall be a misdemeanor.


10 Nothing in this subsection shall prohibit the publication of
11 statistics [~~se~~] that are classified so as to prevent the
12 identification of particular reports or returns and the items of
13 the reports or returns."

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: 

19

BY REQUEST

20

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Report Title:

Legislative Auditor; Access to Tax Information

Description:

Specifically authorizes the Legislative Auditor to access information in the possession of the Department of Taxation for purposes of conducting financial audits of the State of Hawaii, while also requiring the Legislative Auditor to keep the information confidential.

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

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JUSTIFICATION SHEET

DEPARTMENT: Accounting and General Services.

TITLE: A BILL FOR AN ACT RELATING TO FINANCIAL AUDIT OF THE STATE OF HAWAII BY THE LEGISLATIVE AUDITOR.

PURPOSE: To specifically authorize the Legislative Auditor to access from the Department of Taxation certain otherwise confidential taxpayer information for the purpose of conducting the Comprehensive Annual Financial Report (CAFR) audit of the State of Hawaii where such confidential information is relevant and necessary to conduct the audit, while also requiring the Legislative Auditor and its authorized agents to keep that information confidential.

MEANS: Amend sections 23-5(a), 231-18, 235-116, 237-34(b), 237D-13(a), and 251-12(a), Hawaii Revised Statutes.

JUSTIFICATION: The Legislative Auditor has authority to conduct audits of all departments, offices, and agencies of the State and its political subdivisions. However, questions have been raised by the Department of Taxation regarding the Legislative Auditor's authority and ability to review tax returns and other records on file with the Department of Taxation in connection with the annual financial audit of the State of Hawaii, which has hindered the ability of the Legislative Auditor's office to conduct and timely complete financial audits of the State of Hawaii

Impact on the public: Allowing the Legislative Auditor access to relevant and necessary confidential documents it needs to complete a financial audit of the State of

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Hawaii will benefit the public, as timely completion can positively affect the ability of the State to issue general obligation bonds to fund capital improvement projects that benefit the public. In addition, this legislation assures taxpayers that their taxpayer information will remain confidential and are thoroughly protected from intentional and inadvertent disclosure.

Impact on the department and other agencies:
The department of taxation will need to make records available and the Legislative Auditor and its agents will need to keep these records confidential.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Department of Taxation and Legislative Auditor.

EFFECTIVE DATE: Upon approval.