

ACT 136

S.B. NO. 2779

A Bill for an Act Relating to Financial Audit of the State of Hawaii by the Legislative Auditor.

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

SECTION 1. The purpose of this Act is to specifically authorize the department of taxation to release certain otherwise confidential information to the auditor or the auditor's authorized agents, for the purpose of conducting the annual certified financial audit pursuant to section 23-5, Hawaii Revised Statutes. This measure also ensures that the auditor and its authorized agents keep the disclosed information confidential by increasing the class of offense for unlawful disclosure from a misdemeanor to a class C felony.

SECTION 2. Section 23-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The auditor may examine and inspect all accounts, books, records, files, papers, and documents and all financial affairs of every department, office, agency, and political subdivision[-]; provided that:

- (1) Upon written request by the auditor, the department of taxation shall provide to the auditor access to tax returns but only to the extent necessary and relevant to the scope of the comprehensive annual financial report audit of the State; and
- (2) Tax return information provided to the auditor by the department of taxation pursuant to paragraph (1) shall be considered working papers of the auditor pursuant to section 23-9.5.”

SECTION 3. Section 231-18, Hawaii Revised Statutes, is amended to read as follows:

“~~§231-18 [Federal or other tax officials]~~ **Tax and other officials permitted to inspect returns; reciprocal provisions.** Notwithstanding the provisions of any law making it unlawful for any person, officer, or employee of the State to make

known information imparted by any tax return or permit any tax return to be seen or examined by any person, it shall be lawful to ~~permit~~:

- (1) Permit a duly accredited tax official of the United States, any state or territory, any county of this State, or the Multistate Tax Commission to inspect any tax return of any taxpayer~~[-, or to furnish]~~;
- (2) Furnish to an official, commission, or the authorized representative thereof an abstract of the return or supply the official, commission, or the authorized representative thereof with information concerning any item contained in the return or disclosed by the report of any investigation of the return or of the subject matter of the return for tax purposes only~~[-]; or~~
- (3) Provide tax return information to the auditor pursuant to section 23-5(a).

The Multistate Tax Commission may make the information available to a duly accredited tax official of the United States, any state or territory, or the authorized representative thereof, for tax purposes only.”

SECTION 4. Section 235-116, Hawaii Revised Statutes, is amended to read as follows:

“**§235-116 Disclosure of returns unlawful; penalty.** All tax returns and return information required to be filed under this chapter shall be confidential, including any copy of any portion of a federal return ~~[which] that~~ may be attached to a state tax return, or any information reflected in the copy of ~~[such] the~~ federal return. It shall be unlawful for any person, or any officer or employee of the State, including the auditor or the auditor’s agent with regard to tax return information obtained pursuant to section 23-5(a), to make known intentionally information imparted by any income tax return or estimate made under sections 235-92, 235-94, 235-95, and 235-97 or wilfully to permit any income tax return or estimate so made or copy thereof to be seen or examined by any person other than the taxpayer or the taxpayer’s authorized agent, persons duly authorized by the State in connection with their official duties, the Multistate Tax Commission or the authorized representative thereof, except as otherwise provided by law~~[-, and any].~~ Any offense against the foregoing provisions shall be ~~[punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both.]~~ punishable as a class C felony.”

SECTION 5. Section 237-34, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State, including the auditor or the auditor’s agent with regard to tax return information obtained pursuant to section 23-5(a), to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any ~~[such]~~ return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only, the taxpayer, the taxpayer’s authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;

- (2) Partners;
 - (3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return;
 - (4) The person authorized to act for a corporation in dissolution;
 - (5) The shareholder of an S corporation;
 - (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return;
 - (7) The committee, trustee, or guardian of any person in paragraphs (1) ~~[tø]~~ through (6) who is incompetent;
 - (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) ~~[tø]~~ through (7);
 - (9) Persons duly authorized by the State in connection with their official duties;
 - (10) Any duly accredited tax official of the United States or of any state or territory;
 - (11) The Multistate Tax Commission or its authorized representative;
 - (12) Members of a limited liability company; and
 - (13) A person contractually obligated to pay the taxes assessed against another when the latter person is under audit by the department.
- Any violation of this subsection shall be a ~~[misdemeanor.]~~ class C felony."

SECTION 6. Section 237D-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State, including the auditor or the auditor's agent with regard to tax return information obtained pursuant to section 23-5(a), to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) ~~[tø]~~ through (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) ~~[tø]~~ through (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States, or of any state or territory, or of any county of this State;
- (11) The Multistate Tax Commission or its authorized representative; and

(12) Members of a limited liability company.

Any violation of this subsection shall be a ~~[misdemeanor.]~~ class C felony. Nothing in this subsection shall prohibit the publication of statistics ~~[so]~~ that are classified ~~[as]~~ to prevent the identification of particular reports or returns and the items of the reports or returns.”

SECTION 7. Section 251-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State, including the auditor or the auditor’s agent with regard to tax return information obtained pursuant to section 23-5(a), to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any ~~[such]~~ tax return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for surcharge tax purposes only the lessor or tour vehicle operator, the lessor’s or tour vehicle operator’s authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate’s or decedent’s return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) ~~[to]~~ through (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) ~~[to]~~ through (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or territory;
- (11) The Multistate Tax Commission or its authorized representative; and
- (12) Members of a limited liability company.

Any violation of this subsection shall be a ~~[misdemeanor.]~~ class C felony. Nothing in this subsection shall prohibit the publication of statistics ~~[so]~~ that are classified ~~[as]~~ to prevent the identification of particular reports or returns and the items of the reports or returns.”

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

SECTION 9. This Act shall take effect upon its approval.

(Approved June 24, 2014.)