

Honolulu, Hawaii

MAY 01 2009 , 2009

RE: S.B. No. 972
S.D. 2
H.D. 1
C.D. 1

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

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

Madam and Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 972, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TAX ADMINISTRATION,"

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 measure is to establish a special enforcement section in the Department of Taxation to carry out civil enforcement efforts to collect tax payments primarily from those taxpayers engaged in high-risk, cash-based transactions.

Your Committee on Conference finds that cash-based businesses account for a substantial sum of money in the marketplace and capturing a small fraction of the tax liability due on these amounts would help to off-set the sharp downturn in state tax revenues during 2009. Your Committee on Conference also finds that this measure will identify cash-based industries and businesses in Hawaii



that are susceptible to evading the payment of income, general excise, withholding, and employment taxes.

Your Committee on Conference has amended this measure by:

- (1) Clarifying that personnel assigned to the Special Enforcement Section may not participate in any criminal investigation;
- (2) Clarifying that investigators and other personnel shall not render legal advice;
- (3) Deleting the authority of the Director of Taxation to appoint attorneys to provide legal services without regard to chapters 28, 76, and 103D, Hawaii Revised Statutes;
- (4) Deleting the authorization to pay criminal law enforcement agencies from the proceeds collected under this measure;
- (5) Clarifying that the monetary fine associated with a cease and desist citation is discretionary, rather than mandatory;
- (6) Deleting the cap on monetary fines;
- (7) Clarifying that a finding of jeopardy shall be made in writing and is subject to appeal by the taxpayer;
- (8) Clarifying that the Director of Taxation's decision regarding a cease and desist citation may be appealed to the circuit court;
- (9) Clarifying the definition of a cash-based business to include a business that may establish reasonable criteria for accepting personal checks and removing from the definition businesses that do not issue receipts for business transactions;
- (10) Excepting from the definition of a cash-based business those businesses that offer a price differential involving cash for a bona-fide business reason;
- (11) Clarifying that a cash-based business shall not be deemed to be a cash-based business from the factors identified in this measure while a genuine dispute to that factor is



pending in a contested case before any administrative agency or court;

- (12) Clarifying that the Department of Taxation has the burden to establish that currency is possessed for tax avoidance purposes, rather than creating a presumption that a person with over \$5,000 in cash in their possession without a legitimate business purpose is engaging in a tax avoidance scheme;
- (13) Clarifying that it is unlawful for a person to intentionally interfere with the Department of Taxation's efforts to obtain information about a business in relation to the initiatives of this measure;
- (14) Adding a requirement for contractors who are awarded federal construction job contracts to provide the Department of Taxation with estimated gross receipts earned on the construction project within thirty days of being awarded the contract;
- (15) Adding a penalty of \$1,000 per month, or fraction thereof, for each month that a failure to report on the gross receipts from a federal construction job contract; provided that the maximum penalty shall not exceed \$6,000;
- (16) Clarifying that the fines associated with doing business without a license are discretionary and waived with a showing of good cause, rather than being mandatory;
- (17) Adding the requirement for the Department of Taxation to report to the Legislature no later than thirty days prior to the convening of each regular session on the amount of state resources that are committed to implementing this measure;
- (18) Adding that it shall be repealed on June 30, 2014, and section 235-20.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of section 8 of Act 206, Session Laws of Hawaii 2007, and that sections 231-1, 237-9, and 237-12(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act; and



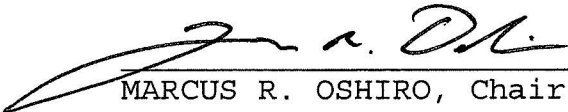
- (19) Making technical, nonsubstantive amendments for the purpose of clarity.

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 S.B. No. 972, S.D. 2, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 972, S.D. 2, H.D. 1, C.D. 1.

Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE


MARCUS R. OSHIRO, Chair


CAROL FUKUNAGA, Chair


DONNA MERCADO KIM, Co-Chair


BRIAN T. TANIGUCHI, Co-Chair



Hawaii State Legislature

CCR 143

Record of Votes of a Conference Committee

Bill / Concurrent Resolution No.: SB 972, SD 2, HD 1	Date/Time: 5/1/09, 10:45am
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The recommendation of the House and Senate managers is to pass with amendments (CD).

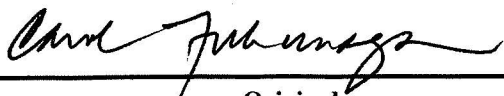
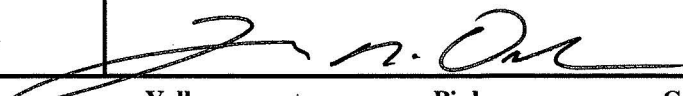
The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
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Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
FUKUNAGA, Carol, Chr.	✓				OSHIRO, Marcus R., Chr.	✓			
KIM, Donna Mercado, Co-Chr.	✓				CHONG, Pono	✓			
TANIGUCHI, Brian T., Co-Chr.	✓				CHOY, Isaac W.	✓			
BAKER, Rosalyn H.	✓				LEE, Marilyn B.	✓			
SLOM, Sam	✓				WARD, Gene	✓			
TOTAL	5				TOTAL	5			

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

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
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Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature: 
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