

STANDING COMMITTEE REPORT NO. ^{Tax} 2517

Honolulu, Hawaii

MAR 4, 1994

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

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[TAX-11(94)]

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Sir:

RE: S.B. No. 2972, S.D. 1

Your Committee on Ways and Means, to which was referred S.B. No. 2972, 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 authorize the public disclosure of written opinions by the department of taxation.

Your Committee finds that providing the public access to written opinions by the department of taxation would assist taxpayers in completing their tax returns. Your Committee also finds 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.

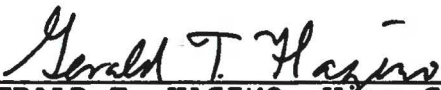
This bill provides public access to a narrow category of written documentation of tax interpretation by the department of taxation. This bill provides for the careful segregation of confidential information within any publicly disclosed written opinion and includes advance notification of the public release of the opinion to all parties mentioned in the original unsegregated opinion. This bill also provides for appeal opportunities that protect the confidentiality of the written opinion until the final decision in the case is rendered. The disclosure law would apply only to written opinions dated after December 31, 1994.


Your Committee has amended this bill by making technical, nonsubstantive amendments.

Your Committee on Ways and Means is in accord with the intent and purpose of S.B. No. 2972, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 2972, S.D. 2.

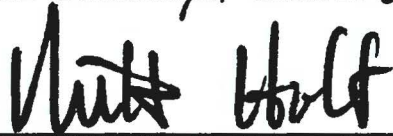
Respectfully submitted,

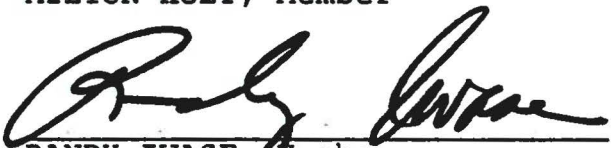

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A BILL FOR AN ACT

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 to tax information. The

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

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

11 "§231- Public inspection and copying of written opinions.

12 (a) Written opinions shall be open to public inspection and
13 copying as provided in this section, notwithstanding sections
14 235-116, 236D-15, 237-34, and 237D-13 and any other law
15 restricting disclosure of tax returns or tax return information
16 to the contrary. Except as provided in subsection (f), regarding
17 the disclosure of the text of written opinions, chapter 92F shall
18 not apply to tax returns and tax return information. A written
19 opinion may not be used or cited as precedent unless otherwise
20 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

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

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

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

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

20 (d) Upon issuance of any written opinion, the department
21 shall mail a notice of intention to disclose the opinion together
22 with a copy of the opinion showing the text the department

1 proposes to segregate to any person to whom the written opinion
2 pertains, or any known successor in interest, personal
3 representative, or other person authorized by law to act for or
4 on behalf of the person.

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

17 (f) The department's decision as to what constitutes a
18 written opinion shall be final. A decision concerning the
19 disclosure of the text of written opinions may be contested, but
20 only in the manner and within the time set forth in this
21 subsection. Any person who meets the requirements of paragraph
22 (1) or (2) and who has exhausted the administrative remedies as

1 prescribed by rules adopted by the department may appeal within
2 sixty days of the date of the department's decision to the office
3 of information practices in accordance with procedures
4 established by the office of information practices under sections
5 92F-15.5 and 92F-42(1). The office of information practices may
6 examine the written opinion at issue, in camera, to assist in
7 determining whether it, or any part of it, may be withheld. In
8 determining whether information constitutes a trade secret or
9 other confidential, commercial, and financial information, the
10 office of information practices may consider and apply, in
11 addition to any other relevant source, interpretations of those
12 terms under chapter 92F.

13 Only the following persons may contest a decision of the
14 department concerning the disclosure of written opinions:

15 (1) Any person:

16 (A) To whom a written opinion pertains, or a successor
17 in interest, personal representative, or other
18 person authorized by law to act for or on behalf
19 of the person;
20 (B) Who has a material interest in maintaining the
21 confidentiality of any written opinion or portion
22 thereof; and

1 (C) Who disagrees with a decision by the department
2 not to segregate information from any written
3 opinion; or
4 (2) Any person who is aggrieved by the department's denial
5 of a request to inspect and copy any written opinion or
6 portion thereof.
7 Any person aggrieved by a decision of the office of
8 information practices may appeal the decision to the circuit
9 court of the first judicial circuit, or of the judicial circuit
10 in which the request for the written opinion is made or in which
11 a copy of the written opinion is made or in which a copy of the
12 written opinion is maintained by the department. The appeal
13 shall be filed within thirty days after the date of the decision
14 of the office of information practices. The circuit court shall
15 have the matter de novo. Opinions and rulings of the office of
16 information practices shall be admissible. The circuit court may
17 examine the written opinion at issue, in camera, to assist in
18 determining whether it, or any part of it, may be withheld.
19 Any person advocating nondisclosure or segregation under
20 paragraph (1) shall have the burden of proof and persuasion, but
21 any person under paragraph (2) need only establish the denial of
22 a request and the department shall have the burden of proof and

1 persuasion to justify the denial of the request to inspect and
2 copy.

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

8 (h) Upon appeal to the office of information practices or a
9 court under subsection (f), the written opinion at issue shall
10 not be made available for public inspection and copying until the
11 final decision in the case has been rendered. If the office of
12 information practices or the court rules that the written opinion
13 subject to the appeal shall be open and available to public
14 inspection and copying, or that confidential or identifying
15 information must be segregated, then the department shall make
16 the written opinion available for public inspection and copying
17 not later than thirty days after the decision becomes final. The
18 office of information practices or the court may extend this
19 thirty-day period for any period of time that the office of
20 information practices or the court finds necessary to allow the
21 department to comply with its decision.

22 (i) The department shall compile yearly an index, in a form

1 that the department determines, of all written opinions issued
2 during the preceding calendar year. Copies of the index shall be
3 furnished upon the payment of 50 cents a page. Copies of written
4 opinion shall be furnished upon the payment of \$1 a page.

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

10 (k) No officer or employee of the department shall be in
11 violation of any law prohibiting the disclosure of tax returns or
12 tax return information, or in violation of any other law
13 restricting the disclosure of information, due to the release of
14 any written opinion.

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

17 SECTION 3. This Act shall apply to written opinions dated
18 after December 31, 1994.

19 SECTION 4. New statutory material is underscored.

20 SECTION 5. This Act shall take effect upon its approval.

