
A BILL FOR AN ACT

RELATING TO TAX.

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

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§46- County education surcharge on state tax. (a)
5 Each county may establish an education surcharge on state tax at
6 the rates enumerated in sections 237- and 238- . A county
7 electing to establish this surcharge shall do so by ordinance;
8 provided that:

9 (1) No ordinance shall be adopted until the county has
10 conducted a public hearing on the proposed ordinance;
11 and

12 (2) No county education surcharge on state tax that may be
13 authorized under this section shall be levied prior to
14 January 1, 2011.

15 Notice of the public hearing required under paragraph (1) shall
16 be published in a newspaper of general circulation within the
17 county at least twice within a period of thirty days immediately
18 preceding the date of the hearing.



1 (b) A county electing to exercise the authority granted
2 under this section shall notify the director of taxation within
3 ten days after the county has adopted a county education
4 surcharge on state tax ordinance and, beginning no earlier than
5 January 1, 2011, the director of taxation shall levy, assess,
6 collect, and otherwise administer the county education surcharge
7 on state tax.

8 (c) Each county adopts an county education surcharge on
9 state tax ordinance pursuant to subsection (a) shall use the
10 surcharges received from the State for public schools
11 established and maintained by the department of education and
12 charter schools approved by the charter school review panel
13 pursuant to sections 302B-2 and 302B-6 within the county."

14 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 "§237- County education surcharge on state tax. (a)
18 The county education surcharge on state tax, upon the adoption
19 of county ordinances and in accordance with the requirements of
20 section 46- , shall be levied, assessed, and collected as
21 provided in this section on all gross proceeds and gross income
22 taxable under this chapter. No county shall set the county



1 education surcharge on state tax at a rate greater than one-half
2 per cent of all gross proceeds and gross income taxable under
3 this chapter. All provisions of this chapter shall apply to the
4 county education surcharge on state tax. With respect to the
5 surcharge, the director of taxation shall have all the rights
6 and powers provided under this chapter. In addition, the
7 director of taxation shall have the exclusive rights and power
8 to determine the county or counties in which a person is engaged
9 in business and, in the case of a person engaged in business in
10 more than one county, the director shall determine, through
11 apportionment or other means, that portion of the county
12 education surcharge on state tax attributable to business
13 conducted in each county.

14 (b) Each county education surcharge on state tax that may
15 be adopted pursuant to section 46- (a) shall be levied
16 beginning in the taxable year after the adoption of the relevant
17 county ordinance; provided that no county education surcharge on
18 state tax may be levied prior to January 1, 2011.

19 (c) The county education surcharge on state tax, if
20 adopted, shall be imposed on the gross proceeds or gross income
21 of all written contracts that require the passing on of the
22 taxes imposed under this chapter; provided that if the gross



1 proceeds or gross income are received as payments beginning in
2 the taxable year in which the taxes become effective, on
3 contracts entered into before June 30 of the year prior to the
4 taxable year in which the taxes become effective, and the
5 written contracts do not provide for the passing on of increased
6 rates of taxes, the county education surcharge on state tax
7 shall not be imposed on the gross proceeds or gross income
8 covered under the written contracts. The county education
9 surcharge on state tax shall be imposed on the gross proceeds or
10 gross income from all contracts entered into on or after June 30
11 of the year prior to the taxable year in which the taxes become
12 effective, regardless of whether the contract allows for the
13 passing on of any tax or any tax increases.

14 (d) No county education surcharge on state tax shall be
15 established on any:

16 (1) Gross income or gross proceeds taxable under this
17 chapter at the one-half per cent tax rate;

18 (2) Gross income or gross proceeds taxable under this
19 chapter at the 0.15 per cent tax rate; or

20 (3) Transactions, amounts, persons, gross income, or gross
21 proceeds exempt from tax under this chapter.



1 (e) The director of taxation shall revise the general
2 excise tax forms to provide for the clear and separate
3 designation of the imposition and payment of the county
4 education surcharge on state tax.

5 (f) The taxpayer shall designate the taxation district to
6 which the county education surcharge on state tax is assigned in
7 accordance with rules adopted by the director of taxation under
8 chapter 91. The taxpayer shall file a schedule with the
9 taxpayer's periodic and annual general excise tax returns
10 summarizing the amount of taxes assigned to each taxation
11 district.

12 (g) The penalties provided by section 231-39 for failure
13 to file a tax return shall be imposed on the amount of surcharge
14 due on the return being filed for the failure to file the
15 schedule required to accompany the return. In addition, there
16 shall be added to the tax an amount equal to ten per cent of the
17 amount of the surcharge and tax due on the return being filed
18 for the failure to file the schedule or the failure to correctly
19 report the assignment of the general excise tax by taxation
20 district on the schedule required under this subsection.

21 (h) All taxpayers who file on a fiscal year basis whose
22 fiscal year ends after December 31 of the year prior to the



1 taxable year in which the taxes become effective, shall file a
2 short period annual return for the period preceding January 1 of
3 the taxable year in which the taxes become effective. Each
4 fiscal year taxpayer shall also file a short period annual
5 return for the period starting on January 1 of the taxable year
6 in which the taxes become effective, and ending before January 1
7 of the following year."

8 SECTION 3. Chapter 238, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§238-_____ County education surcharge on state tax. (a)
12 The county education surcharge on state tax, upon the adoption
13 of a county ordinance and in accordance with the requirements of
14 section 46-_____, shall be levied, assessed, and collected as
15 provided in this section on the value of property and services
16 taxable under this chapter. No county shall set the county
17 education surcharge on state tax at a rate greater than one-half
18 per cent of the value of property taxable under this chapter.
19 All provisions of this chapter shall apply to the county
20 education surcharge on state tax. With respect to the
21 surcharge, the director shall have all the rights and powers
22 provided under this chapter. In addition, the director of



1 taxation shall have the exclusive rights and power to determine
2 the county or counties in which a person imports or purchases
3 tangible personal property and, in the case of a person
4 importing or purchasing tangible property in more than one
5 county, the director shall determine, through apportionment or
6 other means, that portion of the surcharge on state tax
7 attributable to the importation or purchase in each county.

8 (b) Each county education surcharge on state tax that may
9 be adopted shall be levied beginning in the taxable year after
10 the adoption of the relevant county ordinance; provided that no
11 county education surcharge on state tax may be levied prior to
12 January 1, 2011.

13 (c) No county education surcharge on state tax shall be
14 established upon any use taxable under this chapter at the one-
15 half per cent tax rate or upon any use that is not subject to
16 taxation or that is exempt from taxation under this chapter.

17 (d) The director of taxation shall revise the use tax
18 forms to provide for the clear and separate designation of the
19 imposition and payment of the county education surcharge on
20 state tax.

21 (e) The taxpayer shall designate the taxation district to
22 which the county education surcharge on state tax is assigned in



1 accordance with rules adopted by the director of taxation under
2 chapter 91. The taxpayer shall file a schedule with the
3 taxpayer's periodic and annual use tax returns summarizing the
4 amount of taxes assigned to each taxation district.

5 (f) The penalties provided by section 231-39 for failure
6 to file a tax return shall be imposed on the amount of surcharge
7 due on the return being filed for the failure to file the
8 schedule required to accompany the return. In addition, there
9 shall be added to the tax an amount equal to ten per cent of the
10 amount of the surcharge and tax due on the return being filed
11 for the failure to file the schedule or the failure to correctly
12 report the assignment of the use tax by taxation district on the
13 schedule required under this subsection.

14 (g) All taxpayers who file on a fiscal year basis whose
15 fiscal year ends after December 31 of the year prior to the
16 taxable year in which the taxes become effective, shall file a
17 short period annual return for the period preceding January 1 of
18 the taxable year in which the taxes become effective. Each
19 fiscal year taxpayer shall also file a short period annual
20 return for the period starting on January 1 of the taxable year
21 in which the taxes become effective, and ending before January 1
22 of the following year."



1 SECTION 4. Chapter 248, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§248- County education surcharge on state tax;
5 disposition of proceeds. (a) If adopted by county ordinance,
6 all county education surcharges on state tax established under
7 section 46- and collected by the director of taxation shall
8 be paid into the state treasury quarterly, within ten working
9 days after collection. Out of the revenues generated by county
10 education surcharges on state tax paid into the state treasury,
11 the director of finance shall deduct per cent of the gross
12 proceeds of a respective county's education surcharge on state
13 tax to reimburse the State for the costs of assessment,
14 collection, and disposition of the county education surcharge on
15 state tax incurred by the State. Amounts retained shall be
16 general fund realizations of the State. The balance of the
17 revenues shall be placed by the director of finance into the
18 county education tax surcharge trust fund established by section
19 302A- .

20 (b) For the purpose of this section, the costs of
21 assessment, collection, and disposition of the county education
22 surcharges on state tax shall include any and all costs, direct



1 or indirect, that are deemed necessary and proper to effectively
2 administer this section and sections 237- and 238- ."

3 SECTION 5. Chapter 302A, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§302A- County education surcharge trust fund. (a)

7 There is established the county education surcharge trust fund
8 to be administered by the board. The fund shall consist of:

9 (1) Taxes levied by the counties under section 46- ; and

10 (2) All interest earned on the deposit or investment of
11 moneys in the fund.

12 (b) Moneys in the fund shall be used by the board only for
13 public schools and charter schools located within the county
14 that levied the tax, and shall be allocated according to
15 criteria established by the superintendents of complex areas
16 within the county."

17 SECTION 6. Section 248-2.6, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) If adopted by county ordinance, all county surcharges
20 on state tax established under section 46-16.8 and collected by
21 the director of taxation shall be paid into the state treasury
22 quarterly, within ten working days after collection, and shall



1 be placed by the director of finance in special accounts. Out
2 of the revenues generated by county surcharges on state tax paid
3 into each respective state treasury special account, the
4 director of finance shall deduct ten per cent of the gross
5 proceeds of a respective county's surcharge on state tax to
6 reimburse the State for the costs of assessment, collection, and
7 disposition of the county surcharge on state tax incurred by the
8 State. Amounts retained shall be general fund realizations of
9 the State."

10 SECTION 7. Section 437D-8.4, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Notwithstanding any law to the contrary, a lessor may
13 visibly pass on to a lessee:

14 (1) The general excise tax attributable to the
15 transaction;

16 (2) The vehicle license and registration fee and weight
17 taxes, prorated at 1/365th of the annual vehicle
18 license and registration fee and weight taxes actually
19 paid on the particular vehicle being rented for each
20 full or partial twenty-four-hour rental day that the
21 vehicle is rented; provided the total of all vehicle
22 license and registration fees charged to all lessees



1 shall not exceed the annual vehicle license and
2 registration fee actually paid for the particular
3 vehicle rented;

4 (3) The rental motor vehicle surcharge tax as provided in
5 section 251-2 attributable to the transaction;

6 (4) The county surcharge on state tax under section 46-
7 16.8; provided that the lessor itemizes the tax for
8 the lessee; ~~and~~

9 (5) The county education surcharge on state tax under
10 section 46- ; provided that the lessor itemizes the
11 tax for the lessee; and

12 ~~(5)~~ (6) The rents or fees paid to the department of
13 transportation under concession contracts negotiated
14 pursuant to chapter 102, service permits granted
15 pursuant to title 19, Hawaii Administrative Rules, or
16 rental motor vehicle customer facility charges
17 established pursuant to section 261-7; provided that:

18 (A) The rents or fees are limited to amounts that can
19 be attributed to the proceeds of the particular
20 transaction;



- 1 (B) The rents or fees shall not exceed the lessor's
- 2 net payments to the department of transportation
- 3 made under concession contract or service permit;
- 4 (C) The lessor submits to the department of
- 5 transportation and the department of commerce and
- 6 consumer affairs a statement, verified by a
- 7 certified public accountant as correct, that
- 8 reports the amounts of the rents or fees paid to
- 9 the department of transportation pursuant to the
- 10 applicable concession contract or service permit:
- 11 (i) For all airport locations; and
- 12 (ii) For each airport location;
- 13 (D) The lessor submits to the department of
- 14 transportation and the department of commerce and
- 15 consumer affairs a statement, verified by a
- 16 certified public accountant as correct, that
- 17 reports the amounts charged to lessees:
- 18 (i) For all airport locations;
- 19 (ii) For each airport location; and
- 20 (iii) For each lessee;



1 (E) The lessor includes in these reports the
2 methodology used to determine the amount of fees
3 charged to each lessee; and

4 (F) The lessor submits the above information to the
5 department of transportation and the department
6 of commerce and consumer affairs within three
7 months of the end of the preceding annual
8 accounting period or contract year as determined
9 by the applicable concession agreement or service
10 permit.

11 The respective departments, in their sole discretion,
12 may extend the time to submit the statement required
13 in this subsection. If the director determines that
14 an examination of the lessor's information is
15 inappropriate under this subsection and the lessor
16 fails to correct the matter within ninety days, the
17 director may conduct an examination and charge a
18 lessor an examination fee based upon the cost per hour
19 per examiner for evaluating, investigating, and
20 verifying compliance with this subsection, as well as
21 additional amounts for travel, per diem, mileage, and
22 other reasonable expenses incurred in connection with



1 the examination, which shall relate solely to the
 2 requirements of this subsection, and which shall be
 3 billed by the departments as soon as feasible after
 4 the close of the examination. The cost per hour shall
 5 be \$40 or as may be established by rules adopted by
 6 the director. The lessor shall pay the amounts billed
 7 within thirty days following the billing. All moneys
 8 collected by the director shall be credited to the
 9 compliance resolution fund."

10 SECTION 8. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect upon its approval;
 13 provided that the amendments made to section 437D-8.4, Hawaii
 14 Revised Statutes, by section 7 of this Act shall not be repealed
 15 when that section is repealed and reenacted on December 31,
 16 2022, by section 9(3) of Act 247, Session Laws of Hawaii 2005.

17

INTRODUCED BY: *D.C. Kirk-Logna*

JAN 28 2009



Report Title:

General Excise Tax; County Levy for Schools

Description:

Authorizes a county to levy a one-half percent general excise tax to be used for county schools; establishes a County Education Surcharge Trust Fund; authorizes complex area superintendents to establish criteria for awarding schools funds from the fund.

