



GOV. MSG. NO. 867

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 1461 SD2 HD1 CD2

On July 15, 2009, Senate Bill No. 1461, entitled "A Bill for an Act Relating to Taxation" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this law is to advance the general excise tax filing and payment deadline from the last day of the month to the twentieth of the month. This bill also allows the Department of Taxation to require electronic filing and payment of taxes if the taxpayer is already doing the same for federal taxes. Finally, this bill extends the sunset of Act 239, SLH 2007, the general excise tax exemption for common expense reimbursements received by timeshare sub-operators and condominium association managers and sub-managers, by instituting an aggregate cap on exempted amounts for one year.

This bill contains a number of technical and administrative flaws that adversely impact the fair and impartial administration of tax laws in the State of Hawaii.

First, while I supported the concept of advancing the general excise tax filing and payment date from the last day of the month to the twentieth of the month, it is of concern to me that the Department of Taxation and business community are expected to implement this measure for payments due after May 31, 2009. This timeframe is too short and unrealistic for the Department of Taxation to adequately implement this change, as it does not allow taxpayers throughout the State adequate time to prepare for and implement the new payment schedules.

Second, the bill also contains unrealistic deadlines for taxpayers to comply with the requirements to remit their tax payments electronically to the State Department of Taxation. Unrealistic and overzealous timetables create confusion among the taxpaying public and result in additional, unnecessary work for public employees who are helping them to comply.

The Honorable Colleen Hanabusa, President
and Members of the Senate
Page 2

Third, in attempting to control the general fund revenue impact of the extension, the Legislature put a cap of \$400,000 in aggregate tax exemptions on all eligible timeshare owners and condo managers. The cap, if it is to be applied, should have been a cap on the tax credit, not the tax exemption, since the exemption reduces the gross proceeds on which the GET tax is calculated, effectively lowering how much is due the State.

It is also unfortunate and unfair that the general excise tax exemption will be unequally applied to condominium associations governed by Chapter 514A, Hawaii Revised Statutes. Condominium associations created after July 1, 2006 are governed by Chapter 514B and already had the excise tax exemption for reimbursements prior to Act 239. Therefore, the \$400,000 exemption cap will be applied to condominium associations created before July 1, 2006, but not those created thereafter. As a result, I am concerned with the unequal treatment of condominium associations created by this provision.

For the foregoing reasons, I allowed Senate Bill No. 1461 to become law as Act 196, effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a stylized flourish at the end.

LINDA LINGLE

ACT 196

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 1461
S.D. 2
H.D. 1
C.D. 2

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 PART I

2 SECTION 1. The legislature finds that Act 355, Session
3 Laws of Hawaii 1997, authorized the governor to convert the
4 State of Hawaii payroll payment basis from predicted payroll to
5 after-the-fact payroll commencing with the June 30, 1998, pay
6 day in fiscal year 1997-1998, which was delayed to July 1, 1998,
7 in fiscal year 1998-1999. That "payroll lag" measure delayed
8 state expenditures to generate a one-time windfall savings of
9 approximately \$51,500,000.

10 The legislature further finds that advancing the filing and
11 payment of monthly, quarterly, and semi-annual general excise
12 taxes due, from the last calendar day of the month following the
13 month, quarter, or half-year in which taxes accrue to the
14 twentieth day of that month, quarter, or half-year will generate
15 a one-time estimated revenue of \$75,000,000 to \$100,000,000 in a
16 way analogous to the effect of the payroll lag measure, but in



1 reverse fashion, by advancing receipt of revenues within one
2 fiscal year.

3 The purpose of this Act is to:

4 (1) Advance the filing and payment of monthly, quarterly,
5 and semi-annual general excise taxes due to an earlier
6 date to generate a one-time windfall revenue for the
7 State;

8 (2) Require any person who is required to electronically
9 file or remit a federal return or taxes to also
10 electronically file and remit a state return of all
11 state taxes to the department of taxation; and

12 (3) Require any employer who is required to remit any
13 withheld taxes to the federal government on a
14 semi-weekly schedule, to also remit the complete
15 amount of tax withheld to the department of taxation
16 on a semi-weekly schedule.

17 SECTION 2. Section 231-9.9, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§231-9.9 ~~[Payment]~~ Filing and payment of taxes by
20 electronic funds transfer. (a) The director of taxation is
21 authorized to require every person whose tax liability for any
22 one taxable year exceeds \$100,000 and who files a tax return for



1 any tax, including consolidated filers, to remit taxes by one of
2 the means of electronic funds transfer approved by the
3 department; provided that for withholding taxes under section
4 235-62, electronic funds transfers shall apply to annual tax
5 liabilities that exceed \$40,000. Notwithstanding the tax
6 liability thresholds in this subsection, the director of
7 taxation is authorized to require any person who is required to
8 electronically file a federal return or electronically remit any
9 federal taxes to the federal government, to electronically file
10 a state return and electronically remit any state taxes under
11 title 14 to the department. The director is authorized to grant
12 an exemption to the electronic filing and payment requirements
13 for good cause.

14 (b) Any person who files a tax return for any tax and is
15 not required by subsection (a) to remit taxes by means of
16 electronic funds transfer may elect to remit taxes by one of the
17 means of electronic funds transfer approved by the department
18 with the approval of the director of taxation.

19 (c) If a person who is required under subsection (a) to
20 file a return electronically or remit taxes by one of the means
21 of electronic funds transfer approved by the department fails to
22 file electronically or to remit the taxes using an approved



1 method on or before the date prescribed therefor, unless it is
2 shown that the failure is due to reasonable cause and not to
3 neglect, there shall be added to the tax required to be so
4 remitted a penalty of two per cent of the amount of the tax.
5 The penalty under this subsection is in addition to any penalty
6 set forth in section 231-39.

7 (d) No later than twenty days prior to the convening of
8 each regular session, the department shall submit a report to
9 the legislature containing:

- 10 (1) The number of taxpayers who were assessed the two per
11 cent penalty pursuant to subsection (c);
12 (2) The amounts of each assessment; and
13 (3) The total amount of assessments collected for the
14 previous year."

15 SECTION 3. Section 235-62, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

17 "(c) Every return required under this section shall be
18 accompanied by a remission of the complete amount of tax
19 withheld, as reported in the return; provided that each employer
20 whose liability for taxes withheld exceeds \$40,000 annually
21 shall remit the complete amount of tax withheld on a semi-weekly
22 schedule. Notwithstanding the tax liability threshold in this



1 subsection, the director of taxation is authorized to require
2 any employer who is required to remit any withheld taxes to the
3 federal government on a semi-weekly schedule, to remit the
4 complete amount of tax withheld to the department on a semi-
5 weekly schedule. The director of taxation may grant an
6 exemption to the requirement to remit the complete amount of tax
7 withheld on a semi-weekly schedule for good cause."

8 SECTION 4. Section 237-30, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) The taxes levied hereunder shall be payable in
11 monthly installments on or before the [~~last~~] twentieth day of
12 the calendar month following the month in which they accrue.
13 The taxpayer [~~shall~~], on or before the [~~last~~] twentieth day of
14 the calendar month following the month in which the taxes
15 accrue, shall make out and sign a return of the installment of
16 tax for which the taxpayer is liable for the preceding month and
17 transmit the same, together with a remittance, in the form
18 required by section 237-31, for the amount of the tax, to the
19 office of the department of taxation in the appropriate district
20 hereinafter designated.

21 (b) Notwithstanding subsection (a), the director of
22 taxation, for good cause, may permit a taxpayer to file the



1 taxpayer's return required under this section and make payments
2 thereon:

3 (1) On a quarterly basis during the calendar or fiscal
4 year, the return and payment to be made on or before
5 the [~~last~~] twentieth day of the calendar month after
6 the close of each quarter, to wit: for calendar year
7 taxpayers, on or before April [~~30~~] 20, July [~~31~~] 20,
8 October [~~31~~] 20, and January [~~31~~] 20 or, for fiscal
9 year taxpayers, on or before the [~~last~~] twentieth day
10 of the fourth month, seventh month, and tenth month
11 following the beginning of the fiscal year and on or
12 before the [~~last~~] twentieth day of the month following
13 the close of the fiscal year; provided that the
14 director is satisfied that the grant of the permit
15 will not unduly jeopardize the collection of the taxes
16 due thereon and the taxpayer's total tax liability for
17 the calendar or fiscal year under this chapter will
18 not exceed \$4,000; or

19 (2) On a semiannual basis during the calendar or fiscal
20 year, the return and payment to be made on or before
21 the [~~last~~] twentieth day of the calendar month after
22 the close of each six-month period, to wit: for



1 calendar year taxpayers, on July [~~31~~] 20 and January
 2 [~~31~~] 20 or, for fiscal year taxpayers, on or before
 3 the [~~last~~] twentieth day of the seventh month
 4 following the beginning of the fiscal year and on or
 5 before the last day of the month following the close
 6 of the fiscal year; provided that the director is
 7 satisfied that the grant of the permit will not unduly
 8 jeopardize the collection of the taxes due thereon and
 9 the taxpayer's total tax liability for the calendar or
 10 fiscal year under this chapter will not exceed \$2,000.

11 The director, for good cause, may permit a taxpayer to make
 12 monthly payments based on the taxpayer's estimated quarterly or
 13 semiannual liability, provided the taxpayer files a
 14 reconciliation return at the end of each quarter or at the end
 15 of each six-month period during the calendar or fiscal year, as
 16 provided in this section."

PART II

18 SECTION 5. Act 239, Session Laws of Hawaii 2007, is
 19 amended by amending section 4 to read as follows:

20 "SECTION 4. This Act shall take effect on January 1, 2008;
 21 provided that this Act shall be repealed on December 31, [~~2009~~]
 22 2010, and section 237-24.3, Hawaii Revised Statutes, and section



1 237-24.7, Hawaii Revised Statutes, shall be reenacted in the
2 form in which they read on December 31, 2007."

3 SECTION 6. The aggregate tax exemption from the amendment
4 in Act 239, Session Laws of Hawaii 2007, shall not exceed
5 \$400,000 per taxable year ending on or between January 1, 2010
6 and January 1, 2011.

7 PART III

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act, upon its approval, shall apply to
11 returns and payments due after May 31, 2009; provided that part
12 II of this Act shall take effect upon approval.

APPROVED this day of , 2009

GOVERNOR OF THE STATE OF HAWAII