

Tax

H. B. NO. 3190

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A BILL FOR AN ACT

RELATING TO THE PUBLIC DISCLOSURE OF WRITTEN OPINIONS BY THE
DEPARTMENT OF TAXATION.

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

1 SECTION 1. The purpose of this Act is to open to public
2 inspection written opinions of the department of taxation that
3 interpret the tax laws, while at the same time maintaining the
4 confidentiality of tax return information.

5 The viability of Hawaii's tax system depends upon the
6 voluntary disclosure of information to the taxing authorities.
7 The legislature finds that it is necessary to keep the
8 information disclosed by taxpayers confidential in order to
9 maintain voluntary compliance with the tax laws. At the same
10 time, the legislature finds that correct reporting can be
11 enhanced by issuing guidance to taxpayers in areas where the
12 interpretation of the tax laws is unclear. Accordingly, this Act
13 makes available to the public written opinions of the department
14 in areas where the law is unclear.

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1 This Act does not open to public inspection the voluminous
2 routine correspondence with taxpayers concerning established
3 principles of law. This Act is an exception to the
4 well-established principle of confidentiality to tax information.
5 The Act is narrowly tailored to achieve its purpose to provide
6 guidance on the interpretation of tax laws in order to enhance
7 correct reporting, while maintaining the confidentiality of tax
8 return information in order to maintain voluntary compliance with
9 the tax laws. To protect the integrity of the voluntary
10 disclosure system, doubts about whether information should be
11 publicly disclosed shall be resolved in favor of nondisclosure.

12 SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended
13 by adding a new section to be appropriately designated and to
14 read as follows:

15 "\$231- Public inspection and copying of written
16 opinions. (a) Written opinions shall be open to public
17 inspection and copying as provided in this section,
18 notwithstanding sections 235-116, 236D-15, 237-34, and 237D-13
19 and any other law restricting disclosure of tax returns or tax
20 return information to the contrary. Except as provided in
21 subsection (f), regarding the disclosure of the text of written

1 opinions, chapters 92F shall not apply to tax returns and tax
2 return information.

3 A written opinion may not be used or cited as precedent
4 unless otherwise provided by department rules.

5 (b) For purposes of this section, the term "written
6 opinion" means a written statement issued by the department to a
7 taxpayer, or to the taxpayer's authorized representative on
8 behalf of the taxpayer, that interprets and applies any provision
9 in title 14 administered by the department to a specific set of
10 facts. A written opinion generally recites the relevant facts,
11 sets forth the applicable provisions of law, and shows the
12 application of the law to the facts. A written opinion shall not
13 include.

14 (1) Any written communication from the department to any
15 person in connection with the examination or audit of
16 any person's tax return, or in connection with
17 collection activities relating to any person's
18 delinquent tax liability;

19 (2) An information letter, which is a written statement
20 issued by the department that provides general
21 information by calling attention to a well-established
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1 interpretation or principle of tax law, whether or not
2 it applies to a specific set of facts. An information
3 letter may be issued when the nature of the request
4 from the taxpayer suggests that the taxpayer is seeking
5 general information, or where the department believes
6 that general information will assist the taxpayer; or
7 (3) A determination letter, which is a written statement
8 issued by the department that applies an interpretation
9 or principle of tax law clearly established by statute,
10 rule, written opinion, or published court decision to a
11 particular set of facts. A determination letter shall
12 be designated as such, and shall indicate the clearly
13 established interpretation or principle applied and its
14 source.

15 (c) Before making a written opinion available for public
16 inspection and copying under subsection (a), the department where
17 possible shall segregate from the opinion trade secrets or other
18 confidential, commercial, and financial information, and
19 identifying details such as the name, address, and social
20 security or tax identification number of the person to whom the
21 written opinion pertains and of any other person identified in

1 the written opinion. Segregated text shall not be disclosed
2 under this section.

3 (d) Upon the issuance of any written opinion, the
4 department shall mail a notice of intention to disclose the
5 opinion together with a copy of the opinion showing the text the
6 department proposes to segregate to any person to whom the
7 written opinion pertains (or any known successor in interest,
8 personal representative, or other person authorized by law to act
9 for or on behalf of such person).

10 (e) Except as otherwise provided in subsection (h), a
11 written opinion, as segregated under subsection (c), shall be
12 open to public inspection and copying no earlier than
13 seventy-five days, and no later than ninety days, after the
14 department's notice of intention to disclose is mailed. At the
15 written request of a person to whom the written opinion pertains
16 (or a successor in interest, personal representative, or other
17 person authorized by law to act for or on behalf of the person),
18 the preceding period may be extended, but the department shall
19 make the written opinion available for inspection and copying no
20 later than one-hundred-eighty days after the notice to disclose
21 is mailed, including extensions.

1 (f) The department's decision as to what constitutes a
2 written opinion is final. A decision concerning the disclosure
3 of the text of written opinions may be contested, but only in the
4 manner and within the time set forth in this subsection. Any
5 person who meets the requirements of paragraph (1) or (2) and who
6 has exhausted the administrative remedies as prescribed by rules
7 adopted by the department may appeal within sixty days of the
8 date of the department's decision to the office of information
9 practices in accordance with procedures established by the office
10 of information practices under sections 92F-15.5 and 92F-42(1).
11 The office of information practices may examine the written
12 opinion at issue, in camera, to assist in determining whether it,
13 or any part of it, may be withheld. In determining whether
14 information constitutes a trade secret or other confidential,
15 commercial, and financial information, the office of information
16 practices may consider and apply, in addition to any other
17 relevant sources, interpretations of those terms under chapter
18 92F.

19 Only the following persons may contest a decision of the
20 department concerning the disclosure of written opinions:

21 (1) Any person:
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1 (A) To whom a written opinion pertains (or a successor
2 in interest, personal representative, or other
3 person authorized by law to act for or on behalf
4 of the person);

5 (B) Who has a material interest in maintaining the
6 confidentiality of any written opinion or portion
7 thereof; and

8 (C) Who disagrees with a decision by the department
9 not to segregate information from any written
10 opinion; or

11 (2) Any person who is aggrieved by the department's denial
12 of a request to inspect and copy any written opinion or
13 portion thereof.

14 Any person aggrieved by a decision of the office of
15 information practices may appeal the decision to the circuit
16 court of the first judicial circuit, or of the judicial circuit
17 in which the request for the written opinion is made or in which
18 a copy of the written opinion is maintained by the department.
19 The appeal shall be filed within thirty days after the date of
20 the decision of the office of information practices. The circuit
21 court shall hear the matter de novo. Opinions and rulings of the

1 office of information practices shall be admissible. The circuit
2 court may examine the written opinion at issue, in camera, to
3 assist in determining whether it, or any part of it, may be
4 withheld.

5 Any person advocating nondisclosure or segregation under
6 paragraph (1) shall have the burden of proof and persuasion, but
7 any person under paragraph (2) need only establish the denial of
8 a request and the department shall have the burden of proof and
9 persuasion to justify the denial of the request to inspect and
10 copy.

11 (g) Except for cases the circuit court considers of greater
12 importance, proceedings before the court, as authorized by this
13 section, and appeals therefrom, shall be assigned for hearing and
14 trial or for argument at the earliest practicable date and
15 expedited in every way.

16 (h) Upon appeal to the office of information practices or a
17 court under subsection (f), the written opinion at issue shall
18 not be made available for public inspection and copying pending
19 the final decision in the case. If the office of information
20 practices or the court rules that the written opinion subject to
21 the appeal shall be open and available to public inspection and
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1 copying, or that confidential or identifying information must be
2 segregated, then the department shall make the written opinion
3 available for public inspection and copying not later than thirty
4 days after the decision becomes final. The office of information
5 practices or the court may extend this thirty-day period for such
6 time as the office of information practices or the court finds
7 necessary to allow the department to comply with its decision.

8 (i) The department shall compile yearly an index in such
9 form as the department determines of all written opinions issued
10 during the preceding calendar year. Copies of the index shall be
11 furnished upon the payment of 50 cents a page. Copies of written
12 opinions shall be furnished upon the payment of \$1 a page.

13 (j) Except as provided in this section, written opinions
14 shall remain subject to all laws governing tax returns and tax
15 return information and the department shall not be required by
16 any court to disclose any written opinion except as specifically
17 authorized by title 14.

18 (k) No officer or employee of the department shall be in
19 violation of any law prohibiting the disclosure of tax returns or
20 tax return information, or in violation of any other law

1 restricting the disclosure of information, due to the release of
2 any written opinion.

3 (1) The department may adopt rules pursuant to chapter 91
4 to implement this section."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval and
7 shall apply to written opinions dated after December 31, 1994.

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10 INTRODUCED BY:


