

ORIGINAL

STANDING COMMITTEE REPORT NO. 2651

Honolulu, Hawaii

MAR 24, 1994

Honorable Norman Mizuguchi
President of the Senate
Seventeenth State Legislature
Regular Session of 1994
State of Hawaii

Sir:

RE: H.B. No. 3190, H.D. 1

Your Committees on Government Operations, Environmental Protection and Hawaiian Programs and Judiciary, to which was referred H.B. No. 3190, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE PUBLIC DISCLOSURE OF WRITTEN OPINIONS BY THE DEPARTMENT OF TAXATION,"

beg leave to report as follows:

The purpose of this bill is to authorize the public disclosure of written opinions rendered by the Department of Taxation after December 31, 1994.

Your Committees find that providing the public access to written opinions by the Department of Taxation would assist taxpayers in completing their tax returns. Your Committees also find that it is imperative to the voluntary disclosure of information upon which the tax system depends, to protect the confidentiality of information submitted by the taxpayer.

Consequently, public access is limited to a narrow category of written documentation of tax interpretation by the Department of Taxation. The bill provides for the careful segregation of confidential information within any publicly disclosed written opinion and includes advance notification of the public release of the opinion to all parties mentioned in the original unsegregated opinion. The bill also provides for appeal opportunities that protect the confidentiality of the written opinion until the final decision in the case is rendered.

Your Committees have amended the bill by clarifying that jurisdiction over an appeal to a judicial circuit resides only in the judicial circuits in which the written opinion is maintained, or in which the request for the written opinion is made. Your Committees have also made technical nonsubstantive amendments.

Your Committees on Government Operations, Environmental Protection and Hawaiian Programs and Judiciary are in accord with the intent and purpose of H.B. No. 3190, H.D. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 3190, H.D. 1, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted,

COMMITTEE ON JUDICIARY


REY GRAULTY, Chair


MATT MATSUNAGA, Vice Chair


ROSALYN BAKER, Member


ANTHONY K. U. CHANG, Member


RANDY IWASE, Member

COMMITTEE ON GOVERNMENT
OPERATIONS, ENVIRONMENTAL
PROTECTION AND HAWAIIAN
PROGRAMS


ANTHONY K. U. CHANG, Chair


ELOISE YAMASHITA TUNGPALAN,
Vice Chair


CAROL FUKUNAGA, Member


ANDREW LEVIN, Member


MALAMA SOLOMON, Member

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ANN KOBAYASHI, Member


JOE TANAKA, Member


ANDREW LEVIN, Member


RICK REED, Member


RICHARD M. MATSUURA, Member


STAN KOKI, Member


RICK REED, Member

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 information
8 disclosed by taxpayers confidential in order to maintain
9 voluntary compliance with the tax laws. At the same time, the
10 legislature finds that correct reporting can be enhanced by
11 issuing guidance to taxpayers in areas where the interpretation
12 of the tax laws is unclear. Accordingly, this Act makes
13 available to the public written opinions of the department in
14 areas where the law is unclear.

15 This Act does not open to public inspection the voluminous
16 routine correspondence with taxpayers concerning established
17 principles of law. This Act is an exception to the well-
18 established principle of confidentiality of tax information and
19 thus, it is narrowly tailored to achieve its purpose to provide

1 guidance on the interpretation of tax laws in order to enhance
2 correct reporting, while maintaining the confidentiality of tax
3 return information in order to maintain voluntary compliance with
4 the tax laws. To protect the integrity of the voluntary
5 disclosure system, doubts about whether information should be
6 publicly disclosed shall be resolved in favor of nondisclosure.

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

10 "§231- Public inspection and copying of written
11 opinions. (a) Written opinions shall be open to public
12 inspection and copying as provided in this section,
13 notwithstanding sections 235-116, 236D-15, 237-34, and 237D-13
14 and any other law restricting disclosure of tax returns or tax
15 return information to the contrary. Except as provided in
16 subsection (f), regarding the disclosure of the text of written
17 opinions, chapters 92F shall not apply to tax returns and tax
18 return information.

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

21 (b) For purposes of this section, the term "written
22 opinion" means a written statement issued by the department to a
23 taxpayer, or to the taxpayer's authorized representative on

1 behalf of the taxpayer, that interprets and applies any provision
2 in title 14 administered by the department to a specific set of
3 facts. A written opinion generally recites the relevant facts,
4 sets forth the applicable provisions of law, and shows the
5 application of the law to the facts. A written opinion shall not
6 include:

- 7 (1) Any written communication from the department to any
8 person in connection with the examination or audit of
9 any person's tax return, or in connection with
10 collection activities relating to any person's
11 delinquent tax liability;
- 12 (2) An information letter, which is a written statement
13 issued by the department that provides general
14 information by calling attention to a well-established
15 interpretation or principle of tax law, whether or not
16 it applies to a specific set of facts. An information
17 letter may be issued when the nature of the request
18 from the taxpayer suggests that the taxpayer is seeking
19 general information, or where the department believes
20 that general information will assist the taxpayer; or
- 21 (3) A determination letter, which is a written statement
22 issued by the department that applies an interpretation
23 or principle of tax law clearly established by statute,

1 rule, written opinion, or published court decision to a
2 particular set of facts. A determination letter
3 includes the grant or denial of consent, permission,
4 exemption or registration, or a routine correspondence
5 in response to taxpayer inquiries. A determination
6 letter shall be designated as such, and shall indicate
7 the clearly established interpretation or principle
8 applied and its source.

9 (c) Before making a written opinion available for public
10 inspection and copying under subsection (a), the department where
11 possible shall segregate from the opinion trade secrets or other
12 confidential, commercial, and financial information, and
13 identifying details such as the name, address, and social
14 security or tax identification number of the person to whom the
15 written opinion pertains and of any other person identified in
16 the written opinion. Segregated text shall not be disclosed
17 under this section.

18 (d) Upon issuance of any written opinion, the department
19 shall mail a notice of intention to disclose the opinion together
20 with a copy of the opinion showing the text the department
21 proposes to segregate to any person to whom the written opinion
22 pertains (or any known successor in interest, personal
23 representative, or other person authorized by law to act for or

1 on behalf of such person).

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

14 (f) The department's decision as to what constitutes a
15 written opinion is final. A decision concerning the disclosure
16 of the text of written opinions may be contested, but only in the
17 manner and within the time set forth in this subsection. Any
18 person who meets the requirements of paragraph (1) or (2) and who
19 has exhausted the administrative remedies as prescribed by rules
20 adopted by the department may appeal within sixty days of the
21 date of the department's decision to the office of information
22 practices in accordance with procedures established by the office
23 of information practices under sections 92F-15.5 and 92F-42(1).

1 The office of information practices may examine the written
2 opinion at issue, in camera, to assist in determining whether it,
3 or any part of it, may be withheld. In determining whether
4 information constitutes a trade secret or other confidential,
5 commercial, and financial information, the office of information
6 practices may consider and apply, in addition to any other
7 relevant sources, interpretations of those terms under chapter
8 92F.

9 Only the following persons may contest a decision of the
10 department concerning the disclosure of written opinions:

11 (1) Any person:

12 (A) To whom a written opinion pertains (or a successor
13 in interest, personal representative, or other
14 person authorized by law to act for or on behalf
15 of the person);

16 (B) Who has a material interest in maintaining the
17 confidentiality of any written opinion or portion
18 thereof; and

19 (C) Who disagrees with a decision by the department
20 not to segregate information from any written
21 opinion; or

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

1 Any person aggrieved by a decision of the office of
2 information practices may appeal the decision to the circuit
3 court of the first judicial circuit, or of the judicial circuit
4 in which the request for the written opinion is made or in which
5 a copy of the written opinion is maintained by the department.
6 The appeal shall be filed within thirty days after the date of
7 the decision of the office of information practices. The circuit
8 court shall hear the matter de novo. Opinions and ruling of the
9 office of information practices shall be admissible. The circuit
10 court may examine the written opinion at issue, in camera, to
11 assist in determining whether it, or any part of it, may be
12 withheld.

13 Any person advocating nondisclosure or segregation under
14 paragraph (1) shall have the burden of proof and persuasion, but
15 any person under paragraph (2) need only establish the denial of
16 a request and the department shall have the burden of proof and
17 persuasion to justify the denial of the request to inspect and
18 copy.

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

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

14 (i) The department shall compile yearly an index in such
15 form as the department determines of all written opinions issued
16 during the preceding calendar year. Copies of the index shall be
17 furnished upon the payment of 50 cents a page. Copies of written
18 opinions shall be furnished upon the payment of \$1 a page.

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

1 (k) No officer or employee of the department shall be in
2 violation of any law prohibiting the disclosure of tax returns or
3 tax return information, or in violation of any other law
4 restricting the disclosure of information, due to the release of
5 any written opinion pursuant to this section.

6 (l) The department may adopt rules pursuant to chapter 91
7 to implement this section."

8 SECTION 3. New statutory material is underscored.

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

● ORIGINAL ●

STANDING COMMITTEE REPORT NO. 2843

Honolulu, Hawaii

APR 8, 1994

Honorable Norman Mizuguchi
President of the Senate
Seventeenth State Legislature
Regular Session of 1994
State of Hawaii

Sir:

RE: H.B. No. 3190, H.D. 1, S.D. 1

Your Committee on Ways and Means, to which was referred H.B. No. 3190, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE PUBLIC DISCLOSURE OF
WRITTEN OPINIONS BY THE DEPARTMENT OF TAXATION,"

begs leave to report as follows:

The purpose of this bill is to allow public inspection of written opinions of the department of taxation.

This bill is intended to provide assistance to the taxpayer in interpreting the tax laws for correct reporting of tax liability. It balances the need to maintain confidentiality of the information reported to the department of taxation and the benefit it provides to tax preparers.

The bill maintains confidentiality by protecting material such as trade secrets and identifying information including names and taxpayer identification numbers. The bill also limits the burden on the department of taxation by limiting the type of documents that are open to public inspection, and provides for appeal opportunities that protect the confidentiality of the written opinion.

Your Committee finds that this bill establishes a clear set of operating rules regarding tax department opinions to assist taxpayers in understanding state tax policies.


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Your Committee on Ways and Means is in accord with the intent and purpose of H.B. No. 3190, H.D. 1, S.D. 1, and recommends that it pass Third Reading.


Respectfully submitted,



DONNA R. IKEDA, Chair


GERALD T. HAGINO, Vice Chair


LEHUA FERNANDES SALLING,
Member


CAROL FUKUNAGA, Member


MILTON HOLT, Member


RANDY IWASE, Member


BRIAN KANNO, Member


ANDREW LEVIN, Member

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MIKE MCCARTNEY, Member


MALAMA SOLOMON, Member


JOE TANAKA, Member


MARY GEORGE, Member

THE SENATE

THE SEVENTEENTH LEGISLATURE
OF THE STATE OF HAWAII

RECORD OF VOTES

On H.B. 3190, H.D. 1, S.D.1

THIRD READING

Memo	SENATORS	Aye	No	Excused
	AKI, James	/		
	BAKER, Rosalyn	/		
	CHANG, Anthony K.U.			/
	FERNANDES SALLING, L	/		
	FUKUNAGA, Carol	/		
	GEORGE, Mary	/		
	GRAULTY, Rey	/		
	HAGINO, Gerald	/		
	HOLT, Milton	/		
	IKEDA, Donna	/		
	IWASE, Randall	/		
	KANNO, Brian	/		
	KOBAYASHI, Ann	/		
	KOBAYASHI, Bertrand	/		
	KOKI, Stanley T.	/		
	LEVIN, Andrew			/
	MATSUNAGA, Matt	/		
	MATSUURA, Richard	/		
	MCCARTNEY, Mike	/		
	NAKASATO, Dennis M.	/		
	REED, Rick	/		
	SOLOMON, Malama	/		
	TANAKA, Joe	/		
	TUNGPALAN, Eloise Y.	/		
	MR. PRESIDENT	/		
	TOTAL	13	2	



Clerk of the Senate

Date: April 12, 1994