

JAN 18 2013

A BILL FOR AN ACT

RELATING TO TAXATION.

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

PART I

County General Surcharge on State Excise Tax

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46- County general surcharge on state excise tax. (a)

Each county may establish a county general surcharge on state excise tax at the rates enumerated in sections 237- and 238- . A county electing to establish a county general surcharge on state excise tax shall do so by ordinance; provided that no ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance and other requirements for adoption of ordinances in accordance with county ordinance.

(b) A county electing to exercise the authority granted under this section shall notify the director of taxation within ten days after the county has adopted a surcharge on state tax ordinance and, beginning no earlier than one hundred eighty days



1 following the adoption of a surcharge, the director of taxation
2 shall levy, assess, collect, and otherwise administer the county
3 surcharge on state tax.

4 (c) Each county that adopts a county general surcharge on
5 state excise tax pursuant to subsection (a) shall use the
6 surcharges received from the State for any purpose deemed
7 suitable by the particular county."

8 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"§237- County general surcharge on state excise tax;**
12 **administration.** (a) The county general surcharge on state
13 excise tax, upon the adoption of county ordinances and in
14 accordance with the requirements of section 46- , shall be
15 levied, assessed, and collected as provided in this section on
16 all gross proceeds and gross income taxable under this chapter.
17 No county shall set the surcharge on state tax at a rate greater
18 than one-half per cent of all gross proceeds and gross income
19 taxable under this chapter. All provisions of this chapter
20 shall apply to the county surcharge on state tax. With respect
21 to the surcharge, the director of taxation shall have all the
22 rights and powers provided under this chapter. In addition, the



1 director of taxation shall have the exclusive rights and power
2 to determine the county or counties in which a person is engaged
3 in business and, in the case of a person engaged in business in
4 more than one county, the director shall determine, through
5 apportionment or other means, that portion of the surcharge on
6 state tax attributable to business conducted in each county.

7 (b) Each county surcharge on state tax that may be adopted
8 pursuant to section 46- (a) shall be levied beginning in the
9 taxable year after the adoption of the relevant county
10 ordinance.

11 (c) The county general surcharge on state excise tax, if
12 adopted, shall be imposed on the gross proceeds or gross income
13 of all written contracts that require the passing on of the
14 taxes imposed under this chapter; provided that if the gross
15 proceeds or gross income are received as payments beginning in
16 the taxable year in which the taxes become effective, on
17 contracts entered into before June 30 of the year prior to the
18 taxable year in which the taxes become effective, and the
19 written contracts do not provide for the passing on of increased
20 rates of taxes, the county general surcharge on state excise tax
21 shall not be imposed on the gross proceeds or gross income
22 covered under the written contracts. The county surcharge on



1 state tax shall be imposed on the gross proceeds or gross income
2 from all contracts entered into on or after June 30 of the year
3 prior to the taxable year in which the taxes become effective,
4 regardless of whether the contract allows for the passing on of
5 any tax or any tax increases.

6 (d) No county general surcharge on state excise tax shall
7 be established on any:

8 (1) Gross income or gross proceeds taxable under this
9 chapter at the one-half per cent tax rate;

10 (2) Gross income or gross proceeds taxable under this
11 chapter at the 0.15 per cent tax rate; or

12 (3) Transactions, amounts, persons, gross income, or gross
13 proceeds exempt from tax under this chapter.

14 (e) The director of taxation shall revise the general
15 excise tax forms to provide for the clear and separate
16 designation of the imposition and payment of the county general
17 surcharge on state excise tax.

18 (f) The taxpayer shall designate the taxation district to
19 which the county surcharge on state tax is assigned in
20 accordance with rules adopted by the director of taxation under
21 chapter 91. The taxpayer shall file a schedule with the
22 taxpayer's periodic and annual general excise tax returns



1 summarizing the amount of taxes assigned to each taxation
2 district.

3 (g) The penalties provided by section 231-39 for failure
4 to file a tax return shall be imposed on the amount of county
5 general surcharge on state excise tax due on the return being
6 filed for the failure to file the schedule required to accompany
7 the return. In addition, there shall be added to the tax an
8 amount equal to ten per cent of the amount of the surcharge and
9 tax due on the return being filed for the failure to file the
10 schedule or the failure to correctly report the assignment of
11 the general excise tax by taxation district on the schedule
12 required under this subsection.

13 (h) All taxpayers who file on a fiscal year basis whose
14 fiscal year ends after December 31 of the year prior to the
15 taxable year in which the taxes become effective, shall file a
16 short period annual return for the period preceding January 1 of
17 the taxable year in which the taxes become effective. Each
18 fiscal year taxpayer shall also file a short period annual
19 return for the period starting on January 1 of the taxable year
20 in which the taxes become effective, and ending before January 1
21 of the following year."



1 SECTION 3. Chapter 238, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§238- County general surcharge on state excise tax;**
5 **administration.** (a) The county general surcharge on state
6 excise tax, upon the adoption of a county ordinance and in
7 accordance with the requirements of section 46- , shall be
8 levied, assessed, and collected as provided in this section on
9 the value of property and services taxable under this chapter.
10 No county shall set the surcharge on state tax at a rate greater
11 than one-half per cent of the value of property taxable under
12 this chapter. All provisions of this chapter shall apply to the
13 county general surcharge on state excise tax. With respect to
14 the county general surcharge on state excise tax, the director
15 of taxation shall have all the rights and powers provided under
16 this chapter. In addition, the director of taxation shall have
17 the exclusive rights and power to determine the county or
18 counties in which a person imports or purchases tangible
19 personal property and, in the case of a person importing or
20 purchasing tangible property in more than one county, the
21 director shall determine, through apportionment or other means,



1 that portion of the surcharge on state tax attributable to the
2 importation or purchase in each county.

3 (b) Each county general surcharge on state excise tax that
4 may be adopted shall be levied beginning in the taxable year
5 after the adoption of the relevant county ordinance.

6 (c) No county surcharge on state tax shall be established
7 upon any use taxable under this chapter at the one-half per cent
8 tax rate or upon any use that is not subject to taxation or that
9 is exempt from taxation under this chapter.

10 (d) The director of taxation shall revise the use tax
11 forms to provide for the clear and separate designation of the
12 imposition and payment of the county surcharge on state tax.

13 (e) The taxpayer shall designate the taxation district to
14 which the county surcharge on state tax is assigned in
15 accordance with rules adopted by the director of taxation under
16 chapter 91. The taxpayer shall file a schedule with the
17 taxpayer's periodic and annual use tax returns summarizing the
18 amount of taxes assigned to each taxation district.

19 (f) The penalties provided by section 231-39 for failure
20 to file a tax return shall be imposed on the amount of surcharge
21 due on the return being filed for the failure to file the
22 schedule required to accompany the return. In addition, there



1 shall be added to the tax an amount equal to ten per cent of the
2 amount of the surcharge and tax due on the return being filed
3 for the failure to file the schedule or the failure to correctly
4 report the assignment of the use tax by taxation district on the
5 schedule required under this subsection.

6 (g) All taxpayers who file on a fiscal year basis whose
7 fiscal year ends after December 31 of the year prior to the
8 taxable year in which the taxes become effective, shall file a
9 short period annual return for the period preceding January 1 of
10 the taxable year in which the taxes become effective. Each
11 fiscal year taxpayer shall also file a short period annual
12 return for the period starting on January 1 of the taxable year
13 in which the taxes become effective, and ending before January 1
14 of the following year."

15 SECTION 4. Chapter 248, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 **"§248- County general surcharge on state excise tax;**
19 **disposition of proceeds.** (a) If adopted by county ordinance,
20 all county general surcharge on state excise tax collected by
21 the director of taxation shall be paid into the state treasury
22 quarterly, within ten working days after collection, and shall



1 be placed by the director of finance in special accounts. Out
2 of the revenues generated by county surcharges on state tax paid
3 into each respective state treasury special account, the
4 director of finance shall deduct ten per cent of the gross
5 proceeds of a respective county's surcharge on state tax to
6 reimburse the State for the costs of assessment, collection, and
7 disposition of the county surcharge on state tax incurred by the
8 State. Amounts retained shall be general fund realizations of
9 the State.

10 (b) The amounts deducted for costs of assessment,
11 collection, and disposition of county surcharges on state tax
12 shall be withheld from payment to the counties by the State out
13 of the county surcharges on state tax collected for the current
14 calendar year.

15 (c) For the purpose of this section, the costs of
16 assessment, collection, and disposition of the county surcharges
17 on state tax shall include any and all costs, direct or
18 indirect, that are deemed necessary and proper to effectively
19 administer this section and sections 237- and 238- .

20 (d) After the deduction and withholding of the costs under
21 subsections (a) and (b), the director of finance shall pay the
22 remaining balance on a quarterly basis to the director of



1 finance of each county that has adopted a county general
2 surcharge on state excise tax pursuant to section 46- . The
3 quarterly payments shall be made after the county surcharges on
4 state tax have been paid into the state treasury special
5 accounts or after the disposition of any tax appeal, as the case
6 may be. All county surcharges on state tax collected shall be
7 distributed by the director of finance to the county in which
8 the county surcharge on state tax is generated and shall be a
9 general fund realization of the county, to be used for the
10 purposes specified pursuant to section 46- by each of the
11 counties."

PART II

Excise Tax Exemption on Food and Over the Counter Drugs

14 SECTION 5. Chapter 237, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 **"§237- Food and over the counter drugs not taxable. In**
18 addition to the amounts not taxable under sections 237-24,
19 237-24.3, 237.24.5, 237-24.7, and 237-24.8, as well as any other
20 amounts not taxable under this chapter, the following shall not
21 be taxable under this chapter:



1 as follows, with the excess revenues to be deposited into the
2 general fund:

3 (1) 17.3 per cent of the revenues collected under this
4 chapter shall be deposited into the convention center
5 enterprise special fund established under section
6 201B-8; provided that beginning January 1, 2002, if
7 the amount of the revenue collected under this
8 paragraph exceeds \$33,000,000 in any fiscal year,
9 revenues collected in excess of \$33,000,000 shall be
10 deposited into the general fund;

11 (2) 34.2 per cent of the revenues collected under this
12 chapter shall be deposited into the tourism special
13 fund established under section 201B-11 for tourism
14 promotion and visitor industry research; provided that
15 for any period beginning on July 1, 2012, and ending
16 on June 30, 2015, no more than \$71,000,000 per fiscal
17 year shall be deposited into the tourism special fund
18 established under section 201B-11; provided further
19 that beginning on July 1, 2012, and ending on June 30,
20 2015, \$2,000,000 shall be expended from the tourism
21 special fund for development and implementation of
22 initiatives to take advantage of expanded visa



1 programs and increased travel opportunities for
2 international visitors to Hawaii; and provided further
3 that beginning on July 1, 2002, of the first
4 \$1,000,000 in revenues deposited:

5 (A) Ninety per cent shall be deposited into the state
6 parks special fund established in section
7 184-3.4; and

8 (B) Ten per cent shall be deposited into the special
9 land and development fund established in section
10 171-19 for the Hawaii statewide trail and access
11 program;

12 provided that of the 34.2 per cent, 0.5 per cent shall
13 be transferred to a sub-account in the tourism special
14 fund to provide funding for a safety and security
15 budget, in accordance with the Hawaii tourism
16 strategic plan 2005-2015; provided further that of the
17 revenues remaining in the tourism special fund after
18 revenues have been deposited as provided in this
19 paragraph and except for any sum authorized by the
20 legislature for expenditure from revenues subject to
21 this paragraph, beginning July 1, 2007, funds shall be
22 deposited into the tourism emergency trust fund,



1 established in section 201B-10, in a manner sufficient
 2 to maintain a fund balance of \$5,000,000 in the
 3 tourism emergency trust fund; and

4 (3) 44.8 per cent of the revenues collected under this
 5 chapter shall be [~~transferred as follows: Kauai county shall~~
 6 ~~receive 14.5 per cent, Hawaii county shall receive 18.6 per~~
 7 ~~cent, city and county of Honolulu shall receive 44.1 per cent,~~
 8 ~~and Maui county shall receive 22.8 per cent; provided that for~~
 9 ~~any period beginning on July 1, 2011, and ending on June 30,~~
 10 ~~2015, the total amount transferred to the counties shall not~~
 11 ~~exceed \$93,000,000 per fiscal year.] deposited into the
 12 following:~~

13 (1) The pension accumulation fund established pursuant to
 14 section 88-114 to be maintained in the fund or re-
 15 invested to amortize the unfunded actuarial accrued
 16 liability of the fund; and

17 (2) The other post-employment benefits trust fund
 18 established pursuant to section 87A-42 to prefund
 19 health and other benefits to retirees and their
 20 beneficiaries.

21 Revenues collected under section 237D-2(b) shall be
 22 deposited into the general fund. All transient accommodations



1 taxes shall be paid into the state treasury each month within
2 ten days after collection and shall be kept by the state
3 director of finance in special accounts for distribution as
4 provided in this subsection.

5 As used in this subsection, "fiscal year" means the twelve-
6 month period beginning on July 1 of a calendar year and ending
7 on June 30 of the following calendar year."

8 **PART IV**

9 SECTION 7. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 8. This Act shall take effect upon its approval;
12 provided that sections 5 and 6 shall take effect on January 1,
13 2014; provided further that the amendments made to section
14 237D-6.5, Hawaii Revised Statutes, by section 6 of this Act,
15 shall not be repealed when that section is reenacted on June 30,
16 2015, pursuant to Act 61, Session Laws of Hawaii 2009, and Act
17 103, Session Laws of Hawaii 2011.

18

INTRODUCED BY: ~~AC. Koch~~ AC. Koch
BY REQUEST OF ANOTHER PERSON



S.B. NO. 335

Report Title:

Taxation; Counties; General Excise Tax; Transient Accommodations Tax

Description:

Allows counties to adopt a county general surcharge on state excise tax. Exempts general excise tax amounts received from food and over the counter drugs. Stops transient accommodations tax from going to counties, instead directing that portion to pay other post employment retirement benefits and reduce unfunded actuarial accrued liability of the employees' retirement system.

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

