

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to authorize counties to levy a county surcharge on state tax by ordinance to fund public transportation systems.

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

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

- (1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance;
- (2) The ordinance shall be adopted prior to December 31, 2005; and
- (3) No county surcharge on state tax that may be authorized under this section shall be levied prior to January 1, 2007.

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

(b) A county electing to exercise the authority granted under this section shall notify the director of taxation within ten days after the county has adopted a surcharge on state tax ordinance and, beginning no earlier than January 1, 2007, the director of taxation shall levy, assess, collect, and otherwise administer the county surcharge on state tax.

(c) Each county with a population greater than five hundred thousand that adopts a county surcharge on state tax ordinance pursuant to subsection (a) shall use the surcharges received from the State for:

- (1) Operating or capital costs of a locally preferred alternative for a mass transit project; and
- (2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to paragraph (1).

The county surcharge on state tax shall not be used to build or repair public roads or highways, bicycle paths, or support public transportation systems already in existence prior to the effective date of this Act.

(d) Each county with a population equal to or less than five hundred thousand that adopts a county surcharge on state tax ordinance pursuant to subsection (a) shall use the surcharges received from the State for:

- (1) Operating or capital costs of public transportation within each county for public transportation systems, including public roadways or highways, public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths; and
- (2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to paragraph (1).

(e) As used in this section, “capital costs” means nonrecurring costs required to construct a transit facility or system, including debt service, costs of land acquisition and development, acquiring of rights-of-way, planning, design, and construction, and including equipping and furnishing the facility or system.”

SECTION 3. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§237- County surcharge on state tax; administration. (a) The county surcharge on state tax, upon the adoption of county ordinances and in accordance with the requirements of section 46- , shall be levied, assessed, and collected as provided in this section on all gross proceeds and gross income taxable under this chapter. No county shall set the surcharge on state tax at a rate greater than one-half per cent of all gross proceeds and gross income taxable under this chapter. All provisions of this chapter shall apply to the county surcharge on state tax. With respect to the surcharge, the director of taxation shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person is engaged in business and, in the case of a person engaged in business in more than one county, the director shall determine, through apportionment or other means, that portion of the surcharge on state tax attributable to business conducted in each county.

(b) Each county surcharge on state tax that may be adopted pursuant to section 46- (a) shall be levied beginning in the taxable year after the adoption of the relevant county ordinance; provided that no surcharge on state tax may be levied prior to January 1, 2007.

(c) The county surcharge on state tax, if adopted, shall be imposed on the gross proceeds or gross income of all written contracts that require the passing on of the taxes imposed under this chapter; provided that if the gross proceeds or gross income are received as payments beginning in the taxable year in which the taxes become effective, on contracts entered into before June 30 of the year prior to the taxable year in which the taxes become effective, and the written contracts do not provide for the passing on of increased rates of taxes, the county surcharge on state tax shall not be imposed on the gross proceeds or gross income covered under the written contracts. The county surcharge on state tax shall be imposed on the gross proceeds or gross income from all contracts entered into on or after June 30 of the year prior to the taxable year in which the taxes become effective, regardless of whether the contract allows for the passing on of any tax or any tax increases.

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

- (1) Gross income or gross proceeds taxable under this chapter at the one-half per cent tax rate;
- (2) Gross income or gross proceeds taxable under this chapter at the 0.15 per cent tax rate; or
- (3) Transactions, amounts, persons, gross income, or gross proceeds exempt from tax under this chapter.

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

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

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

(h) All taxpayers who file on a fiscal year basis whose fiscal year ends after December 31 of the year prior to the taxable year in which the taxes become effective, shall file a short period annual return for the period preceding January 1 of

the taxable year in which the taxes become effective. Each fiscal year taxpayer shall also file a short period annual return for the period starting on January 1 of the taxable year in which the taxes become effective, and ending before January 1 of the following year.”

SECTION 4. Chapter 238, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§238- County surcharge on state tax; administration. (a) The county surcharge on state tax, upon the adoption of a county ordinance and in accordance with the requirements of section 46- , shall be levied, assessed, and collected as provided in this section on the value of property and services taxable under this chapter. No county shall set the surcharge on state tax at a rate greater than one-half per cent of the value of property taxable under this chapter. All provisions of this chapter shall apply to the county surcharge on state tax. With respect to the surcharge, the director shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person imports or purchases tangible personal property and, in the case of a person importing or purchasing tangible property in more than one county, the director shall determine, through apportionment or other means, that portion of the surcharge on state tax attributable to the importation or purchase in each county.

(b) Each county surcharge on state tax that may be adopted shall be levied beginning in the taxable year after the adoption of the relevant county ordinance; provided that no surcharge on state tax may be levied prior to January 1, 2007.

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

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

(e) The taxpayer shall designate the taxation district to which the county surcharge on state tax is assigned in accordance with rules adopted by the director of taxation under chapter 91. The taxpayer shall file a schedule with the taxpayer’s periodic and annual use tax returns summarizing the amount of taxes assigned to each taxation district.

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

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

SECTION 5. Chapter 248, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§248- County surcharge on state tax; disposition of proceeds. (a) If adopted by county ordinance, all county surcharges on state tax collected by the director of taxation shall be paid into the state treasury quarterly, within ten working days after collection, and shall be placed by the director of finance in special accounts. Out of the revenues generated by county surcharges on state tax paid into each respective state treasury special account, the director of finance shall deduct ten per cent of the gross proceeds of a respective county’s surcharge on state tax to reimburse the State for the costs of assessment, collection, and disposition of the county surcharge on state tax incurred by the State. Amounts retained shall be general fund realizations of the State.

(b) The amounts deducted for costs of assessment, collection, and disposition of county surcharges on state tax shall be withheld from payment to the counties by the State out of the county surcharges on state tax collected for the current calendar year.

(c) For the purpose of this section, the costs of assessment, collection, and disposition of the county surcharges on state tax shall include any and all costs, direct or indirect, that are deemed necessary and proper to effectively administer this section and sections 237- and 238-

(d) After the deduction and withholding of the costs under subsections (a) and (b), the director of finance shall pay the remaining balance on quarterly basis to the director of finance of each county that has adopted a county surcharge on state tax under section 46-. The quarterly payments shall be made after the county surcharges on state tax have been paid into the state treasury special accounts or after the disposition of any tax appeal, as the case may be. All county surcharges on state tax collected shall be distributed by the director of finance to the county in which the county surcharge on state tax is generated and shall be a general fund realization of the county, to be used for the purposes specified in section 46- by each of the counties.’’

SECTION 6. Section 437D-8.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) The general excise tax attributable to the transaction;
- (2) The vehicle license and registration fee and weight taxes, prorated at 1/365th of the annual vehicle license and registration fee and weight taxes actually paid on the particular vehicle being rented for each full or partial twenty-four hour rental day that the vehicle is rented; provided the total of all vehicle license and registration fees charged to all lessees shall not exceed the annual vehicle license and registration fee actually paid for the particular vehicle rented;
- (3) The rental motor vehicle surcharge tax as provided in section 251-2 attributable to the transaction; [and]
- (4) The county surcharge on state tax under section 46- ; provided that the lessor itemizes the tax for the lessee; and
- [{4}] (5) The rents or fees paid to the department of transportation under concession contracts, negotiated pursuant to chapter 102, or service permits, granted pursuant to title 19, Hawaii Administrative Rules, provided that:
 - (A) The rents or fees are limited to amounts that can be attributed to the proceeds of the particular transaction;
 - (B) The rents or fees shall not exceed the lessor’s net payments to the department of transportation made under concession contract or service permit;

- (C) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts of the rents or fees paid to the department of transportation pursuant to the applicable concession contract or service permit:
 - (i) For all airport locations; and
 - (ii) For each airport location;
- (D) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts charged to lessees:
 - (i) For all airport locations;
 - (ii) For each airport location; and
 - (iii) For each lessee;
- (E) The lessor includes in these reports the methodology used to determine the amount of fees charged to each lessee; and
- (F) The lessor submits the above information to the department of transportation and the department of commerce and consumer affairs within three months of the end of the preceding annual accounting period or contract year as determined by the applicable concession agreement or service permit.

The respective departments, in their sole discretion, may extend the time to submit the statement required in this subsection. If the director determines that an examination of the lessor's information is inappropriate under this subsection and the lessor fails to correct the matter within ninety days, the director may conduct an examination and charge a lessor an examination fee based upon the cost per hour per examiner for evaluating, investigating, and verifying compliance with this subsection, as well as additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination, which shall relate solely to the requirements of this subsection, and which shall be billed by the departments as soon as feasible after the close of the examination. The cost per hour shall be \$40 or as may be established by rules adopted by the director. The lessor shall pay the amounts billed within thirty days following the billing. All moneys collected by the director shall be credited to the compliance resolution fund."

SECTION 7. Chapter 51D, Hawaii Revised Statutes, is repealed.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval; provided that:

- (1) If none of the counties of the State adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, this Act shall be repealed and section 437D-8.4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act;
- (2) If any county does not adopt an ordinance to levy a county surcharge on state tax by December 31, 2005, it shall be prohibited from adopting such an ordinance pursuant to this Act, unless otherwise authorized by the legislature through a separate legislative act;

- (3) If an ordinance to levy a county surcharge on state tax is adopted by December 31, 2005:
- (A) The ordinance shall be repealed on December 31, 2022;
 - (B) This Act shall be repealed on December 31, 2022; and
 - (C) Section 437D-8.4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Became law on July 12, 2005, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.