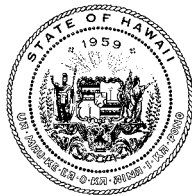


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**SENATE COMMITTEE ON WAYS & MEANS  
TESTIMONY REGARDING SB 2834  
RELATING TO TAXATION**

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: FEBRUARY 10, 2010**

**TIME: 9:30AM**

**ROOM: 211**

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This measure provides a written waiver program from the income tax on all wagering winnings.

The Department of Taxation (Department) **supports the concept** of this legislation.

**OPEN TO REVISITING WAGERING TAXATION**—The Department is open to the idea of paying a fee to offset wagering liability primarily because of the compliance concerns under the current law. Last legislative session, the law was changed to disallow the wagering loss offset against commensurate winnings. In short, this law requires taxpayers in Hawaii to report all gross winnings, no matter how much wagering money was lost in earning the winnings. Effectively, Hawaii taxpayers would be required to pay tax—even when they lost more than they won. Though the Department supported the law change last session, the Department has practical concerns over whether taxpayers will accurately report and pay on their winnings without netting their losses.

**REVENUE IMPACT**—This waiver program will provide a general fund gain because the Department projects that taxpayers will take advantage of the certainty accompanied by the waiver. The only anticipated revenue loss would be where a taxpayer wins the "jackpot."

**UNBUDGETED COSTS**—The Department appreciates the intent of implementing this wagering income waiver program online; however it will require costs to get such a system up and running. The Department may need an appropriation to accomplish this. In the alternative, the Department recommends amending the bill to allow the Department to keep the first few thousand dollars in order to pay for computer and internet enhancements, with the remainder going to the general fund.

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Waiver for wagering winnings

BILL NUMBER: SB 2001; HB 1923 (Identical)

INTRODUCED BY: SB by Nishihara; HB by Choy

**BRIEF SUMMARY:** Adds a new section to HRS chapter 235 to allow a taxpayer to acquire a written waiver from the department of taxation that exempts the taxpayer from reporting all wagering or gambling winnings that would have been otherwise reportable under this chapter and that were accrued during the period of the waiver. Provides that: (1) the cost of the waiver shall be \$10 for a specific consecutive five-day period during the taxable year for which the waiver applies; (2) multiple periods may be acquired; (3) the \$10 fee applies to each period acquired; (4) the waiver shall be acquired by the taxpayer at least three days before the commencement of the waiver period; (5) the waiver shall apply to all taxpayers, whether or not the taxpayer itemizes tax deductions; (6) the waivers shall not be transferrable and may not be combined with any waiver acquired by other taxpayers.

Requires the department of taxation to adopt rules pursuant to HRS chapter 91 to effectuate this section; provided that: (1) the waivers shall be acquired and paid on the department's website or other web-based system established by the department by credit card using appropriate web-based security technology; and (2) the rules shall be in effect by January 1, 2011.

**EFFECTIVE DATE:** January 1, 2011; applicable to tax years beginning after December 31, 2010

**STAFF COMMENTS:** All wagering or gambling winnings are taxable under the federal and state income tax laws. However, since gambling winnings of under \$1,200 from slot machines or bingo and winnings of under \$1,500 from keno and \$5,000 in poker tournaments are not required to comply with income tax withholding provisions of Form W-2G, most winnings under these amounts are not reported.

This measure would allow a taxpayer to purchase a waiver for \$10 prior to a "gambling" trip and allow the taxpayer to be exempt from reporting their winnings on their state income tax return. While this measure may result in enforcement and verification difficulties for the state department of taxation, it is questionable whether the \$10 fee is sufficient to cover the added duties of the department of taxation. If the intent of this measure is to generate additional revenue for the state, consideration must be given to the loss of revenue generated as a result of exempting winnings realized during the permitted period.

It should be remembered that any of the taxpayer's winnings would still be required to be reported on the taxpayer's federal income tax return. As there is no similar provision on the federal level, the adoption of this measure would run contrary to the state's intent to conform to the federal Internal Revenue Code.

Digested 2/4/10

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THE SENATE  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2010

COMMITTEE ON WAYS AND MEANS  
Hearing February 10, 2010  
Testimony on S.B. 2001  
(Relating to Taxation)

Chair Mercado Kim, Vice-Chair Tsutsui and member of the Committees:

My name is Peter Fritz. I am an attorney specializing in tax matters. I offer comments regarding S.B. 2105.

This bill establishes a waiver program to exempt a taxpayer's wagering winnings acquired during a consecutive five-day period.

- Unless this bill makes a distinction between legal and illegal wagering, a bookmaker<sup>1</sup> could purchase waivers covering the entire year and the waivers would prevent the Department of Taxation (“Department”) from assessing taxes on income from illegal wagering in Hawaii should they discover the illegal operation.
- This bill applies to “wagering or gambling winnings . . . that were **accrued** during the period of the waiver.” However, most individual taxpayers report income in the “cash basis” and not accrual basis. The bill needs to clarify what is meant by “accrued during the period of the waiver” with respect to taxpayers who report income on a cash basis.
- This bill states that the waiver applies to winnings “that would have been otherwise reportable.” This could be interpreted to mean that a taxpayer does not have to report the winnings on their tax return even though the winnings are not taxable. In order for the Department to evaluate the cost of this waiver, it needs to know the dollar amount of winnings that were not taxed. This can be done if the amount is reported on the return.

Thank you for the opportunity to testify.



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<sup>1</sup> A bookmaker, or bookie, is an organization or a person that takes bets on sporting and other events at agreed upon odds.