

JAN 22 2016

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that tax credits,
2 exclusions, and deductions require periodic review to determine
3 their tax expenditures, benefits, and continued merit and
4 necessity. The legislature further finds that tax expenditures
5 from the credits, exclusions, and deductions reduce revenues to
6 the State. This requires ordinary taxpayers who do not benefit
7 from the credits, exclusions, or deductions to compensate for
8 the reduced revenues. Alternatively, funding for important
9 state programs must be curtailed. The legislature further finds
10 that good tax policy requires the equal treatment of similarly-
11 situated taxpayers for the sake of equity and efficiency. When
12 certain taxpayers receive special benefits to the detriment of
13 others, it may generate resentment that leads to the loss of the
14 general public's confidence in fair treatment by the state
15 government.

16 However, the legislature also believes that certain tax
17 credits, exclusions, and deductions are worthy of continuation



1 for equity, efficiency, and economic and social policy. The
2 legislature finds that independent review by the state auditor
3 would help the legislature to identify and affirm the credits,
4 exclusions, and deductions that represent good public policy.

5 Accordingly, the purpose of this Act is to require the
6 state auditor to periodically review certain tax credits,
7 exclusions, and deductions for the income tax under chapter 235,
8 Hawaii Revised Statutes, and the financial institutions tax
9 under chapter 241, Hawaii Revised Statutes. The legislature
10 finds that this Act is necessary to promote tax equity and
11 efficiency, adequacy of state revenues, public transparency, and
12 confidence in a fair state government.

13 This Act also generates funds for the auditor's reviews by
14 imposing a surcharge on each taxpayer who files a tax return and
15 benefits from a tax credit, exclusion, or deduction. The
16 legislature finds that the reviews should be funded by the
17 taxpayers who receive these tax benefits and not through general
18 fund taxes paid by other businesses and state residents.

19 This Act exempts from the surcharge a taxpayer who files a
20 claim for the food/general excise tax credit or renter's tax
21 credit. The legislature finds that those credits are available



1 only to low-income taxpayers who should not be required to pay
2 the surcharge for credits intended to ease their financial
3 burden.

4 This Act also exempts from the surcharge a taxpayer who
5 claims a tax credit for employment-related expenses for
6 household and dependent care services or for a child passenger
7 restraint system purchase. The legislature finds that these
8 taxpayers should not be required to pay the surcharge as a
9 matter of social policy.

10 The legislature also notes that this Act comprehensively
11 imposes the surcharge at the same dollar amount on each taxpayer
12 who files a tax return and benefits from a tax credit,
13 exclusion, or deduction, even if that credit, exclusion, or
14 deduction is not scheduled for review during that taxable year.
15 The legislature has established this process for administrative
16 efficiency and ease, balancing the interest of the State in
17 funding the reviews against the relatively negligible financial
18 impact on taxpayers benefiting from the credits, exclusions, and
19 deductions.



1 SECTION 2. Chapter 23, Hawaii Revised Statutes, is amended
2 by adding a new part to be appropriately designated and to read
3 as follows:

4 "PART . REVIEW OF TAX CREDITS, EXCLUSIONS, AND DEDUCTIONS

5 §23-A Review of certain credits, exclusions, and
6 deductions under the income tax and financial institutions tax.

7 (a) The auditor shall conduct a review of the tax credits,
8 exclusions, and deductions listed in sections 23-D to 23-H.

9 (b) In the review of a credit, exclusion, or deduction,
10 the auditor shall:

- 11 (1) Determine the amount of tax expenditure for the
12 credit, exclusion, or deduction for each of the
13 previous three fiscal years;
- 14 (2) Estimate the amount of tax expenditure for the credit,
15 exclusion, or deduction for the current fiscal year
16 and the next two fiscal years;
- 17 (3) Determine whether the credit, exclusion, or deduction
18 has achieved and continues to achieve the purpose for
19 which it was enacted by the legislature;



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1 (4) Determine whether the credit, exclusion, or deduction
2 is necessary to promote or preserve tax equity or
3 efficiency;

4 (5) If the credit, exclusion, or deduction was enacted
5 because of its purported economic or employment
6 benefit to the State:

7 (A) Determine whether a benefit has resulted, and if
8 so, quantify to the extent possible the estimated
9 benefit directly attributable to the credit,
10 exclusion, or deduction; and

11 (B) Comment on whether the benefit, if any, outweighs
12 the cost of the credit, exclusion, or deduction;
13 and

14 (6) Estimate the annual cost of the credit, exclusion, or
15 deduction per low-income resident of the State. For
16 purposes of this paragraph, a "low-income resident of
17 the State" means an individual who is a resident of
18 the State and:

19 (A) Is the only member of a family of one and has an
20 income of not more than eighty per cent of the
21 area median income for a family of one; or



1 (B) Is part of a family with an income of not more
2 than eighty per cent of the area median income
3 for a family of the same size.

4 The cost shall be estimated by dividing the annual tax
5 expenditure for the credit, exclusion, or deduction
6 for each fiscal year under review by the number of
7 low-income residents of the State in the fiscal year.
8 The estimate determined pursuant to this paragraph is
9 intended to display the effect on low-income residents
10 of the State if they directly receive, either through
11 tax reduction or negative tax, the dollars saved by
12 elimination of the credit, exclusion, or deduction.

13 (c) Based on the review, the auditor shall recommend that
14 the credit, exclusion, or deduction be retained without
15 modification, amended, or repealed.

16 **§23-B Funds for review; audit revolving fund; excessive**
17 **fee reduction.** (a) Subject to legislative appropriation, the
18 auditor shall pay for the reviews required by this part using
19 the proceeds of the surcharge deposited into the audit revolving
20 fund pursuant to sections 235- and 241- .



1 (b) If the auditor determines that the moneys in the audit
2 revolving fund expendable for the reviews exceed the amount
3 necessary for a future fiscal year, the auditor may require the
4 director of taxation to reduce the surcharge collectible for a
5 tax year to a specified dollar amount less than \$. The
6 specified dollar amount shall be sufficient to pay for the
7 reviews in the future fiscal year.

8 If, after a reduction of the surcharge, the auditor
9 determines that an increase of the surcharge is necessary for a
10 future fiscal year, the auditor shall require the director of
11 taxation to increase the surcharge to a specified dollar amount
12 not exceeding \$.

13 Any surcharge reduction or increase shall apply to every
14 surcharge imposed under sections 235- and 241- .

15 The auditor shall provide the director of taxation with
16 written notice of the reduction or increase of the surcharge at
17 least one year prior to the commencement of the taxable year for
18 which the surcharge amount is to be reduced or increased.

19 §23-C Director of taxation; cooperation. The director of
20 taxation shall cooperate with the auditor's request for
21 information when the auditor conducts a review of a credit,



1 exclusion, or deduction; provided that the director of taxation
2 shall not disclose to the auditor any information prohibited
3 from disclosure by law.

4 §23-D Review for 2017 and every fifth year thereafter.

5 (a) The credits under the income tax and financial institutions
6 tax listed in subsection (c) shall be reviewed in 2017 and every
7 fifth year thereafter.

8 (b) The auditor shall submit the findings and
9 recommendations of the reviews to the legislature and governor
10 at least twenty days prior to the convening of the immediately
11 following regular session.

12 (c) This section shall apply to the following:

13 (1) Sections 235-12.5 and 241-4.6--Credit for renewable
14 energy technology system installed and placed in
15 service in the State. For the purpose of section 23-
16 A(5), this credit shall be deemed to have been enacted
17 for an economic benefit; and

18 (2) Section 235-17--Credit for qualified production costs
19 incurred for a qualified motion picture, digital
20 media, or film production.



1 §23-E Review for 2018 and every fifth year thereafter.

2 (a) The credits, exclusions, and deductions under the income
3 tax and financial institutions tax listed in subsection (c)
4 shall be reviewed in 2018 and every fifth year thereafter.

5 (b) The auditor shall submit the findings and
6 recommendations of the reviews to the legislature and governor
7 at least twenty days prior to the convening of the immediately
8 following regular session.

9 (c) This section shall apply to the following:

10 (1) Section 235-7.3--Exclusion of royalties and other
11 income derived from a patent, copyright, or trade
12 secret of a qualified high technology business;

13 (2) Section 235-9.5--Exclusion for income and proceeds
14 from stock options or stocks of a qualified high
15 technology business or a holding company for a
16 qualified high technology business;

17 (3) Sections 235-17.5 and 241-4.4--Credit for capital
18 infrastructure costs;

19 (4) Sections 235-110.7 and 241-4.5--Credit for capital
20 goods used by a trade or business;

21 (5) Section 235-110.91--Credit for research activity;



- 1 (6) Section 235-110.3--Credit for ethanol facility; and
- 2 (7) Section 241-3.5--Deduction for adjusted eligible net
- 3 income of an international banking facility.

4 §23-F Review for 2019 and every fifth year thereafter.

5 (a) The credits and exclusions under the income tax listed in

6 subsection (c) shall be reviewed in 2019 and every fifth year

7 thereafter.

8 (b) The auditor shall submit the findings and

9 recommendations of the reviews to the legislature and governor

10 at least twenty days prior to the convening of the immediately

11 following regular session.

12 (c) This section shall apply to the following:

13 (1) Section 235-4.5(a)--Exclusion of intangible income

14 earned by a trust sited in this State;

15 (2) Section 235-4.5(b)--Exclusion of intangible income of

16 a foreign corporation owned by a trust sited in this

17 State;

18 (3) Section 235-4.5(c)--Credit to a resident beneficiary

19 of a trust for income taxes paid by the trust to

20 another state;



- 1 (4) Sections 235-55 and 235-129--Credit for income taxes
2 paid by a resident taxpayer to another jurisdiction;
- 3 (5) Section 235-71(c)--Credit for a regulated investment
4 company shareholder for the capital gains tax paid by
5 the company;
- 6 (6) Section 235-110.6--Credit for fuel taxes paid by a
7 commercial fisher;
- 8 (7) Section 235-110.93--Credit for important agricultural
9 land qualified agricultural cost;
- 10 (8) Section 235-129(b)--Credit to S corporation
11 shareholder for pro rata share of the tax credit
12 earned by the S corporation in this State; and
- 13 (9) Section 209E-10--Credit for a qualified business in an
14 enterprise zone; provided that the review of this
15 credit pursuant to this part shall be limited in scope
16 to income tax credits.

17 **§23-G Review for 2020 and every fifth year thereafter.**

- 18 (a) The credits and deductions under the income tax and
19 financial institutions tax listed in subsection (c) shall be
20 reviewed in 2020 and every fifth year thereafter.



1 (b) The auditor shall submit the findings and
2 recommendations of the reviews to the legislature and governor
3 at least twenty days prior to the convening of the immediately
4 following regular session.

5 (c) This section shall apply to the following:

- 6 (1) Section 235-5.5--Deduction for individual housing
7 account deposit;
- 8 (2) Section 235-7(f)--Deduction of property loss due to a
9 natural disaster;
- 10 (3) Section 235-16.5--Credit for cesspool upgrade,
11 conversion, or connection;
- 12 (4) Section 235-19--Deduction for maintenance of an
13 exceptional tree;
- 14 (5) Section 235-55.91--Credit for the employment of a
15 vocational rehabilitation referral;
- 16 (6) Section 235-110.2--Credit for in-kind services
17 contribution for public school repair and maintenance;
18 and
- 19 (7) Sections 235-110.8 and 241-4.7--Credit for ownership
20 of a qualified low-income housing building.



1 §23-H Review for 2021 and every fifth year thereafter.

2 (a) The credits under the income tax listed in subsection (c)
3 shall be reviewed in 2021 and every fifth year thereafter.

4 (b) The auditor shall submit the findings and
5 recommendations of the reviews to the legislature and governor
6 at least twenty days prior to the convening of the immediately
7 following regular session.

8 (c) This section shall apply to the following:

9 (1) Section 235-15--Credit for purchase of child passenger
10 restraint system;

11 (2) Section 235-55.6--Credit for employment-related
12 expenses for household and dependent care services;

13 (3) Section 235-55.7--Credit for a low-income household
14 renter; and

15 (4) Section 235-55.85--Credit for food and excise tax."

16 SECTION 3. Chapter 235, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§235- Surcharge for credit, exclusion, or deduction.

20 (a) A taxpayer shall be assessed a surcharge if:

1 (1) The taxpayer files an annual return for a taxable year
2 under section 235-92; and

3 (2) The taxpayer claims a credit, exclusion, or deduction
4 listed under section 23-D, 23-E, 23-F, or 23-G.

5 The amount of the surcharge shall be \$ per taxpayer
6 who meets the qualifications of paragraphs (1) and (2) or a
7 lesser amount established in accordance with section 23-B;
8 provided that if the surcharge amount for a taxpayer is greater
9 than the amount of the credit, exclusion, or deduction claimed
10 in the taxpayer's return, the taxpayer shall be charged a
11 surcharge equal to the amount of the credit, exclusion, or
12 deduction.

13 (b) The surcharge shall be:

14 (1) Added to the taxes remitted with the annual return; or

15 (2) Deducted from any tax refund or credit for the
16 taxpayer if the taxpayer has made excess tax payments
17 for that taxable year.

18 (c) All surcharge revenues shall be transmitted by the
19 director of taxation to the director of finance for deposit into
20 the audit revolving fund.



1 The director of taxation shall transmit the surcharge
2 revenues to the director of finance within thirty days of
3 receipt.

4 Upon receipt of the surcharge revenues from the director of
5 taxation, the director of finance shall immediately deposit the
6 surcharge revenues into the audit revolving fund.

7 (d) A person who is not required to file an annual return
8 for a taxable year shall not be assessed the surcharge, even if
9 the person benefited from a credit, exclusion, or deduction
10 arising under this chapter and listed under section 23-D, 23-E,
11 23-F, or 23-G."

12 SECTION 4. Chapter 241, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§241- Surcharge for credit, exclusion, or deduction.

16 (a) A taxpayer shall be assessed a surcharge if:

17 (1) The taxpayer files an annual return for a taxable year
18 under section 241-5; and

19 (2) The taxpayer claims a credit, exclusion, or deduction
20 listed under section 23-D, 23-E, 23-F, or 23-G.



1 The amount of the surcharge shall be \$ per taxpayer
2 who meets the qualifications of paragraphs (1) and (2) or a
3 lesser amount established in accordance with section 23-B;
4 provided that if the surcharge amount for a taxpayer is greater
5 than the amount of the credit, exclusion, or deduction claimed
6 in the taxpayer's return, the taxpayer shall be charged a
7 surcharge equal to the amount of the credit, exclusion, or
8 deduction.

9 (b) The surcharge shall be:

10 (1) Added to the taxes remitted with the annual return; or

11 (2) Deducted from any tax refund or credit for the
12 taxpayer if the taxpayer has made excess tax payments
13 for that taxable year.

14 (c) All surcharge revenues shall be transmitted by the
15 director of taxation to the director of finance for deposit into
16 the audit revolving fund.

17 The director of taxation shall transmit the surcharge
18 revenues to the director of finance within thirty days of
19 receipt.



1 Upon receipt of the surcharge revenues from the director of
2 taxation, the director of finance shall immediately deposit the
3 surcharge revenues into the audit revolving fund.

4 (d) A person who is not required to file an annual return
5 for a taxable year shall not be assessed the surcharge, even if
6 the person benefited from a credit, exclusion, or deduction
7 arising under this chapter and listed under section 23-D, 23-E,
8 23-F, or 23-G."

9 SECTION 5. Section 23-3.6, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[+]§23-3.6[+] **Audit revolving fund.** (a) There is
12 established the audit revolving fund to be administered by the
13 office of the auditor, into which shall be deposited:

- 14 (1) Reimbursement moneys received by any department,
15 office, or agency of the State and its political
16 subdivisions for financial audits;
- 17 (2) Moneys received by the auditor from any department,
18 office, or agency of the State and its political
19 subdivisions for audit costs payable by special funds,
20 revolving funds, capital improvement funds, or trust
21 funds;



1 (3) Surcharge revenues collected by the director of
2 finance pursuant to sections 235- and 241- ;
3 [~~3~~] (4) Legislative appropriations; and
4 [~~4~~] (5) All interest and investment earnings credited to
5 the assets of the fund.

6 (b) Moneys in the audit revolving fund received pursuant
7 to subsections (a)(1) and (a)(2) shall be expended by the
8 auditor to conduct audits of the State's departments, offices,
9 agencies, and political subdivisions, audits of special,
10 revolving, capital improvement, or trust funds, and for the
11 services of certified public accountants contracted to conduct
12 such audits.

13 (c) Moneys in the audit revolving fund received pursuant
14 to subsections (a)(3) and (a)(5) shall be expended by the
15 auditor for the review of tax credits, exclusions, and
16 deductions as provided under part .

17 (d) Moneys in the audit revolving fund received from
18 legislative appropriations pursuant to subsection (a)(4) shall
19 be expended as specified by the legislature."

20 SECTION 6. (a) The auditor shall review chapters 235 and
21 241, Hawaii Revised Statutes, and identify any existing sections



1 that are obsolete. Based on the review, the auditor shall
2 recommend whether any identified section should be repealed.

3 (b) The auditor shall review the provisions of chapters
4 235 and 241, Hawaii Revised Statutes, that require, with or
5 without modification, conformance with the federal Internal
6 Revenue Code and identify tax credits, exclusions, and
7 deductions operative in the State that are not listed in part
8 of chapter 23, Hawaii Revised Statutes. Based on the
9 review, the auditor shall recommend whether any identified
10 credit, exclusion, or deduction should be subject to periodic
11 review under part of chapter 23, Hawaii Revised Statutes.

12 (c) The auditor shall submit the findings and
13 recommendations of the review required by this section to the
14 legislature no later than twenty days prior to the convening of
15 the regular session of 2017.

16 SECTION 7. The director of taxation shall commence
17 imposing and collecting the surcharge established under sections
18 235- and 241- , Hawaii Revised Statutes, in the 2016
19 taxable year.



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1 After collection, the surcharge revenues shall be
 2 administered in accordance with section 235- and section 241-
 3 , Hawaii Revised Statutes.

4 SECTION 8. There is appropriated out of the audit
 5 revolving fund of the State of Hawaii the sum of \$ or so
 6 much thereof as may be necessary for fiscal year 2016-2017 for
 7 the review of tax credits, exclusions, and deductions in 2017 as
 8 provided under part of chapter 23, Hawaii Revised Statutes.

9 The sum appropriated shall be expended by the auditor for
 10 the purposes of this Act.

11 SECTION 9. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 10. This Act shall take effect on July 1, 2016.

14

INTRODUCED BY:

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Report Title:

Income Tax and Financial Institutions Tax Credits, Exclusions, and Deductions; Auditor Review

Description:

Requires the Auditor to periodically review certain credits, exclusions, and deductions under the income tax and financial institutions tax. Assesses a surcharge on certain taxpayers who file returns and benefit from credits, exclusions, and deductions. Exempts from the surcharge low-income taxpayers who claim the food/general excise tax credit and renter's tax credit, and taxpayers who claim credits for employment-related expenses for household and dependent care services or for the purchase of child passenger restraint systems. Requires the deposit of the surcharge into the audit revolving fund.

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

