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

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

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

20 SECTION 20. 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.



Report Title:

Review of Tax Exemptions, Exclusions, Credits, and Deductions;
Amendments

Description:

Delays the reviews by the Auditor of tax exemptions, exclusions, credits, and deductions. Provides the Auditor with access to DOTAX records for the reviews and establishes confidentiality requirements concerning the data. Requires the reviews be made on a calendar year basis. Adds the organic foods production income tax credit to the schedule of review. Amends the review criteria regarding the legislative purpose of an exemption, exclusion, credit, or deduction to provide more discretion to the Auditor. (CD1)

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

