

JAN 19 2017

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, pursuant to Act
2 245, Session Laws of Hawaii 2016, beginning in 2019, the auditor
3 is required to review certain credits, exclusions, and
4 deductions under the income tax and financial institutions tax.
5 Pursuant to Act 261, Session Laws of Hawaii 2016, beginning in
6 2018, the auditor is also required to review certain exemptions,
7 exclusions, and credits under the general excise and use taxes,
8 public service company tax, and insurance premium tax.

9 The legislature has chosen to delay the review schedules
10 because relevant tax impact data may not be readily available in
11 2018. The department of taxation is undertaking a tax system
12 modernization project that will be capable of efficiently
13 collecting and reporting data on the tax expenditures from
14 exemptions, exclusions, credits, and deductions. Thus, the
15 legislature finds it prudent to delay the review schedules until
16 after the tax system modernization project reaches a higher
17 level of production.



1 The legislature also finds that the organic foods
2 production tax credit should be added to the review schedule.
3 The tax credit was established by Act 258, Session Laws of
4 Hawaii 2016, and the schedule of income tax credit reviews was
5 established by Act 245, Session Laws of Hawaii 2016. Because of
6 the near simultaneous passage during the Regular Session of 2016
7 of the bills that became Acts 245 and 258, the organic foods
8 production tax credit was not included in the review schedule of
9 Act 245.

10 The legislature notes that the auditor has raised concerns
11 regarding the criterion to be used to determine whether tax
12 measures are achieving their legislative purpose. The auditor
13 has indicated that the available legislative history is not
14 helpful in identifying the purposes of some tax exemptions,
15 exclusions, credits, and deductions, particularly the older
16 ones. It is the legislature's intent to provide the auditor
17 with more discretion to identify the purpose of the exemptions,
18 exclusions, credits, and deductions.

19 The purpose of this Act is to amend the provisions of the
20 auditor's review of exemptions, exclusions, credits, and



1 deductions established under Acts 245 and 261, Session Laws of
2 Hawaii 2016, by:

3 (1) Delaying the review schedules established under Act
4 245 and Act 261;

5 (2) Providing the auditor with access to department of
6 taxation records that are necessary to conduct its
7 review;

8 (3) Adding the organic foods production tax credit that
9 was enacted by Act 258, Session Laws of Hawaii 2016,
10 to the review schedule; and

11 (4) Clarifying the review criterion regarding the
12 achievement of the legislative purpose of the
13 exemption, exclusion, credit, or deduction.

14 SECTION 2. Chapter 231, Hawaii Revised Statutes, is
15 amended by adding a new section to the part entitled "General
16 Provisions" to be appropriately designated and to read as
17 follows:

18 "§231- Auditor access to tax records or other
19 information for reviews of exemptions, exclusions, credits, and
20 deductions. (a) Notwithstanding any other law to the contrary,
21 the department shall provide to the auditor any tax records and



1 other information maintained by the department that are
2 requested by the auditor for the reviews of:

3 (1) Exemptions, exclusions, and credits under the general
4 excise and use taxes, public service company tax, and
5 insurance premium tax, as provided by chapter 23, part
6 VI; and

7 (2) Credits, exclusions, and deductions under the income
8 tax and financial institutions tax, as provided by
9 chapter 23, part VII.

10 (b) Notwithstanding any other law to the contrary, the
11 auditor may include in a report of a review that is submitted to
12 the legislature data that:

13 (1) Are aggregated from the records or other information
14 received from the department of taxation pursuant to
15 subsection (a); and

16 (2) Do not explicitly identify any specific taxpayer or
17 beneficiary of a tax exemption, exclusion, credit, or
18 deduction."

19 SECTION 3. Section 23-71, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:



1 "(b) In the review of an exemption, exclusion, or credit,
2 the auditor shall:

3 (1) Determine the amount of tax expenditure for the
4 exemption, exclusion, or credit for each of the
5 previous three [~~fiscal~~] calendar years;

6 (2) Estimate the amount of tax expenditure for the
7 exemption, exclusion, or credit for the current fiscal
8 year and the next two fiscal years;

9 (3) Determine, to the extent possible, whether the
10 exemption, exclusion, or credit has achieved and
11 continues to achieve the purpose for which it was
12 enacted by the legislature[?], as reasonably
13 identified by the auditor;

14 (4) Determine whether the exemption, exclusion, or credit
15 is necessary to promote or preserve tax equity or
16 efficiency;

17 (5) If the exemption, exclusion, or credit was enacted
18 because of its purported economic or employment
19 benefit to the State:

20 (A) Determine whether a benefit has resulted, and if
21 so, quantify to the extent possible the estimated



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1 benefit directly attributable to the exemption,
2 exclusion, or credit; and

3 (B) Comment on whether the benefit, if any, outweighs
4 the cost of the exemption, exclusion, or credit;
5 and

6 (6) Estimate the annual cost of the exemption, exclusion,
7 or credit per low-income resident of the State. For
8 purposes of this paragraph, a "low-income resident of
9 the State" means an individual who is a resident of
10 the State and:

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

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

17 The cost shall be estimated by dividing the annual tax
18 expenditure for the exemption, exclusion, or credit
19 for each fiscal year under review by the number of
20 low-income residents of the State in the fiscal year.

21 The estimate determined pursuant to this paragraph is



1 intended to display the effect on low-income residents
2 of the State if they directly receive, either through
3 tax reduction or negative tax, the dollars saved by
4 elimination of the exemption, exclusion, or credit."

5 SECTION 4. Section 23-72, Hawaii Revised Statutes, is
6 amended by amending its title and subsection (a) to read as
7 follows:

8 "~~§23-72~~ Review for ~~2018~~ 2019 and every tenth year
9 thereafter. (a) The exemptions and exclusions under the
10 general excise and use taxes listed in subsection (c) shall be
11 reviewed in ~~2018~~ 2019 and every tenth year thereafter."

12 SECTION 5. Section 23-73, Hawaii Revised Statutes, is
13 amended by amending its title and subsection (a) to read as
14 follows:

15 "~~§23-73~~ Review for ~~2019~~ 2020 and every tenth year
16 thereafter. (a) The exemptions, exclusions, and credits under
17 the general excise tax listed in subsection (c) shall be
18 reviewed in ~~2019~~ 2020 and every tenth year thereafter."

19 SECTION 6. Section 23-74, Hawaii Revised Statutes, is
20 amended by amending its title and subsection (a) to read as
21 follows:

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1 " [H]§23-74 [H] Review for [2020] 2021 and every tenth year
2 thereafter. (a) The exemptions and exclusions under the
3 general excise tax, public service company tax, or insurance
4 premium tax listed in subsection (c) shall be reviewed in [2020]
5 2021 and every tenth year thereafter."

6 SECTION 7. Section 23-75, Hawaii Revised Statutes, is
7 amended by amending its title and subsection (a) to read as
8 follows:

9 " [H]§23-75 [H] Review for [2021] 2022 and every tenth year
10 thereafter. (a) The exemptions or exclusions under the general
11 excise and use taxes listed in subsection (c) shall be reviewed
12 in [2021] 2022 and every tenth year thereafter."

13 SECTION 8. Section 23-76, Hawaii Revised Statutes, is
14 amended by amending its title and subsection (a) to read as
15 follows:

16 " [H]§23-76 [H] Review for [2022] 2023 and every tenth year
17 thereafter. (a) The exemptions or exclusions under the general
18 excise tax listed in subsection (c) shall be reviewed in [2022]
19 2023 and every tenth year thereafter."



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1 SECTION 9. Section 23-77, Hawaii Revised Statutes, is
2 amended by amending its title and subsection (a) to read as
3 follows:

4 "[+]§23-77[+] Review for [~~2023~~] 2024 and every tenth year
5 thereafter. (a) The exemptions or exclusions under the general
6 excise and use taxes listed in subsection (c) shall be reviewed
7 in [~~2023~~] 2024 and every tenth year thereafter."

8 SECTION 10. Section 23-78, Hawaii Revised Statutes, is
9 amended by amending its title and subsection (a) to read as
10 follows:

11 "[+]§23-78[+] Review for [~~2024~~] 2025 and every tenth year
12 thereafter. (a) The exemptions or exclusions under the general
13 excise tax listed in subsection (c) shall be reviewed in [~~2024~~]
14 2025 and every tenth year thereafter."

15 SECTION 11. Section 23-79, Hawaii Revised Statutes, is
16 amended by amending its title and subsection (a) to read as
17 follows:

18 "[+]§23-79[+] Review for [~~2025~~] 2026 and every tenth year
19 thereafter. (a) The exemptions, exclusions, or credits under
20 the general excise and use taxes and insurance premium tax



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1 listed in subsection (c) shall be reviewed in [~~2025~~] 2026 and
2 every tenth year thereafter."

3 SECTION 12. Section 23-80, Hawaii Revised Statutes, is
4 amended by amending its title and subsection (a) to read as
5 follows:

6 "[~~§~~23-80[~~§~~] Review for [~~2026~~] 2027 and every tenth year
7 thereafter. (a) The exemptions or exclusions under the general
8 excise and use taxes listed in subsection (c) shall be reviewed
9 in [~~2026~~] 2027 and every tenth year thereafter."

10 SECTION 13. Section 23-81, Hawaii Revised Statutes, is
11 amended by amending its title and subsection (a) to read as
12 follows:

13 "[~~§~~23-81[~~§~~] Review for [~~2027~~] 2028 and every tenth year
14 thereafter. (a) The exemptions or exclusions under the general
15 excise tax listed in subsection (c) shall be reviewed in [~~2027~~]
16 2028 and every tenth year thereafter."

17 SECTION 14. Section 23-91, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) In the review of a credit, exclusion, or deduction,
20 the auditor shall:



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- 1 (1) Determine the amount of tax expenditure for the
2 credit, exclusion, or deduction for each of the
3 previous three [~~fiscal~~] calendar years;
- 4 (2) Estimate the amount of tax expenditure for the credit,
5 exclusion, or deduction for the current fiscal year
6 and the next two fiscal years;
- 7 (3) Determine, to the extent possible, whether the credit,
8 exclusion, or deduction has achieved and continues to
9 achieve the purpose for which it was enacted by the
10 legislature [7], as reasonably identified by the
11 auditor;
- 12 (4) Determine whether the credit, exclusion, or deduction
13 is necessary to promote or preserve tax equity or
14 efficiency;
- 15 (5) If the credit, exclusion, or deduction was enacted
16 because of its purported economic or employment
17 benefit to the State:
 - 18 (A) Determine whether a benefit has resulted, and if
19 so, quantify to the extent possible the estimated
20 benefit directly attributable to the credit,
21 exclusion, or deduction; and



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1 (B) Comment on whether the benefit, if any, outweighs
2 the cost of the credit, exclusion, or deduction;
3 and

4 (6) Estimate the annual cost of the credit, exclusion, or
5 deduction per low-income resident of the State. For
6 purposes of this paragraph, a "low-income resident of
7 the State" means an individual who is a resident of
8 the State and:

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

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

15 The cost shall be estimated by dividing the annual tax
16 expenditure for the credit, exclusion, or deduction
17 for each fiscal year under review by the number of
18 low-income residents of the State in the fiscal year.

19 The estimate determined pursuant to this paragraph is
20 intended to display the effect on low-income residents
21 of the State if they directly receive, either through



1 tax reduction or negative tax, the dollars saved by
2 elimination of the credit, exclusion, or deduction."

3 SECTION 15. Section 23-92, Hawaii Revised Statutes, is
4 amended by amending its title and subsection (a) to read as
5 follows:

6 "[+]§23-92[+] Review for [~~2019~~] 2020 and every fifth year
7 thereafter. (a) The credits under the income tax and financial
8 institutions tax listed in subsection (c) shall be reviewed in
9 [~~2019~~] 2020 and every fifth year thereafter."

10 SECTION 16. Section 23-93, Hawaii Revised Statutes, is
11 amended by amending its title and subsection (a) to read as
12 follows:

13 "[+]§23-93[+] Review for [~~2020~~] 2021 and every fifth year
14 thereafter. (a) The credits, exclusions, and deductions under
15 the income tax and financial institutions tax listed in
16 subsection (c) shall be reviewed in [~~2020~~] 2021 and every fifth
17 year thereafter."

18 SECTION 17. Section 23-94, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending its title and subsection (a) to read:



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1 " [f]§23-94 [t] Review for [2021] 2022 and every fifth year
2 thereafter. (a) The credits and exclusions under the income
3 tax listed in subsection (c) shall be reviewed in [2021] 2022
4 and every fifth year thereafter."

5 2. By amending subsection (c) to read:

6 "(c) This section shall apply to the following:

- 7 (1) Section 235-4.5(a)--Exclusion of intangible income
8 earned by a trust sited in this State;
- 9 (2) Section 235-4.5(b)--Exclusion of intangible income of
10 a foreign corporation owned by a trust sited in this
11 State;
- 12 (3) Section 235-4.5(c)--Credit to a resident beneficiary
13 of a trust for income taxes paid by the trust to
14 another state;
- 15 (4) Sections 235-55 and 235-129--Credit for income taxes
16 paid by a resident taxpayer to another jurisdiction;
- 17 (5) Section 235-71(c)--Credit for a regulated investment
18 company shareholder for the capital gains tax paid by
19 the company;



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- 1 (6) Section 235-110.6--Credit for fuel taxes paid by a
2 commercial fisher;
- 3 (7) Section 235-110.93--Credit for important agricultural
4 land qualified agricultural cost;
- 5 (8) Section 235-110.94--Credit for organically produced
6 agricultural products;
- 7 [~~(8)~~] (9) Section 235-129(b)--Credit to a shareholder of an
8 S corporation [~~shareholder~~] for the shareholder's pro
9 rata share of the tax credit earned by the S
10 corporation in this State; and
- 11 [~~(9)~~] (10) Section 209E-10--Credit for a qualified business
12 in an enterprise zone; provided that the review of
13 this credit pursuant to this part shall be limited in
14 scope to income tax credits."

15 SECTION 18. Section 23-95, Hawaii Revised Statutes, is
16 amended by amending its title and subsection (a) to read as
17 follows:

18 "~~§~~23-95~~§~~ Review for ~~[2022]~~ 2023 and every fifth year
19 thereafter. (a) The credits and deductions under the income
20 tax and financial institutions tax listed in subsection (c)



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1 shall be reviewed in [~~2022~~] 2023 and every fifth year
2 thereafter."

3 SECTION 19. Section 23-96, Hawaii Revised Statutes, is
4 amended by amending its title and subsection (a) to read as
5 follows:

6 "[~~§~~23-96[~~]~~] Review for [~~2023~~] 2024 and every fifth year
7 thereafter. (a) The credits under the income tax listed in
8 subsection (c) shall be reviewed in [~~2023~~] 2024 and every fifth
9 year thereafter."

10 SECTION 20. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$ or so much
12 thereof as may be necessary for fiscal year 2018-2019 for the
13 review of tax exemptions, exclusions, credits, and deductions,
14 as required by chapter 23, parts VI and VII, Hawaii Revised
15 Statutes.

16 The sum appropriated shall be expended by the auditor for
17 the purposes of this Act.

18 SECTION 21. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

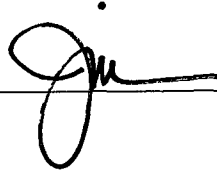


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1 SECTION 22. This Act shall take effect upon its approval;
2 provided that section 20 shall take effect on July 1, 2018.

3

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'Jim', is written over a horizontal line.

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Report Title:

Review of Tax Exemptions, Exclusions, Credits, and Deductions;
Amendments; Appropriation

Description:

Delays the reviews by the Auditor of tax exemptions, exclusions, credits, and deductions. Provides the Auditor with access to DOTAX records for the reviews and authorizes the Auditor to include data from the records in its reports to the legislature that do not explicitly identify any specific taxpayer. Adds the organic foods production income tax credit to the schedule of review. Amends the review criterion regarding the legislative purpose of an exemption, exclusion, credit, or deduction to provide more discretion to the Auditor. Appropriates funds to the Auditor for fiscal year 2018-2019.

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

