

Honolulu, Hawaii

April 23, 2009RE: H.B. No. 1739
H.D. 1
S.D. 1
C.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir and Madam:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 1739, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to deter tax fraud and promote uniformity in the state tax system by, among other things:

- (1) Stipulating circumstances under which a tax preparer may be required to pay a fine for understatement of liability based on unreasonable positions in a tax return or claim for a tax refund;
- (2) Stipulating the circumstances under which a person commits the offense of promoting an abusive tax shelter and the penalties for such a violation;



- (3) Establishing penalties for erroneous claims for refunds or credits;
- (4) Establishing penalties for underpayments of taxes attributable to any substantial understatement of any tax amounts in a taxable year;
- (5) Establishing statute of limitation provisions and extension provisions for substantial omissions on tax amount information;
- (6) Stipulating that the burden of proof for the issue of falsity or fraud and intent to evade tax shall be placed upon the government;
- (7) Providing for an expedited administrative appeals process;
- (8) Stipulating that the fact that an individual's name is signed on a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by the individual;
- (9) Authorizing the Department of Taxation (DOTAX) to undertake temporary rulemaking;
- (10) Making documents submitted to a tax district board of review public information; and
- (11) Establishing penalties for the wilful failure to collect, account for, and pay over taxes.

Your Committee on Conference has amended this bill by:

- (1) Allowing the following taxes to be collected by levy or by a proceeding in court within 15 years after the assessment of the tax if the assessment of the tax was imposed within the three-year period of limitation established by law:
 - (A) Income Tax;
 - (B) General Excise Tax;
 - (C) Transient Accommodations Tax;
 - (D) Use Tax;



- (E) Fuel Tax;
 - (F) Conveyance Tax;
 - (G) Rental Motor Vehicle and Tour Vehicle Surcharge Tax;
 - (H) Nursing Facility Tax; and
 - (I) Insurance Premium tax;
- (2) Requiring that the limitation on collection after the assessment of the abovementioned taxes be suspended for certain periods;
 - (3) Authorizing DOTAX to implement an administrative appeals and dispute resolution program to expeditiously resolve all tax, penalty, interest, fine, assessment, and other disputes between DOTAX and taxpayers or return preparers;
 - (4) Establishing certain procedures for the appeals and dispute resolution program process and requiring DOTAX to adopt other procedures necessary to implement the appeals and dispute resolution program;
 - (5) Requiring DOTAX to implement rules providing examples and safe harbors to explain in clear and unambiguous terms the penalties and fines provided under Hawaii's tax laws that may be imposed against a return preparer or taxpayer for understatement of tax liabilities, promotion of abusive tax shelters, erroneous claims for refund or credit, or substantial understatements or misstatements of tax;
 - (6) Stipulating that any and all advice given, or communications made by DOTAX, including but not limited to letter rulings, and determination letters, containing tax advice shall be disclosed to the public under standards and procedures under Section 6110 of the federal Internal Revenue Code of 1986, as amended;
 - (7) Requiring that DOTAX provide a taxpayer with a closing audit letter at the conclusion of a tax audit that will confirm, in writing, the department's position on each issue considered in the audit and will provide guidance on how the taxpayer may report these issues for post audit years; and



- (8) Making technical, nonsubstantive amendments for clarity, consistency, and style.


As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 1739, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1739, H.D. 1, S.D. 1, C.D. 1.

Respectfully submitted on behalf
of the managers:

ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE


DONNA MERCADO KIM, Chair


MARCUS R. OSHIRO, Chair



CCR 5

Hawaii State Legislature

Record of Votes of a Conference Committee

Bill / Concurrent Resolution No.: HB 1739, HD 1, SD 1 Date/Time: 4/18/2009 5:30 PM

[X] The recommendation of the House and Senate managers is to pass with amendments (CD).

[] The Committee is reconsidering its previous decision.

[] The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure

[] The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.

Table with columns for Senate Managers, House Managers, and vote categories (A, WR, N, E). Includes names like KIM, Donna Mercado, Chr. and OSHIRO, Marcus R., Chr. with checkmarks in the 'A' column.

TOTAL

TOTAL

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: [X] Adopted [] Not Adopted

House Recommendation is: [X] Adopted [] Not Adopted

Senate Lead Chair's or Designee's Signature: [Handwritten Signature]

House Lead Chair's or Designee's Signature: [Handwritten Signature]

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