



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 2924, S.D. 2, H.D. 1 RELATING TO THE DISCLOSURE OF TAX RETURN INFORMATION.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday April 1, 2016

TIME: 11:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Nathan S.C. Chee, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General (the “Department”) supports the passage of this measure with the amendments noted herein. The purpose of this bill is to clarify the strict rule of confidentiality that normally applies to the taxpayers’ tax returns and tax return information. The bill generally proposes to adopt analogous exceptions to the rule of confidentiality that Congress codified in section 6103 of the Internal Revenue Code many years ago.

We respectfully request that the Department be excepted from the provisions of the new proposed subsection (b)(1) of section 231-18, Hawaii Revised Statutes (HRS), on page 5, lines 10-19, of this bill. The Department’s Tax & Charities Division receives inquiries from the Department of Taxations personnel on almost a daily basis through email and telephone conversations that involve a taxpayer’s tax return information. A requirement that the Department of the Attorney General maintain a system to track these communications, which may involve a “request for returns or return information . . . by an agency” would be onerous and burdensome.

The Department particularly supports the provisions of the bill that allow for the disclosure of tax returns and return information to the Department for the purpose of prosecuting tax related crimes and to prosecute or defend civil tax cases and in judicial proceedings where the tax return or return information is relevant to the case. This provision is identical to section 6103(h)(2) and (4) of the Internal Revenue Code, which contains the following exceptions:

(2) **Department of Justice** In a matter involving tax administration, a return or return information shall be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys)

personally and directly engaged in, and solely for their use in, any proceeding before a Federal grand jury or preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court, but only if—

(A) the taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title;

(B) the treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or

(C) such return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in such proceeding or investigation.

(4) Disclosure in judicial and administrative tax proceedings A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only—

(A) the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;

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

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

The Department cannot properly provide legal services to the State if it does not have access to tax returns and return information, where the returns and return information are necessary to prosecute tax crimes and prosecute or defend civil tax-related cases like tax appeals and collection proceedings.

The Department respectfully requests the Committee's favorable consideration of this measure.

DAVID Y. IGE
GOVERNOR

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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Friday, April 1, 2016
Time: 11:00 A.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2924, S.D. 2, H.D. 1, Relating to the Disclosure of Tax Return Information.

The Department of Taxation (Department) strongly supports S.B. 2924, S.D. 2, H.D. 1, an Administration measure, and provides the following comments for your consideration.

S.B. 2924, S.D. 2, H.D. 1, amends section 231-18, Hawaii Revised Statutes (HRS), to allow disclosure of tax return information to the Department of the Attorney General for certain court proceedings, to federal or state officials for federal or state judicial or administrative tax proceedings, to federal, state, or local law enforcement officials for investigation or prosecution of identity theft or fraudulent tax refund claims, or to other persons, such as hardware and software contractors, to the extent necessary to provide services to the department for purposes of tax administration. S.B. 2924, S.D. 2, H.D. 1, also clarifies that all information filed under chapter 235, HRS, with any state agency is confidential, and requires persons and agencies receiving information from the Department to adopt recordkeeping procedures and security measures related to the information. H.D. 1 is effective upon approval.

First, the Department believes that the amendments to section 231-18, HRS, will help clarify some of the common, specific instances where the Department may disclose tax return information. These amendments are modeled after the exemptions codified in section 6103 of the Internal Revenue Code.

Second, with respect to the measure's new section 231-18(b)(1), HRS, the Department notes that such a permanent system of standardized records could quickly grow voluminous and be burdensome for the Department of the Attorney General to maintain. The Department of the Attorney General routinely provides legal advice to the Department on numerous returns. The Department requests that this paragraph be deleted or, alternatively, be amended to only apply to persons and agencies under this section other than the Department of the Attorney General.

Third, the Department notes that the proposed amendment to section 235-116, HRS, is necessary to clarify that the information filed with other state agencies is confidential. Hawaii income tax credits are often certified prior to filing of the credit claim with the Department in order to determine whether the taxpayer qualifies for the credit and to administer aggregate caps of such tax credits. The information being submitted to the other state agencies contains personal identifying information, as well as business and trade information that is generally not for public dissemination.

Finally, it is important to note that this amendment would not preclude the Legislature from enacting legislation that specifically states that certain information provided by a taxpayer would be made public. For example, a new tax credit could contain language that would require a taxpayer to submit a report to a state agency, which would be published, as a prerequisite to claiming a tax credit.

Thank you for the opportunity to provide testimony in support of this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: INCOME, ADMINISTRATION, Disclosure of Tax Return Information

BILL NUMBER: SB 2924, HD-1

INTRODUCED BY: House Committee on Judiciary

EXECUTIVE SUMMARY: Technical amendments to allow explicitly certain forms of interagency disclosure, and to specify that income tax information is confidential even in the hands of another agency.

BRIEF SUMMARY: Amends section 231-18, Hawaii Revised Statutes, to allow disclosure of tax return information to the Department of the Attorney General, federal, state, or local officials, and other persons in specified situations. Specifies that the director of taxation may adopt rules, pursuant to chapter 91, to ensure that any parties to which a tax return or tax return information is disclosed shall take adequate measures to safeguard the tax return or tax return information disclosed.

Provides that each person and agency that receives information pursuant to this section shall, pursuant to procedures approved by the director of taxation: (1) establish and maintain a permanent system of standardized records to track all requests for returns or return information made by the person or agency pursuant to this section, which shall record the reason for each request, the date of the request, and a description of the information disclosed in response to the person's or agency's request; (2) establish and maintain a secure place to store the return or return information received by the person or agency; and (3) restrict access to the requested taxpayer information to only those persons who need the information to execute their responsibilities.

Amends section 235-116, Hawaii Revised Statutes, to clarify that all information submitted, collected, or maintained under chapter 235, Hawaii Revised Statutes, with any state agency is confidential. Also amends section 235-116, Hawaii Revised Statutes, to clarify that all information filed under chapter 235, Hawaii Revised Statutes, with any state agency is confidential.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This bill is sponsored by the Department of Taxation TAX-04 (16).

According to the Department's justification sheet accompanying the bill, the amendment to section 231-18 will allow disclosure of tax return information to the Department of the Attorney General for certain court proceedings, to federal or state officials for federal or state judicial or administrative tax proceedings, to federal, state, or local law enforcement officials for investigation or prosecution of identity theft or fraudulent tax refund claims, or to other persons to the extent necessary to provide services to the department for purposes of tax administration.

This provision appears to be comparable to federal provisions allowing disclosure of tax information (section 6103, Internal Revenue Code).

Also, the Department asserts that the amendment to section 235-116, HRS, is needed to clarify that all information filed under the Income Tax Law with any state agency is confidential. The proposed amendment extends this protection to any tax returns and return information required to be collected or maintained under the Income Tax Law. “Confidential” in this context means that the state agencies are prohibited from disclosing the information to others, although the same information is obtainable from the reporting company’s files or personnel by judicial process. *St. Regis Paper Co. v. United States*, 368 U.S. 208, 218-19 (1961) (discussing IRC sections 6103 and 7213(a)).

Digested 3/30/2016