
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 criteria 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 in identifying the purpose of the
18 exemptions, 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) Requiring the auditor to provide access to department
4 of taxation records that are necessary to conduct its
5 review;

6 (2) Clarifying the review criteria regarding the
7 achievement of the legislative purpose of the
8 exemption, exclusion, credit, or deduction;

9 (3) Delaying the review schedules established under Act
10 245 and Act 261; and

11 (4) Adding the organic foods production tax credit that
12 was enacted by Act 258, Session Laws of Hawaii 2016,
13 to the review schedule.

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 Any information provided to the auditor under this section
11 marked confidential by the department shall be kept confidential
12 by the auditor, except as provided in paragraph (b).

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

16 (1) The auditor deems necessary and relevant for the
17 purpose of legislative review, including information
18 received from the department of taxation pursuant to
19 subsection (a); and



1 (2) Does not explicitly identify any specific taxpayer or
 2 beneficiary of a tax exemption, exclusion, credit, or
 3 deduction;
 4 provided that any information marked confidential by the
 5 department shall be kept confidential by the legislature."

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

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

- 10 (1) Determine the amount of tax expenditure for the
- 11 exemption, exclusion, or credit for each of the
- 12 previous three [~~fiscal~~] calendar years;
- 13 (2) Estimate the amount of tax expenditure for the
- 14 exemption, exclusion, or credit for the current fiscal
- 15 year and the next two fiscal years;
- 16 (3) Determine, to the extent possible, whether the
- 17 exemption, exclusion, or credit has achieved and
- 18 continues to achieve the purpose for which it was
- 19 enacted by the legislature[+], as reasonably
- 20 identified by the auditor;



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

4 (5) If the exemption, exclusion, or credit 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 exemption,
10 exclusion, or credit; and

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

14 (6) Estimate the annual cost of the exemption, exclusion,
15 or credit 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 exemption, exclusion, or credit
 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 exemption, exclusion, or credit."

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

16 "[+]§23-72[+] **Review for [2018] 2019 and every tenth year**
 17 **thereafter.** (a) The exemptions and exclusions under the
 18 general excise and use taxes listed in subsection (c) shall be
 19 reviewed in [2018] 2019 and every tenth year thereafter."



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

4 "[+]§23-73[+] Review for [~~2019~~] 2020 and every tenth year
5 thereafter. (a) The exemptions, exclusions, and credits under
6 the general excise tax listed in subsection (c) shall be
7 reviewed in [~~2019~~] 2020 and every tenth year thereafter."

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

11 "[+]§23-74[+] Review for [~~2020~~] 2021 and every tenth year
12 thereafter. (a) The exemptions and exclusions under the
13 general excise tax, public service company tax, or insurance
14 premium tax listed in subsection (c) shall be reviewed in [~~2020~~]
15 2021 and every tenth year thereafter."

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

19 "[+]§23-75[+] Review for [~~2021~~] 2022 and every tenth year
20 thereafter. (a) The exemptions or exclusions under the general



1 excise and use taxes listed in subsection (c) shall be reviewed
2 in [~~2021~~] 2022 and every tenth year thereafter."

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

6 "~~[+]§23-76[+]~~ **Review for [2022] 2023 and every tenth year**
7 **thereafter.** (a) The exemptions or exclusions under the general
8 excise tax listed in subsection (c) shall be reviewed in [~~2022~~]
9 2023 and every tenth year thereafter."

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

13 "~~[+]§23-77[+]~~ **Review for [2023] 2024 and every tenth year**
14 **thereafter.** (a) The exemptions or exclusions under the general
15 excise and use taxes listed in subsection (c) shall be reviewed
16 in [~~2023~~] 2024 and every tenth year thereafter."

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

20 "~~[+]§23-78[+]~~ **Review for [2024] 2025 and every tenth year**
21 **thereafter.** (a) The exemptions or exclusions under the general



1 excise tax listed in subsection (c) shall be reviewed in [~~2024~~]
2 2025 and every tenth year thereafter."

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

6 "[~~§~~23-79] **Review for [~~2025~~ 2026 and every tenth year**
7 **thereafter.** (a) The exemptions, exclusions, or credits under
8 the general excise and use taxes and insurance premium tax
9 listed in subsection (c) shall be reviewed in [~~2025~~ 2026 and
10 every tenth year thereafter."

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

14 "[~~§~~23-80] **Review for [~~2026~~ 2027 and every tenth year**
15 **thereafter.** (a) The exemptions or exclusions under the general
16 excise and use taxes listed in subsection (c) shall be reviewed
17 in [~~2026~~ 2027 and every tenth year thereafter."

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



1 "~~[+]~~§23-81~~[+]~~ Review for ~~[2027]~~ 2028 and every tenth year
2 thereafter. (a) The exemptions or exclusions under the general
3 excise tax listed in subsection (c) shall be reviewed in ~~[2027]~~
4 2028 and every tenth year thereafter."

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

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

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



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

16 "[+]§23-92[+] Review for [~~2019~~] 2020 and every fifth year
 17 thereafter. (a) The credits under the income tax and financial
 18 institutions tax listed in subsection (c) shall be reviewed in
 19 [~~2019~~] 2020 and every fifth year thereafter."



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

4 "[+]§23-93[+] Review for [~~2020~~] 2021 and every fifth year
5 thereafter. (a) The credits, exclusions, and deductions under
6 the income tax and financial institutions tax listed in
7 subsection (c) shall be reviewed in [~~2020~~] 2021 and every fifth
8 year thereafter."

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

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

12 "[+]§23-94[+] Review for [~~2021~~] 2022 and every fifth year
13 thereafter. (a) The credits and exclusions under the income
14 tax listed in subsection (c) shall be reviewed in [~~2021~~] 2022
15 and every fifth year thereafter."

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

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

18 (1) Section 235-4.5(a)--Exclusion of intangible income
19 earned by a trust sited in this State;



- 1 (2) Section 235-4.5(b)--Exclusion of intangible income of
2 a foreign corporation owned by a trust sited in this
3 State;
- 4 (3) Section 235-4.5(c)--Credit to a resident beneficiary
5 of a trust for income taxes paid by the trust to
6 another state;
- 7 (4) Sections 235-55 and 235-129--Credit for income taxes
8 paid by a resident taxpayer to another jurisdiction;
- 9 (5) Section 235-71(c)--Credit for a regulated investment
10 company shareholder for the capital gains tax paid by
11 the company;
- 12 (6) Section 235-110.6--Credit for fuel taxes paid by a
13 commercial fisher;
- 14 (7) Section 235-110.93--Credit for important agricultural
15 land qualified agricultural cost;
- 16 (8) Section 235-110.94--Credit for organically produced
17 agricultural products;
- 18 [+8+] (9) Section 235-129(b)--Credit to a shareholder of an
19 S corporation [shareholder] for the shareholder's pro
20 rata share of the tax credit earned by the S
21 corporation in this State; and



1 [~~9~~] (10) Section 209E-10--Credit for a qualified business
 2 in an enterprise zone; provided that the review of
 3 this credit pursuant to this part shall be limited in
 4 scope to income tax credits."

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

8 "~~{}~~\$23-95~~{}~~ Review for [~~2022~~] 2023 and every fifth year
 9 thereafter. (a) The credits and deductions under the income
 10 tax and financial institutions tax listed in subsection (c)
 11 shall be reviewed in [~~2022~~] 2023 and every fifth year
 12 thereafter."

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

16 "~~{}~~\$23-96~~{}~~ Review for [~~2023~~] 2024 and every fifth year
 17 thereafter. (a) The credits under the income tax listed in
 18 subsection (c) shall be reviewed in [~~2023~~] 2024 and every fifth
 19 year thereafter."

20 SECTION 20. There is appropriated out of the general
 21 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2018-2019 for
2 the review of tax exemptions, exclusions, credits, and
3 deductions, as required by chapter 23, parts VI and VII, Hawaii
4 Revised Statutes; provided that the auditor shall submit a
5 report to the legislature no later than twenty days prior to the
6 regular session of 2018 regarding the status of the reviews
7 required pursuant to Act 245, Session Laws of Hawaii 2016, and
8 Act 261, Session Laws of Hawaii 2016.

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

11 SECTION 21. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

15



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 criteria 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; requires report to legislature. (SD1)

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

