

Report Title:

Public Transit; County Surcharge on State Tax

Description:

Authorizes counties to levy a county surcharge on State tax to fund public transportation systems in their respective counties; repeals transit capital development fund. (HB1309 CD1)

HB1309_CD1 (2)

HB1309_CD1 (2)

HB1309_CD1 (2)

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The purpose of this Act is to authorize
2 counties to levy a county surcharge on state tax by ordinance to
3 fund public transportation systems.

4 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
5 by adding a new section to be appropriately designated and to
6 read as follows:

7 "§46- County surcharge on state tax. (a) Each county
8 may establish a surcharge on state tax at the rates enumerated
9 in sections 237- and 238- . A county electing to establish
10 this surcharge shall do so by ordinance; provided that:

11 (1) No ordinance shall be adopted until the county has
12 conducted a public hearing on the proposed ordinance;

13 (2) The ordinance shall be adopted prior to December 31,
14 2005; and

15 (3) No county surcharge on state tax that may be
16 authorized under this section shall be levied prior to
17 January 1, 2007.

1 Notice of the public hearing required under paragraph (1) shall
2 be published in a newspaper of general circulation within the
3 county at least twice within a period of thirty days immediately
4 preceding the date of the hearing.

5 (b) A county electing to exercise the authority granted
6 under this section shall notify the director of taxation within
7 ten days after the county has adopted a surcharge on state tax
8 ordinance and, beginning no earlier than January 1, 2007, the
9 director of taxation shall levy, assess, collect, and otherwise
10 administer the county surcharge on state tax.

11 (c) Each county with a population greater than five
12 hundred thousand that adopts a county surcharge on state tax
13 ordinance pursuant to subsection (a) shall use the surcharges
14 received from the State for:

- 15 (1) Operating or capital costs of a locally preferred
16 alternative for a mass transit project; and
17 (2) Expenses in complying with the Americans with
18 Disabilities Act of 1990 with respect to paragraph
19 (1).

20 The county surcharge on state tax shall not be used to build or
21 repair public roads or highways, bicycle paths, or support

1 public transportation systems already in existence prior to the
2 effective date of this Act.

3 (d) Each county with a population equal to or less than
4 five hundred thousand that adopts a county surcharge on state
5 tax ordinance pursuant to subsection (a) shall use the
6 surcharges received from the State for:

7 (1) Operating or capital costs of public transportation
8 within each county for public transportation systems,
9 including public roadways or highways, public buses,
10 trains, ferries, pedestrian paths or sidewalks, or
11 bicycle paths; and

12 (2) Expenses in complying with the Americans with
13 Disabilities Act of 1990 with respect to paragraph
14 (1).

15 (e) As used in this section, "capital costs" means
16 nonrecurring costs required to construct a transit facility or
17 system, including debt service, costs of land acquisition and
18 development, acquiring of rights-of-way, planning, design, and
19 construction, and including equipping and furnishing the
20 facility or system."

1 SECTION 3. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§237- County surcharge on state tax; administration.**

5 (a) The county surcharge on state tax, upon the adoption of
6 county ordinances and in accordance with the requirements of
7 section 46- , shall be levied, assessed, and collected as
8 provided in this section on all gross proceeds and gross income
9 taxable under this chapter. No county shall set the surcharge
10 on state tax at a rate greater than one-half per cent of all
11 gross proceeds and gross income taxable under this chapter. All
12 provisions of this chapter shall apply to the county surcharge
13 on state tax. With respect to the surcharge, the director of
14 taxation shall have all the rights and powers provided under
15 this chapter. In addition, the director of taxation shall have
16 the exclusive rights and power to determine the county or
17 counties in which a person is engaged in business and, in the
18 case of a person engaged in business in more than one county,
19 the director shall determine, through apportionment or other
20 means, that portion of the surcharge on state tax attributable
21 to business conducted in each county.

1 (b) Each county surcharge on state tax that may be adopted
2 pursuant to section 46- (a) shall be levied beginning in the
3 taxable year after the adoption of the relevant county
4 ordinance; provided that no surcharge on state tax may be levied
5 prior to January 1, 2007.

6 (c) The county surcharge on state tax, if adopted, shall
7 be imposed on the gross proceeds or gross income of all written
8 contracts that require the passing on of the taxes imposed under
9 this chapter; provided that if the gross proceeds or gross
10 income are received as payments beginning in the taxable year in
11 which the taxes become effective, on contracts entered into
12 before June 30 of the year prior to the taxable year in which
13 the taxes become effective, and the written contracts do not
14 provide for the passing on of increased rates of taxes, the
15 county surcharge on state tax shall not be imposed on the gross
16 proceeds or gross income covered under the written contracts.
17 The county surcharge on state tax shall be imposed on the gross
18 proceeds or gross income from all contracts entered into on or
19 after June 30 of the year prior to the taxable year in which the
20 taxes become effective, regardless of whether the contract
21 allows for the passing on of any tax or any tax increases.

1 (d) No county surcharge on state tax shall be established

2 on any:

3 (1) Gross income or gross proceeds taxable under this
4 chapter at the one-half per cent tax rate;

5 (2) Gross income or gross proceeds taxable under this
6 chapter at the 0.15 per cent tax rate; or

7 (3) Transactions, amounts, persons, gross income, or gross
8 proceeds exempt from tax under this chapter.

9 (e) The director of taxation shall revise the general
10 excise tax forms to provide for the clear and separate
11 designation of the imposition and payment of the county
12 surcharge on state tax.

13 (f) The taxpayer shall designate the taxation district to
14 which the county surcharge on state tax is assigned in
15 accordance with rules adopted by the director of taxation under
16 chapter 91. The taxpayer shall file a schedule with the
17 taxpayer's periodic and annual general excise tax returns
18 summarizing the amount of taxes assigned to each taxation
19 district.

20 (g) The penalties provided by section 231-39 for failure
21 to file a tax return shall be imposed on the amount of surcharge
22 due on the return being filed for the failure to file the

1 schedule required to accompany the return. In addition, there
2 shall be added to the tax an amount equal to ten per cent of the
3 amount of the surcharge and tax due on the return being filed
4 for the failure to file the schedule or the failure to correctly
5 report the assignment of the general excise tax by taxation
6 district on the schedule required under this subsection.

7 (h) All taxpayers who file on a fiscal year basis whose
8 fiscal year ends after December 31 of the year prior to the
9 taxable year in which the taxes become effective, shall file a
10 short period annual return for the period preceding January 1 of
11 the taxable year in which the taxes become effective. Each
12 fiscal year taxpayer shall also file a short period annual
13 return for the period starting on January 1 of the taxable year
14 in which the taxes become effective, and ending before January 1
15 of the following year."

16 SECTION 4. Chapter 238, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 **"§238- County surcharge on state tax; administration.**

20 (a) The county surcharge on state tax, upon the adoption of a
21 county ordinance and in accordance with the requirements of
22 section 46- , shall be levied, assessed, and collected as

1 provided in this section on the value of property and services
2 taxable under this chapter. No county shall set the surcharge
3 on state tax at a rate greater than one-half per cent of the
4 value of property taxable under this chapter. All provisions of
5 this chapter shall apply to the county surcharge on state tax.
6 With respect to the surcharge, the director shall have all the
7 rights and powers provided under this chapter. In addition, the
8 director of taxation shall have the exclusive rights and power
9 to determine the county or counties in which a person imports or
10 purchases tangible personal property and, in the case of a
11 person importing or purchasing tangible property in more than
12 one county, the director shall determine, through apportionment
13 or other means, that portion of the surcharge on state tax
14 attributable to the importation or purchase in each county.

15 (b) Each county surcharge on state tax that may be adopted
16 shall be levied beginning in the taxable year after the adoption
17 of the relevant county ordinance; provided that no surcharge on
18 state tax may be levied prior to January 1, 2007.

19 (c) No county surcharge on state tax shall be established
20 upon any use taxable under this chapter at the one-half per cent
21 tax rate or upon any use that is not subject to taxation or that
22 is exempt from taxation under this chapter.

1 (d) The director of taxation shall revise the use tax
2 forms to provide for the clear and separate designation of the
3 imposition and payment of the county surcharge on state tax.

4 (e) The taxpayer shall designate the taxation district to
5 which the county surcharge on state tax is assigned in
6 accordance with rules adopted by the director of taxation under
7 chapter 91. The taxpayer shall file a schedule with the
8 taxpayer's periodic and annual use tax returns summarizing the
9 amount of taxes assigned to each taxation district.

10 (f) The penalties provided by section 231-39 for failure
11 to file a tax return shall be imposed on the amount of surcharge
12 due on the return being filed for the failure to file the
13 schedule required to accompany the return. In addition, there
14 shall be added to the tax an amount equal to ten per cent of the
15 amount of the surcharge and tax due on the return being filed
16 for the failure to file the schedule or the failure to correctly
17 report the assignment of the use tax by taxation district on the
18 schedule required under this subsection.

19 (g) All taxpayers who file on a fiscal year basis whose
20 fiscal year ends after December 31 of the year prior to the
21 taxable year in which the taxes become effective, shall file a
22 short period annual return for the period preceding January 1 of

1 the taxable year in which the taxes become effective. Each
2 fiscal year taxpayer shall also file a short period annual
3 return for the period starting on January 1 of the taxable year
4 in which the taxes become effective, and ending before January 1
5 of the following year."

6 SECTION 5. Chapter 248, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 **"§248- County surcharge on state tax; disposition of**
10 **proceeds.** (a) If adopted by county ordinance, all county
11 surcharges on state tax collected by the director of taxation
12 shall be paid into the state treasury quarterly, within ten
13 working days after collection, and shall be placed by the
14 director of finance in special accounts. Out of the revenues
15 generated by county surcharges on state tax paid into each
16 respective state treasury special account, the director of
17 finance shall deduct ten per cent of the gross proceeds of a
18 respective county's surcharge on state tax to reimburse the
19 State for the costs of assessment, collection, and disposition
20 of the county surcharge on state tax incurred by the State.
21 Amounts retained shall be general fund realizations of the
22 State.

1 (b) The amounts deducted for costs of assessment,
2 collection, and disposition of county surcharges on state tax
3 shall be withheld from payment to the counties by the State out
4 of the county surcharges on state tax collected for the current
5 calendar year.

6 (c) For the purpose of this section, the costs of
7 assessment, collection, and disposition of the county surcharges
8 on state tax shall include any and all costs, direct or
9 indirect, that are deemed necessary and proper to effectively
10 administer this section and sections 237- and 238- .

11 (d) After the deduction and withholding of the costs under
12 subsections (a) and (b), the director of finance shall pay the
13 remaining balance on quarterly basis to the director of finance
14 of each county that has adopted a county surcharge on state tax
15 under section 46- . The quarterly payments shall be made after
16 the county surcharges on state tax have been paid into the state
17 treasury special accounts or after the disposition of any tax
18 appeal, as the case may be. All county surcharges on state tax
19 collected shall be distributed by the director of finance to the
20 county in which the county surcharge on state tax is generated
21 and shall be a general fund realization of the county, to be

1 used for the purposes specified in section 46- by each of the
2 counties."

3 SECTION 6. Section 437D-8.4, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Notwithstanding any law to the contrary, a lessor may
6 visibly pass on to a lessee:

7 (1) The general excise tax attributable to the
8 transaction;

9 (2) The vehicle license and registration fee and weight
10 taxes, prorated at 1/365th of the annual vehicle
11 license and registration fee and weight taxes actually
12 paid on the particular vehicle being rented for each
13 full or partial twenty-four hour rental day that the
14 vehicle is rented; provided the total of all vehicle
15 license and registration fees charged to all lessees
16 shall not exceed the annual vehicle license and
17 registration fee actually paid for the particular
18 vehicle rented;

19 (3) The rental motor vehicle surcharge tax as provided in
20 section 251-2 attributable to the transaction; [~~and~~]

1 (4) The county surcharge on state tax under section 46- ;
2 provided that the lessor itemizes the tax for the
3 lessee; and

4 [~~(4)~~] (5) The rents or fees paid to the department of
5 transportation under concession contracts, negotiated
6 pursuant to chapter 102, or service permits, granted
7 pursuant to title 19, Hawaii Administrative Rules,
8 provided that:

9 (A) The rents or fees are limited to amounts that can
10 be attributed to the proceeds of the particular
11 transaction;

12 (B) The rents or fees shall not exceed the lessor's
13 net payments to the department of transportation
14 made under concession contract or service permit;

15 (C) The lessor submits to the department of
16 transportation and the department of commerce and
17 consumer affairs a statement, verified by a
18 certified public accountant as correct, that
19 reports the amounts of the rents or fees paid to
20 the department of transportation pursuant to the
21 applicable concession contract or service permit:

22 (i) For all airport locations; and

- 1 (ii) For each airport location;
- 2 (D) The lessor submits to the department of
3 transportation and the department of commerce and
4 consumer affairs a statement, verified by a
5 certified public accountant as correct, that
6 reports the amounts charged to lessees:
- 7 (i) For all airport locations;
- 8 (ii) For each airport location; and
- 9 (iii) For each lessee;
- 10 (E) The lessor includes in these reports the
11 methodology used to determine the amount of fees
12 charged to each lessee; and
- 13 (F) The lessor submits the above information to the
14 department of transportation and the department
15 of commerce and consumer affairs within three
16 months of the end of the preceding annual
17 accounting period or contract year as determined
18 by the applicable concession agreement or service
19 permit.
- 20 The respective departments, in their sole discretion,
21 may extend the time to submit the statement required
22 in this subsection. If the director determines that

1 an examination of the lessor's information is
2 inappropriate under this subsection and the lessor
3 fails to correct the matter within ninety days, the
4 director may conduct an examination and charge a
5 lessor an examination fee based upon the cost per hour
6 per examiner for evaluating, investigating, and
7 verifying compliance with this subsection, as well as
8 additional amounts for travel, per diem, mileage, and
9 other reasonable expenses incurred in connection with
10 the examination, which shall relate solely to the
11 requirements of this subsection, and which shall be
12 billed by the departments as soon as feasible after
13 the close of the examination. The cost per hour shall
14 be \$40 or as may be established by rules adopted by
15 the director. The lessor shall pay the amounts billed
16 within thirty days following the billing. All moneys
17 collected by the director shall be credited to the
18 compliance resolution fund."

19 SECTION 7. Chapter 51D, Hawaii Revised Statutes, is
20 repealed.

21 SECTION 8. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

1 SECTION 9. This Act shall take effect upon its approval;
2 provided that:

3 (1) If none of the counties of the State adopt an
4 ordinance to levy a county surcharge on state tax by
5 December 31, 2005, this Act shall be repealed and
6 section 437D-8.4, Hawaii Revised Statutes, shall be
7 reenacted in the form in which it read on the day
8 prior to the effective date of this Act;

9 (2) If any county does not adopt an ordinance to levy a
10 county surcharge on state tax by December 31, 2005, it
11 shall be prohibited from adopting such an ordinance
12 pursuant to this Act, unless otherwise authorized by
13 the legislature through a separate legislative act;

14 (3) If an ordinance to levy a county surcharge on state
15 tax is adopted by December 31, 2005:

16 (A) The ordinance shall be repealed on December 31,
17 2022;

18 (B) This Act shall be repealed on December 31, 2022;
19 and

20 (C) Section 437D-8.4, Hawaii Revised Statutes, shall
21 be reenacted in the form in which it read on the
22 day prior to the effective date of this Act.