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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 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.

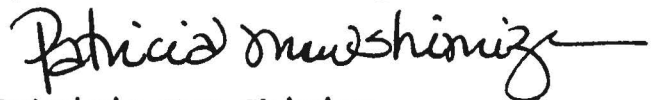
THE HOUSE OF REPRESENTATIVES OF THE  
STATE OF HAWAII

Honolulu, Hawaii

We hereby certify that the foregoing Bill passed Final Reading in the House of Representatives of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1994, on April 29, 1994.



Joseph M. Souki  
Speaker, House of Representatives

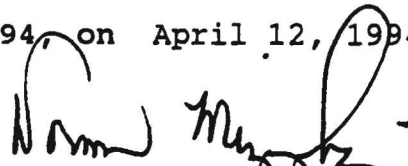


Patricia Mau-Shimizu  
Clerk, House of Representatives

THE SENATE OF THE STATE OF HAWAII

Honolulu, Hawaii

We hereby certify that the foregoing Bill passed Third Reading in the Senate of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1994, on April 12, 1994



Norman Mizuguchi  
President of the Senate



T. David Woo, Jr.  
Clerk of the Senate