

L E G I S L A T I V E

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SUBJECT: GENERAL EXCISE, USE, MISCELLANEOUS, County collection of 0.5% surcharge

BILL NUMBER: SB 2814; HB 2474 (Identical)

INTRODUCED BY: SB by Bunda; HB by Say by request

BRIEF SUMMARY: Amends HRS 46-16.8 and 248-2.6 to specify that the county shall be responsible for collecting the county surcharge if adopted by that county and that it shall be the responsibility of the county finance director to collect the tax surcharge. Allows the county that imposes the surcharge to use up to 10% of the gross proceeds of the surcharge to pay for the costs of assessment, collection, and disposition of the surcharge. After amounts for such costs are deducted, the remainder of the collections of the surcharge are to be a realization of the county's general fund to be used as specified by law. Also allows a county to contract with a private entity for the collection of the surcharge.

Amends HRS 237-8.6 by repealing the provision that allowed the assessment of the surcharge on contracts only if the contract was entered into after June 30 of the year prior to the effective date of the county surcharge and specifies that the surcharge applies to all written contracts including those in effect at the time the county surcharge becomes effective.

Amends HRS 235-116 and 237-34 to include county officials in their official duties to administer the county surcharge to access income tax and general excise tax information.

Adds definitions to HRS 237-1 and 238-1 to clarify that department and director also include county finance departments and county finance directors in addition to the department of taxation and the tax director. And amends HRS 237-31 to specify remittances of the general excise tax also include, in the case of the county surcharge, remittances to county finance directors and that realization of the county surcharge that shall be to the county treasury.

Appropriates an unspecified amount of general funds for fiscal 2007 for the purposes of this act, including hiring of necessary staff, effective 7/1/06.

EFFECTIVE DATE: Upon Approval

STAFF COMMENTS: Act 247, SLH 2005, that became law without the governor's approval authorized the counties to impose a general excise tax surcharge of 0.5% with the proceeds to be used for: (1) operating or capital costs of public transportation systems including buses, trains, ferries, pedestrian paths or sidewalks, or bike paths; and (2) expenses incurred in complying with the Americans with Disabilities Act of 1990 in counties where the population is greater than 500,000. A county with a population of under 500,000 could have used the surcharge to build or repair public roads or highways.

However, Act 247 designated the state as the administrator and collector of the county surcharge and the

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state would be compensated with 10% of the collections of the surcharge. The governor charged that this violated the concept of homerule and threatened to veto the measure. After numerous discussions and at the behest of the mayor of the city & county of Honolulu, and promises by both legislative leaders that they would introduce measures to turn the collection responsibilities over to the counties, the governor allowed HB 1309, CD-1 to become law. As is now known, the city & county of Honolulu approved the imposition of 0.5% surcharge and since that time officials at both the state and county level have been in discussions as to how to go about having the county collect the tax. In the meantime, businesses have begun to balk at the idea of filling out separate forms on the same gross income.

This measure represents an effort to shift the responsibility for collection of the county surcharge from the state to the county collecting the surcharge. It is interesting to note that not only does the proposal specifically provide that up to 10% of the collections of the surcharge may be used to pay for the costs of assessment, collection and disposition of the surcharge, but it also provides that the county may contract out these responsibilities to a private entity. If the latter comes to pass, that is, the county hires a private company, will the private provider have the same standing as if the county had administered the tax?

More specifically, who will have the final say in interpreting how the tax is to be imposed? It is one thing to open envelopes, verify income reported, and deposit checks. It is another whole ball of wax in trying to determine whether or not a particular type of gross income is subject to the surcharge. For example, who will decide whether or not a Honolulu attorney's charges to a client on Maui are subject to the surcharge or are exempt? Will the same payment rules apply to the 0.5% surcharge because the amount of the tax is so much smaller than the thresholds that apply to the 4% general excise tax?

There is no doubt that the state is in a better position to administer the surcharge since it is based on the general excise tax which the department has administered since its inception. It has a newly implemented integrated tax system that interfaces the net income tax with the gross income tax to insure accuracy in compliance. Farming the county surcharge out to a private entity does not address the complaints of businesses that they will have to deal with two forms adding more costs to their operations that will shrink the bottom line.

Given the position of the administration that the state not collect the surcharge, there are no simple solutions. Whatever the legislature decides, it should also consider setting some ground rules with respect to allocation of income and therefore what gross income will be subject to the surcharge. This problem is particularly acute for services that are rendered by a person who has a business in one county but may service clients in all four counties. Differing rates may also encourage businesses to assign gross income to a county where there is no added rate. If so, extra time will be needed to audit the books of these taxpayers to insure that the gross income was subject to the correct surcharge rate. These hidden costs of administration and compliance will also add to the cost of living in Hawaii.

Thus, not only will the 0.5% surcharge add to the cost of doing business in Hawaii, but the cost of administering and complying with the inane concept of allowing just one county to levy the additional rate will bear heavily not only on taxpayers but on Hawaii's economy as a whole.

Digested 2/6/06