H.B. NO. 3192

A BILL FOR AN ACT

RELATING TO REVENUE AUTHORITIES ADMINISTERED BY THE GOVERNMENT.

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

SECTION 1. The purpose of this Act is to make technical corrections or additions to various provisions of the Hawaii Revised Statutes, in order to improve the administration of Hawaii taxes and other revenue authorities. These technical amendments are intended to clarify, simplify, and conform Hawaii tax law, where necessary.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§231- Erroneous claim for refund or credit.** If a claim for refund or credit with respect to tax is made for an excessive amount, unless it is shown by the person making the claim that the claim for such excessive amount has a reasonable basis, the person making such claim shall be liable for a penalty in an amount equal to twenty per cent of the excessive amount. For purposes of this section, the term "excessive amount" means the amount by which the amount of the claim for

1 refund or credit for any taxable year exceeds the amount of such
2 claim allowable for such taxable year."
3 SECTION 3. Section 232-7, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:
5 "(b) Each board shall hold public meetings at some central
6 location in its taxation district, commencing not later than
7 April 9 of each year and shall hear, as speedily as possible,
8 all appeals presented for each year. A taxpayer's identity and
9 final documents submitted in support or opposition of an appeal
10 shall be public information. Each board shall have the power
11 and authority to decide all questions of fact and all questions
12 of law, excepting questions involving the Constitution or laws
13 of the United States, necessary to the determination of the
14 objections raised by the taxpayer in the notice of appeal;
15 provided that no board shall have power to determine or declare
16 an assessment illegal or void. Without prejudice to the
17 generality of the foregoing, each board shall have power to
18 allow or disallow exemptions pursuant to law whether or not
19 previously allowed or disallowed by the assessor and to increase
20 or lower any assessment."
21 SECTION 4. Section 232-16, Hawaii Revised Statutes, is
22 amended to read as follows:

"§232-16 **Appeal to tax appeal court.** A taxpayer or county, in all cases, may appeal directly to the tax appeal court without appealing to a state board of review, or any equivalent administrative body established by county ordinance. An appeal to the tax appeal court is properly commenced by filing, on or before the date fixed by law for the taking of the appeal, a written notice of appeal in the office of the tax appeal court and by service of the notice of appeal on the director of taxation and, in the case of an appeal from a decision involving the county as a party, the real property assessment division of the county involved. An appealing taxpayer shall also pay the costs in the amount fixed by section 232-22.

The notice of appeal to the tax appeal court shall be sufficient if it meets the requirements prescribed for a notice of appeal to the board of review and may be amended at any time; provided that it sets forth the following additional information, to wit:

A brief description of the property involved in sufficient detail to identify the same and the valuation placed thereon by the assessor.

The notice of appeal shall be accompanied by a copy of the taxpayer's return, if any has been filed[~~.~~]; provided that an

individual taxpayer is authorized to redact all but the last four digits of the taxpayer's social security number from any accompanying tax return.

An appeal to the tax appeal court shall be deemed to have been taken in time if the notice thereof and costs and the copy of the notice shall have been deposited in the mail, postage prepaid, properly addressed to the tax appeal court, the director of taxation, or the real property assessment division of the county involved, and to the taxpayer or taxpayers in the case of an appeal taken by a county, respectively, on or before the date fixed by law for the taking of the appeal.

An appeal to the tax appeal court shall bring up for review all questions of fact and all questions of law, including constitutional questions, necessary to the determination of the objections raised by the taxpayer or county in the notice of appeal."

SECTION 5. Section 232-18, Hawaii Revised Statutes, is amended to read as follows:

"**§232-18 Certificate of appeal to tax appeal court.** Upon the perfecting of an appeal to the tax appeal court, the tax assessor of the district from which the appeal is taken shall immediately send up to the tax appeal court a certificate in

which there shall be set forth the information required by section 232-16 to be set forth in the notice of appeal where an appeal is taken direct from the assessment to the tax appeal court.

The certificate shall be accompanied by the taxpayer's return, if any has been filed[~~,~~]; provided that the department of taxation is authorized to redact all but the last four digits of an individual taxpayer's social security number from any accompanying tax return, a copy of the notice of appeal to the state board of review, or equivalent administrative body established by county ordinance, and any amendments thereto, and the decision or action, if any, of the state board of review or equivalent administrative body. Failure of the assessor to comply herewith shall not prejudice or affect the taxpayer's, county's, or assessor's appeal and the certificate of appeal may be amended at any time up to the final determination of the appeal."

SECTION 6. Section 235-2.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department of taxation shall submit to each regular session of the legislature a bill to amend sections 235-2.3, 235-2.4, and 235-2.45 and such other sections and

subsections of this chapter as may be necessary to adopt the Internal Revenue Code as it exists on the December 31 preceding such regular session. In submitting the bill the department may provide that certain amendments to the Internal Revenue Code by Congress during the preceding calendar year shall not be operative in this State or as operative are limited in their operation. The department [~~shall~~] may also prepare a digest and explanation of the amended provisions of the Internal Revenue Code recommended for operation, as well as those provisions which are limited in their operation, or which are not recommended for operation, and shall submit [~~with the bill required by this subsection the digest,~~] to the legislature testimony, comments, an explanation, and a statement of revenue impact of the adoption of such bill. In preparing the bill, digest, [~~and~~] or explanation the department may request the assistance of the office of the legislative reference bureau.

It is the intent of the legislature that it shall each year adopt all amendments to the Internal Revenue Code for the calendar year preceding the year in which the legislature meets; provided that the legislature may choose to adopt none of the amendments to the Internal Revenue Code or may provide that certain amendments are limited in their operation."

SECTION 7. Section 235-7.5, Hawaii Revised Statutes, is amended to read as follows:

"**§235-7.5 Certain unearned income of [~~minor~~] children taxed as if parent's income.** (a) In the case of any child to whom this section applies, the tax imposed by this chapter shall be equal to the greater of:

(1) The tax imposed by section 235-51 without regard to this section, or

(2) The sum of:

(A) The tax which would be imposed by section 235-51 if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(B) Such child's share of allocable parental tax.

(b) This section shall apply to any child for any taxable year if:

(1) Such child [~~has not attained age fourteen before the close of the taxable year, and~~]:

(A) Has not attained age eighteen before the close of the taxable year, or

(B) Has:

(i) Attained age eighteen before the close of the taxable year and meets the age requirements of section 152(c)(3) (relating to age requirements for a qualifying dependent child) of the Internal Revenue Code without regard to subparagraph B thereof, for such taxable year; and

(ii) Whose earned income as defined in section 911(d)(2) (relating to defining earned income) of the Internal Revenue Code, for such taxable year does not exceed one-half of the amount of the individual's support within the meaning of section 152(c)(1)(D) (relating to support requirements for a qualifying dependent child) of the Internal Revenue Code, after application of section 152(f)(5) (relating to a special support test for students) of the Internal Revenue Code, for such taxable year.

(2) Either parent of such child is alive at the close of the taxable year.

(3) Such child does not file a joint return for the taxable year.

(c) For the purpose of this section:

(1) The term "allocable parental tax" means the excess of:

(A) The tax which would be imposed by section 235-51 on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this section applies, over,

(B) The tax imposed by section 235-51 on the parent without regard to this section.

For purposes of subparagraph (A), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(2) A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this section applies.

(3) Except as provided in rules, if the parent does not have the same taxable year as the child, the allocable

parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(d) For purposes of this section:

(1) The term "net unearned income" means the excess of:

(A) The portion of the adjusted gross income for the taxable year which is not attributable to earned income as defined in the Internal Revenue Code, over,

(B) The sum of:

(i) The amount in effect for the taxable year under section 63(c)(5)(A) (relating to the limitation on standard deduction in the case of certain dependents) of the Internal Revenue Code as operative under section 235-2.4(a), plus

(ii) The greater of the amount described in clause (i) or, if the child itemizes the child's deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the

portion of adjusted gross income referred to in subparagraph (A).

(2) The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(3) In the case of any child who is a beneficiary of a qualified disability trust as defined in section 642(b)(2)(C)(ii) (with respect to qualified disability trusts) of the Internal Revenue Code, any amount included in the income of such child under sections 652 and 662 (each with respect to inclusion in income of certain trust distributions) of the Internal Revenue Code during a taxable year shall be considered earned income of such child for such taxable year.

(e) For purposes of this section, the parent whose taxable income shall be taken into account shall be:

(1) In the case of parents who are not married (within the meaning of section 235-93), the custodial parent (within the meaning of section 152(e) (with respect to the support test in case of child of divorced parents, etc.) of the Internal Revenue Code) of the child, and

1 (2) In the case of married individuals filing separately,
2 the individual with the greater taxable income.
3 (f) The parent of any child to whom this section applies
4 for any taxable year shall provide the social security number of
5 such parent to such child and such child shall include such
6 parent's social security number on the child's return of tax
7 imposed by this section for such taxable year.
8 (g) Election to claim certain unearned income of child on
9 parent's return.
10 (1) If:
11 (A) Any child to whom this section applies has gross
12 income for the taxable year only from interest and
13 dividends (including Alaska Permanent Fund
14 dividends),
15 (B) Such gross income is more than $500 and less than
16 $5,000,
17 (C) No estimated tax payments for such year are made
18 in the name and social security number of such
19 child, and no amount has been deducted and
20 withheld under section 3406 (with respect to
21 backup withholding) of the Internal Revenue Code,
22 and

(D) The parent of such child (as determined under subsection (e)) elects the application of paragraph (2),

such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under this chapter.

(2) In the case of a parent making the election under this subsection:

(A) The gross income of each child to whom such election applies (to the extent the gross income of such child exceeds $1,000) shall be included in such parent's gross income for the taxable year,

(B) The tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of:

(i) The amount determined under section 235-51 after the application of subparagraph (A), plus

(ii) For each such child, the lesser of $10 or two per cent of the excess of the gross income of such child over $500.

(3) The director shall prescribe such rules as may be necessary or appropriate to carry out the purposes of this subsection."

SECTION 8. Section 235-20.5, Hawaii Revised Statutes, is amended to read as follows:

"**§235-20.5 Tax administration special fund; established.** There is established a tax administration special fund, into which shall be deposited fees collected under sections 235-20, 235-110.9, and 235-110.91, and penalties collected under section 2 of Act 206, [~~(~~]Session Laws of Hawaii 2007[~~)~~]. The moneys in the fund shall be expended by the department to offset the costs associated with:

(1) Issuing comfort letters; and

(2) Administering the tax [~~credit~~] credits under [~~section~~] sections 235-110.9[~~,~~] and 235-110.91, including issuing certificates[~~; and~~

~~(3) Issuing certificates under section 235-110.91~~]."

SECTION 9. Section 235-110.7, Hawaii Revised Statutes, is amended as follows:

(1) By amending subsection (a) to read as follows:

"(a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter a capital goods excise tax credit

which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the tax credit shall be determined by [~~the application of the following rates~~] applying four per cent against the cost of the eligible depreciable tangible personal property used by the taxpayer in a trade or business and placed in service within Hawaii after December 31, 1987. [~~For calendar years beginning after: December 31, 1987, the applicable rate shall be three per cent; December 31, 1988, and thereafter, the applicable rate shall be four per cent. For taxpayers with fiscal taxable years, the applicable rate shall be the rate for the calendar year in which the eligible depreciable tangible personal property used in the trade or business is placed in service within Hawaii.~~]

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for eligible depreciable tangible personal property which is placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rules.

In the case of eligible depreciable tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), the amount of the tax credit allowed under this section shall not exceed the amount of use tax actually paid under chapter 238 relating to such tangible personal property.

If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of [~~1954~~,] 1986, as amended, no tax credit shall be allowed for that portion of the cost of property for which the deduction was taken."

(2) By Amending subsection (e) to read as follows:

"(e) As used in this section, the definition of section 38 property (with respect to investment in depreciable tangible personal property) as defined by section 48(a)(1)(A), (a)(1)(B), (a)(3), (a)(4), (a)(7), (a)(8), (a)(10)(A), (b), (c), (f), (l), (m), and (s) of the Internal Revenue Code of 1954, as amended as of December 31, 1984, is operative for the purposes of this section only.

As used in this section:

"Canned computer software" means a pre-written set of instructions or statements, which is capable of causing a

computer to indicate, perform, or achieve a particular function, task, or result that has a general applicability and is made available through a non-exclusive license or other permission to use the pre-written set of instructions, and which has not been prepared at the special request of the purchaser to meet the purchaser's particular needs.

"Cost" means [~~(1) the actual invoice price of the tangible personal property, or (2)~~] the basis from which depreciation is taken under section 167 (with respect to depreciation) or from which a deduction may be taken under section 168 (with respect to accelerated cost recovery system) of the Internal Revenue Code of 1954, as amended, whichever is less.

"Eligible depreciable tangible personal property" is section 38 property as defined by the operative provisions of section 48 and having a depreciable life under section 167 or for which a deduction may be taken under section 168 of the federal Internal Revenue Code of 1954, as amended. "Eligible depreciable tangible personal property" includes canned computer software for taxable years beginning after December 31, 2007; provided that tax at a rate of at least four per cent has been paid under chapter 237 or 238 relating to the transaction involving canned computer software.

"Placed in service" means the earliest of the following taxable years:

(1) The taxable year in which, under the:

(A) Taxpayer's depreciation practice, the period for depreciation; or

(B) Accelerated cost recovery system, a claim for recovery allowances;

with respect to such property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"Purchase" means an acquisition of property.

"Tangible personal property" means tangible personal property which is placed in service within Hawaii after December 31, 1987, and the purchase or importation of which resulted in a transaction which was subject to the imposition and payment of tax at the rate of four per cent under chapter 237 or 238. "Tangible personal property" does not include tangible personal property which is an integral part of a building or structure or tangible personal property used in a foreign trade zone, as defined under chapter 212."

1 SECTION 10. Section 237-13, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§237-13 Imposition of tax.** There is hereby levied and
4 shall be assessed and collected annually privilege taxes against
5 persons on account of their business and other activities in the
6 State measured by the application of rates against values of
7 products, gross proceeds of sales, or gross income, whichever is
8 specified, as follows:
9 (1) Tax on manufacturers.
10 (A) Upon every person engaging or continuing within
11 the State in the business of manufacturing,
12 including compounding, canning, preserving,
13 packing, printing, publishing, milling,
14 processing, refining, or preparing for sale,
15 profit, or commercial use, either directly or
16 through the activity of others, in whole or in
17 part, any article or articles, substance or
18 substances, commodity or commodities, the amount
19 of the tax to be equal to the value of the
20 articles, substances, or commodities,
21 manufactured, compounded, canned, preserved,
22 packed, printed, milled, processed, refined, or

prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.

(B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.

(C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce,

whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:

(i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products;

(ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for

assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values;

(iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce; and

(iv) In all cases in which products leave the State in an unfinished condition, the basis

for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.

(2) Tax on business of selling tangible personal property; producing.

(A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as the sale of tangible personal property is a wholesale sale under section [~~237-4(a)(8)(B), the sale shall be subject to section 237-13.3.~~] 237-4(a), the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds

of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).

(B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.

(C) No manufacturer or producer, engaged in such business in the State and selling the

manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.

(D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value

or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.

(E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.

(F) The department, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the additional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.

(3) Tax upon contractors.

(A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business.

(B) In computing the tax levied under this paragraph, there shall be deducted from the gross income of the taxpayer so much thereof as has been included

in the measure of the tax levied under subparagraph (A), on:

(i) Another taxpayer who is a contractor, as defined in section 237-6;

(ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or

(iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State;

provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.

(C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the

contractor so much thereof as fulfills the following requirements:

(i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and

(ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.

(D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other

disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements the person intended, and for the period of at least one year after completion of the building, structure, or other improvements the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon

the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

(4) Tax upon theaters, amusements, radio broadcasting stations, etc.

(A) Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business, and in the case of a sale

of an amusement at wholesale under section 237-4(a)(13), the tax shall be subject to section 237-13.3.

(B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.

(5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the

State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.

(6) Tax on service business.

(A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business. Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.

(B) The department may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form

prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.

(C) Where any person engaging or continuing within the State in any service business or calling renders those services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering those services and the ultimate recipient of the benefits of those services, so much of the gross income as is received by the

1 person rendering the services shall be subjected
2 to the tax at the rate of one-half of one per cent
3 and all of the gross income received by the
4 intermediary from the principal shall be subjected
5 to a tax at the rate of four per cent. Where the
6 taxpayer is subject to both this subparagraph and
7 to the lowest tax rate under subparagraph (A), the
8 taxpayer shall be taxed under this subparagraph.
9 This subparagraph shall be repealed on January 1,
10 2006.
11 (D) Where any person is engaged in the business of
12 selling interstate or foreign common carrier
13 telecommunication services within and without the
14 State, other than as a home service provider, the
15 tax shall be imposed on that portion of gross
16 income received by a person from service which is
17 originated or terminated in this State and is
18 charged to a telephone number, customer, or
19 account in this State notwithstanding any other
20 state law (except for the exemption under section
21 237-23(a)(1)) to the contrary. If, under the
22 Constitution and laws of the United States, the

1 entire gross income as determined under this
2 paragraph of a business selling interstate or
3 foreign common carrier telecommunication services
4 cannot be included in the measure of the tax, the
5 gross income shall be apportioned as provided in
6 section 237-21; provided that the apportionment
7 factor and formula shall be the same for all
8 persons providing those services in the State.
9 (E) Where any person is engaged in the business of a
10 home service provider, the tax shall be imposed on
11 the gross income received or derived from
12 providing interstate or foreign mobile
13 telecommunications services to a customer with a
14 place of primary use in this State when such
15 services originate in one state and terminate in
16 another state, territory, or foreign country;
17 provided that all charges for mobile
18 telecommunications services which are billed by or
19 for the home service provider are deemed to be
20 provided by the home service provider at the
21 customer's place of primary use, regardless of
22 where the mobile telecommunications originate,

terminate, or pass through; provided further that the income from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-24, shall be apportioned under any apportionment factor or formula adopted under section 237-13(6)(D). Gross income shall not include:

(i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;

(ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;

(iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and

(iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

(7) Tax on insurance producers. Upon every person engaged as a licensed producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to 0.15 per cent of the commissions due to that activity.

(8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person

or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.

(9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

SECTION 11. Section 237-28.1, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§237-28.1**[~~]~~] **Exemption of certain shipbuilding and ship repair business.** There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the gross proceeds arising from shipbuilding and ship repairs rendered to surface and subsurface vessels federally owned or engaged in interstate or international trade."

SECTION 12. Section 286-46, Hawaii Revised Statutes, is amended to read as follows:

"**§286-46 Tax lien and encumbrance record.** (a) The director of finance shall keep a book or record to be known as the "tax lien and encumbrance record" in which the following information shall be entered:

(1) Notices of liens for internal revenue taxes payable to the United States and certificates of release thereof;

(2) Notices of liens [~~or~~], taxes, debts, or judgments payable to the State or county and certificates of release thereof;

(3) Notices of seizure in accordance with law of any registered motor vehicle upon any writ of attachment,

execution, or other process issued under authority of law;

(4) Notices of restraining order or other order affecting the registration of any registered motor vehicle;

(5) Notice of any proceeding or action affecting the title of a registered motor vehicle or the interest of the owner or legal owner thereof; and

(6) Notice of release of any of the foregoing.

(b) With the exception of delinquent taxes and penalties imposed by section 249-10, the record shall show the year, month, day, hour, and minute at which the notice has been filed with the director of finance, shall show the nature and kind of lien or encumbrance claimed, the amount of tax or other claim, with interest, penalties, and costs, and shall identify the registered motor vehicles affected by the lien or encumbrance, and shall contain such further information as the director of finance may require. The record shall be a public record and may be arranged in such manner as the director of finance determines.

The interest of the owner or the legal owner in the motor vehicle shall not be deemed to be affected until the notice referred to in subsection (a)(1) to (5) has been filed with the director of finance in such form as the director of finance shall

prescribe for entry in the tax lien and encumbrance record; provided the director of finance [~~may~~] shall require the payment of delinquent taxes and penalties, debts, or judgments payable to the State or county as a condition precedent to the vehicle's renewal, registration, or transfer of ownership. The director of finance shall charge a fee of $5 for each entry made in the tax lien and encumbrance record, which shall be deposited in the general fund. Neither the State nor any political subdivision shall be charged a fee for any entry made in the tax lien and encumbrance record.

Nothing in this section shall be deemed to alter or amend any statute relating to tax liens or the enforcement thereof."

SECTION 13. Section 487J-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Subsection (a) shall not apply to:

(1) The inclusion of a social security number in documents that are mailed and:

(A) Are specifically requested by the individual identified by the social security number;

(B) Required by state or federal law to be on the document to be mailed;

1 (C) Required as part of an application or enrollment
2 process;
3 (D) Used to establish, amend, or terminate an account,
4 contract, or policy; or
5 (E) Used to confirm the accuracy of the social
6 security number for the purpose of obtaining a
7 credit report pursuant to 15 U.S.C. section
8 1681(b).
9 A social security number that is permitted to be mailed
10 under this paragraph may not be printed, in whole or in
11 part, on a postcard or other mailer not requiring an
12 envelope, or visible on the envelope or without the
13 envelope having been opened;
14 (2) The opening of an account or the provision of or
15 payment for a product or service authorized by an
16 individual;
17 (3) The collection, use, or release of a social security
18 number to investigate or prevent fraud; conduct
19 background checks; conduct social or scientific
20 research; collect a debt; obtain a credit report from
21 or furnish data to a consumer reporting agency pursuant
22 to the Fair Credit Reporting Act, 15 U.S.C. sections

1681 to 1681x, as amended; undertake a permissible purpose enumerated under the federal Gramm Leach Bliley Act, 15 U.S.C. sections 6801 to 6809, as amended; locate an individual who is missing or due a benefit, such as a pension, insurance, or unclaimed property benefit; or locate a lost relative;

(4) A business or government agency acting pursuant to a court order, warrant, subpoena, or when otherwise required by law;

(5) A business or government agency providing the social security number to a federal, state, or local government entity including a law enforcement agency or court, or their agents or assigns;

(6) The collection, use, or release of a social security number in the course of administering a claim, benefit, or procedure relating to an individual's employment, including an individual's termination from employment, retirement from employment, injuries suffered during the course of employment, and other related claims, benefits, or procedures;

(7) The collection, use, or release of a social security number as required by state or federal law;

(8) The sharing of the social security number by business affiliates;

(9) The use of a social security number for internal verification or administrative purposes;

(10) A social security number that has been redacted; [~~and~~]

(11) Documents or records that are recorded or required to be open to the public pursuant to the constitution or laws of the State or court rule or order[~~.~~]; and

(12) The collection, use, or release of a social security number by the department of taxation in administering its duties under title 14."

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval; provided that:

(1) Section 2 of this Act shall apply to claims for refund or credit submitted on or after July 1, 2007;

(2) Section 3, 4, and 5 of this Act shall apply to appeals filed on or after July 1, 2007;

(3) Sections 7 and 9 of this Act shall apply to taxable years beginning after December 31, 2007;

(4) Sections 10 and 11 of this Act shall apply to gross proceeds or gross income received on or after January 1, 2009;

(5) The amendments made to section 235-20.5, Hawaii Revised Statutes, by this Act, shall not be repealed when section 235.20.5, Hawaii Revised Statutes, is reenacted on January 1, 2011, pursuant to Act 206, Session Laws of Hawaii 2007.

INTRODUCED BY: _____

BY REQUEST

JAN 22 2008

Report Title:
Tax Administration; Technical Corrections 2008

Description:
Establishes a twenty per cent penalty for erroneous refund or credit claims. Clarifies that information discussed in a public board of review hearing is public information. Provides authority for taxpayer and the department of taxation to redact parts of a social security number in tax returns filed with the tax appeal court. Amends conformity law to allow discretion in submitting a digest to the legislature and requires testimony by the department of taxation. Makes technical corrections to conform Hawaii tax law to the internal revenue code for purposes of the "Kiddie Tax." Clarifies the uses of funds available in the tax administration special fund. Extends the capital goods excise tax credit to include canned computer software. Clarifies the general excise tax wholesale rate for sales of tangible personal property. Clarifies that the general excise tax exemption for building and repair of a surface vessel applies to subsurface vessels. Clarifies tax lien recording requirements. Adds an exemption for the proper use of social security numbers for tax administration.

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JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO REVENUE AUTHORITIES ADMINISTERED BY THE GOVERNMENT.

PURPOSE: To provide various technical amendments to Hawaii Revised Statutes (HRS), in order to assist the Department of Taxation with administration of Hawaii's taxes and other revenue authorities.

MEANS: Add a new section to chapter 231, Hawaii Revised Statutes (HRS), and amend sections 232-7(b), 232-16, 232-18, 235-2.5(c), 235-7.5, 235-20.5, 235-110.7(a) and (e), 237-13, 237-28.1, 286-46, and 487J-2(b), HRS.

JUSTIFICATION: The purpose of this legislation is to make various technical corrections to provisions in the HRS that relate to the Department of Taxation's ability to administer Hawaii taxes.

A. ERRONEOUS REFUND CLAIMS

Congress recently amended the Internal Revenue Code to allow for a twenty percent penalty on any excessive refund claims. With certain of the tax incentives provided in Title 14, HRS, providing the Department of Taxation with the ability to assess a penalty for refund or credit claims where a taxpayer's claim lacks a reasonable basis will assist with the administration of Hawaii's taxes by providing a deterrent mechanism, which presently does not exist.

B. PUBLIC BOARD OF REVIEW INFORMATION

Current law is ambiguous as to whether certain information discussed at a Taxation Board of Review hearing is public and able to be disseminated. Chapter 232, HRS, is clear that a Board of Review hearing is a

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public meeting. However, other conflicting confidentiality laws preclude the Department of Taxation from discussing the taxpayer's identity or the specific legal arguments presented to the Board of Review. The dilemma arises that if a person was not present at the hearing, the Department of Taxation cannot disclose appeal briefs or taxpayer identity. However, if the same person were at the hearing, the person would know the taxpayer's identity and other material information. This bill clarifies what information is public when discussed at a Board of Review hearing.

C. SOCIAL SECURITY NUMBERS ON APPEAL DOCUMENTS

With the onset of identity theft, administration of tax appeals should likewise conform to protection such sensitive data. Currently, tax appeals require taxpayers to submit a copy of the tax return(s) in dispute in the appeal. Tax returns routinely contain sensitive data, including social security numbers of individuals. This bill authorizes individuals and the department of taxation to redact all but the last four digits of their social security number on any filed tax returns with the Tax Appeal Court.

D. CONFORMITY DIGEST

Current law requires the Department of Taxation to submit a statutory digest summarizing all tax laws passed by Congress in the prior calendar year early in the legislative session. In recent years, the political makeup of Congress has been such that any tax amendments to continue common tax provisions are passed in the waning days of the calendar year. The congressional digest of federal tax laws is extremely complicated and time consuming, taking months to complete. It is not uncommon for Department of Taxation staff to digest

nearly thousands of sections of congressional law. In order to maximize resources and minimize delay to the legislature, this bill amends the law to allow discretion in whether a digest is submitted to the Legislature. However, the bill also amends the law to require the Department of Taxation to fully apprise the Legislature on the conformity measure in summary form by providing explanations, testimony, and revenue impact information.

E. "KIDDIE TAX" AMENDMENTS

In its conformity provisions, Hawaii does not expressly conform to the "Kiddie Tax" assessed by the Internal Revenue Code. However, Hawaii has adopted its own "Kiddie Tax" at section 235-7.5, HRS. In 2006, Congress made various amendments to the "Kiddie Tax" contained in the Internal Revenue Code. This bill makes similar conforming amendments to the changes made by Congress to ensure consistency in the application and assessment of these similar taxes.

F. TAX ADMINISTRATION SPECIAL FUND

Act 206, Session Laws of Hawaii 2007, amended the Tax Administration Special Fund to allow use of the funds for the administration of credits under section 235-110.9, HRS. The Department of Taxation understood the intent of this amendment was to allow use of the funds for administration of other high tech credits, including the refundable credit for research activities under section 235-110.91, HRS. This bill clarifies that the tax administration special fund may be used for administering both high technology tax credits.

G. CANNED SOFWARE ELIGIBILITY FOR THE CAPITAL GOOD EXCISE TAX CREDIT

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Hawaii's capital goods excise tax credit allows a credit equal to the general excise tax paid on depreciable tangible personal property. The credit defines depreciable tangible personal property as of the Internal Revenue Code of 1954, as amended in 1984. Canned computer software was considered depreciable tangible personal property in the Internal Revenue Code of 1986. This bill amends the definition of depreciable tangible personal property to allow for canned computer software to qualify for the capital goods excise tax credit.

H. WHOLESALE GENERAL EXCISE TAX RATE CORRECTION

Current law does not have a corresponding wholesale general excise tax rate of one-half of one per cent for the sales of tangible personal property. This bill provides a conforming amendment to allow for a wholesale general excise tax rate for sales of tangible personal property to conform this provision to other provisions allowing the same.

I. VESSEL EXEMPTION

There currently exists an exemption from the general excise tax for the repair of surface vessels owned by the federal government or for use out-of-state. This bill amends the general excise to make an amendment to clarify that repair of subsurface vessels is likewise included in this exemption.

J. TAX LIEN RECORDING

Encumbrances on real property and motor vehicles are an effective mechanism to significantly increase the likelihood of recovering outstanding tax and other debts. This bill clarifies that debts and judgments owed the state or counties are valid claims for purposes of recordation on the tax lien

encumbrance record. This bill also requires the county directors of finance to require payment of such tax or other debts owed as a condition of removing a tax lien or encumbrance.

K. SOCIAL SECURITY NUMBER USE; CHAPTER 487J, HRS

Chapter 487J, HRS, was enacted in 2006 to limit the use of social security numbers by businesses and government. The Department of Taxation's tax administration processes and procedures rely heavily on the use of the social security number to ensure identification of a taxpayer. This bill makes clarifying amendments to chapter 487J, HRS, that allow the Department of Taxation to utilize social security numbers in the administration of Hawaii taxes.

Impact on the public: Conformity to amendments to the Internal Revenue Code will minimize the burden of taxpayers to comply with the requirements of Hawaii's income tax law. Various technical amendments clarify the application of Hawaii law to the administration of Hawaii taxes. Taxpayers will qualify for the capital good excise tax credit for computer software.

Impact on the department and other agencies: Conforming Hawaii's income tax law to that of the Internal Revenue Code will increase consistency between the two jurisdictions. Minimizing the administrative burden on the Department of Taxation will greatly assist with the administration of Hawaii taxes.

GENERAL FUND: $1,200,000.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: TAX 100.

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OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval, with various provisos.