



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 11, 2017

**GOV. MSG. NO. 1291**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Ninth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Twenty-Ninth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 11, 2017, the following bill was signed into law:

SB100 SD2 HD1 CD1

RELATING TO TAXATION  
**ACT 177 (17)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

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# 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 department of taxation to provide the  
4 auditor with any tax records that are necessary to  
5 conduct the reviews;

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 subsection (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  
15           [~~fiscal~~] calendar year and the next two [~~fiscal~~]  
16           calendar years;

17       (3) Determine, to the extent possible, whether the  
18           exemption, exclusion, or credit has achieved and  
19           continues to achieve the purpose for which it was  
20           enacted by the legislature[+], as reasonably  
21           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~~] calendar year under review by the  
7 number of low-income residents of the State in the  
8 [~~fiscal~~] calendar year. The estimate determined  
9 pursuant to this paragraph is intended to display the  
10 effect on low-income residents of the State if they  
11 directly receive, either through tax reduction or  
12 negative tax, the dollars saved by elimination of the  
13 exemption, exclusion, or credit."

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

17 "[~~+~~]§23-72[~~+~~] Review for [~~2018~~] 2019 and every tenth year  
18 thereafter. (a) The exemptions and exclusions under the  
19 general excise and use taxes listed in subsection (c) shall be  
20 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]~~  
14           calendar year and the next two ~~[fiscal]~~ calendar  
15           years;
- 16           (3) Determine, to the extent possible, whether the credit,  
17           exclusion, or deduction has achieved and continues to  
18           achieve the purpose for which it was enacted by the  
19           legislature~~[,]~~, as reasonably identified by the  
20           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~~] calendar year under review by the  
7 number of low-income residents of the State in the  
8 [~~fiscal~~] calendar year. The estimate determined  
9 pursuant to this paragraph is intended to display the  
10 effect on low-income residents of the State if they  
11 directly receive, either through tax reduction or  
12 negative tax, the dollars saved by elimination of the  
13 credit, exclusion, or deduction."

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

17 "[+] §23-92 [+] Review for [~~2019~~] 2020 and every fifth year  
18 thereafter. (a) The credits under the income tax and financial  
19 institutions tax listed in subsection (c) shall be reviewed in  
20 [~~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           "~~[(1)]~~ §23-95~~[(1)]~~ 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           "~~[(1)]~~ §23-96~~[(1)]~~ 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. Statutory material to be repealed is bracketed  
21       and stricken. New statutory material is underscored.



1 SECTION 21. This Act shall take effect upon its approval.

APPROVED this 11 day of JUL , 2017




GOVERNOR OF THE STATE OF HAWAII


**THE SENATE OF THE STATE OF HAWAII**

Date: May 2, 2017  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.



President of the Senate



Clerk of the Senate

SB No. 100, SD 2, HD 1, CD 1

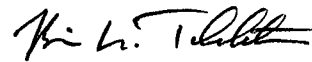
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.



Joseph M. Souki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives