

## **JUDtestimony**

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**From:** Tina Desuacido [tina500@juno.com]  
**Sent:** Wednesday, February 09, 2011 2:07 PM  
**To:** JUDtestimony  
**Subject:** Tax Foundation Testimony  
**Attachments:** H0828-11.pdf; h0119-11.pdf; h1532-11.pdf

### **TRANSMISSION OF TESTIMONY**

**DATE:** Wednesday, February 9, 2011

**TO:** House Committee on Judiciary

**FROM:** Tax Foundation of Hawaii

**Total Pages 4**

**FOR:** Rep. Gilbert Keith-Agaran, Chair

**Testifier:** Lowell L. Kalapa, President - Tax Foundation of Hawaii

**(Mr. Kalapa will not appear in person at the hearing.)**

**Date of Hearing - Thursday, February 10, 2011**

**Position: Comments**

**Time of Hearing - 2:00 pm**

**HB 828 - Relating to Taxation (1 page)**

**HB 119 - Relating to Taxation (2 pages)**

**HB 1532 - Relating to Real Property Tax Appeals**

**Number of copies - 3**

**Thank you.**

# TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** ADMINISTRATION, APPEALS, Tax amnesty; equitable relief; burden of proof

**BILL NUMBER:** HB 119

**INTRODUCED BY:** McKelvey, Awana, Har, Takai and 4 Democrats

**BRIEF SUMMARY:** Adds a new section to HRS chapter 231 to provide that a taxpayer may designate the tax period for any tax payment made by, or any penalty assessed on, the taxpayer; provided that the payment or penalty is paid pursuant to applicable provisions of law.

Adds a new section to HRS chapter 231 to provide that a taxpayer, including a taxpayer applying for spousal relief, shall be relieved of any tax liability under title 14, if: (1) by taking into account all the facts and circumstances of the taxpayer's situation, the department of taxation finds that it is inequitable and unjust to hold the taxpayer liable for that liability; and (2) no other relief is available to the taxpayer under title 14.

Amends HRS section 232-1 to provide that in any proceeding before the board of review or the tax appeal court, if a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax, interest, or penalty imposed under title 14, the department of taxation shall have the burden of proof to prove otherwise with respect to the issue; provided that: (1) the taxpayer has complied with the requirements under title 14 to substantiate any disputed item or issue; and (2) the taxpayer has maintained all records required under title 14 and has cooperated with reasonable requests by the department of taxation for witnesses, information, documents, meetings, and interviews.

The department of taxation shall have the burden of proof in any proceeding with respect to any item of income that was reconstructed by the department solely through the use of statistical information on unrelated taxpayers. Also provides that the department of taxation shall have the burden of production in any proceeding with respect to the liability of any taxpayer for any penalty, additional tax or amount imposed under title 14.

Establishes a state tax amnesty program to allow taxpayers owing taxes, penalties, or interest on any tax administered by the director of taxation under HRS Title 14, except the real property tax or any tax subject to HRS chapter 249, to pay taxes due without the imposition of any penalty. The program shall begin by October 31, 2011 and be completed before January 1, 2012 and shall be applicable to tax liabilities for tax periods ending or transactions occurring on or before December 31, 2010.

Delineates eligibility requirements and general amnesty provisions. Requires the director of taxation to adopt rules pursuant to HRS chapter 91, as necessary, issue forms and instructions and take all actions necessary to implement this act. Directs the director to publicize the tax amnesty program in order to maximize public awareness and participation in the program.

Stipulates that the director of taxation shall maintain accounting and reporting of funds collected under the amnesty program that shall be deposited into the general fund.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: Although the idea of tax amnesty may have merit for Hawaii, it should be noted that such a program may not be sufficient incentive for taxpayers to make good on outstanding state liabilities in view of the fact that interest due on delinquent federal taxes is much more onerous. For example, interest due on delinquent federal taxes may be imposed at up to 25% depending on the period when the taxes were due, while on the state level interest is imposed only at the rate of 2/3 of one percent per month or 8% per year. Thus, if a taxpayer did not pay either state or federal taxes, the deterrent determined by interest and penalties would be the federal liability which has considerably more severe penalties. Consideration should also be given to the fact that taxpayers who did not report taxable income or under report such income would be subjecting such information to federal authorities since such information, no doubt, would be shared with the Internal Revenue Service as part of the information sharing program of the state. This may create some hesitancy on the part of delinquent taxpayers to participate in this tax amnesty program.

Thus, while the proposed tax amnesty program may reap benefits for the state, careful consideration should be given to all the ramifications of such a program and in particular fairness to those taxpayers who paid their taxes in a timely manner. Lawmakers should also consider the kind of message this sends to all other taxpayers who have paid their obligations on a timely and accurate basis. Will such an amnesty program actually encourage taxpayers to avoid or delay paying their state taxes in hopes another amnesty period will be offered?

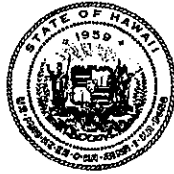
While granting amnesty to taxpayers who failed to file and pay their taxes is unfair to others who have dutifully done so, some of the responsibility falls on the department of taxation to educate the public about their tax obligations. In recent years the department has withdrawn from the education efforts for the average taxpayer. While they may point with pride to their annual workshops, those sessions are largely for practitioners. This lack of effort to educate the general public is where the department failed as they began to enforce the licensing of vendors at farmers' markets around the islands. When these vendors were "raided" many thought they had complied with the law, but did not realize that new requirements called for actual display of their license. In some cases vendors learned they had to have a certain color license for display. Many of the negative reactions could have been mitigated had the department conducted educational efforts before enforcing the new standards.

While the other provisions of the measure would appear to clarify that the burden of proof regarding the tax liability of a taxpayer shall be on the department of taxation, it is questionable whether such instances are currently treated inequitably favoring the department of taxation.

Digested 2/9/11

NEIL ABERCROMBIE  
GOVERNOR

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INTERIM DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR  
DEPUTY DIRECTOR

## HOUSE COMMITTEE ON JUDICIARY

### TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 119 RELATING TO TAXATION

TESTIFIER: FREDERICK D. PABLO, INTERIM DIRECTOR OF  
TAXATION (OR DESIGNEE)  
COMMITTEE: JUD  
DATE: FEBRUARY 10, 2011  
TIME: 2PM

POSITION: CONCERNS; COMMENTS

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This measure provides for several procedural amendments associated with a taxpayer's tax liability.

The Department of Taxation (Department) has concerns with this measure on practical and philosophical grounds.

#### I. DESIGNATION OF PAYMENT

The Department acknowledges that allowing a taxpayer to designate the period of partial payments would conform to the Internal Revenue Code. The Department; however, is concerned with this amendment's impact on the Department's computer system and would request a delayed effective date and resources to implement this amendment.

Currently, state law dictates that tax payments are to be paid first to interest, then penalties, and finally the principal of taxes owed. The current regime is in the State's best financial interests because it ensures payments of interest (reflecting time value of money) as the priority, followed by penalties, and then principal. By paying principal last, the State is ensured the optimal

time value of money when the principal is paid last and payments are spread over time.

## **II. EQUITABLE RELIEF**

Under current law, Section 6015 of the Internal Revenue Code allows for spouses to be relieved of liability in certain circumstances, including where equity requires. It is doubtful that this provision has any substantial effect on the administration of tax laws.

## **III. SHIFTING OF BURDEN ON APPEAL**

The amendments relating to burden shifting on appeals need to be further evaluated.

The Department supports the provision that conforms to current federal tax administration law that, where taxpayers comply in all material respects, the burden of proof shifts to the government. Where taxpayers comply with substantiation and cooperation, this is a fair result. The Department recommends that the federal counterpart be adopted rather than what is proposed in the measure so that the federal case law and regulations on the issue are adopted. Conforming to Section 7491 of the Internal Revenue Code for purposes of Chapter 232 may be more efficient.

The Department opposes the amendments to shift the burden to the government to the extent inconsistent with federal law.

## **IV. AMNESTY PROGRAM**

The Department is reluctant to support a tax amnesty program at this time.

A tax amnesty program was offered by the Department in 2009. Repeat amnesty programs tend to send a message that it is acceptable to avoid paying taxes until the next amnesty program rolls around. The Department does not support efforts to that affect.

The Department offers the following comments and will continue to work with the Legislature on this matter—

**ELIMINATE REQUIREMENT TO PROMULGATE RULES PURSUANT TO CHAPTER 91**—It is critical that the Department be given sufficient tools to expeditiously administer this tax amnesty program. The State general fund needs money NOW—not after the rulemaking process has completed. Rules can take years to complete, especially if a small business impact exists. The Department strongly recommends that either: (1) the tax amnesty program be exempted from Chapter 91 and Chapter 201M to get guidance out quickly to get money in faster; (2) the Department be allowed by Tax Information Release to provide guidance to taxpayers; or (3) the Legislature currently institutes whatever regulatory provisions are necessary in the statute.

**CONSIDER PENALTIES FOR FAILING TO COME FORWARD**—The Department understands that penalizing people for not taking advantage of tax amnesty may be counterproductive. However, California provided larger penalties for people who could have used amnesty and failed to do so by doubling any penalties. There were also penalties for failing to accurately submit accurate disclosures.

## JUDtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 09, 2011 5:35 PM  
**To:** JUDtestimony  
**Cc:** atg.legcoordinator@hawaii.gov  
**Subject:** Testimony for HB119 on 2/10/2011 2:00:00 PM  
**Attachments:** HB0119\_ATG\_02-10-11\_JUD.pdf

Testimony for JUD 2/10/2011 2:00:00 PM HB119

Conference room: 325  
Testifier position: comments only  
Testifier will be present: Yes  
Submitted by: Joshua Wisch  
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Submitted on: 2/9/2011

**Comments:**

Cynthia Johiro, Deputy Attorney General, will be present at the hearing to testify.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011**

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**ON THE FOLLOWING MEASURE:**  
H.B. NO. 119, RELATING TO TAXATION.

**BEFORE THE:**  
House Committee on Judiciary

**DATE:** Thursday, February 10, 2011      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Cynthia M. Johiro, Deputy Attorney General

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides the following comments.

House Bill No. 119 establishes a one-time amnesty program for delinquent tax obligations, provides equitable relief in certain tax situations, and places the burden of proof on the Department of Taxation in certain circumstances.

As part of the state tax amnesty program, House Bill No. 119 provides that un-appealed tax assessments will become final, due, and owing thirty days after service of notice of assessment. (Page 5, Lines 15-16). However, this wording conflicts with the wording of sections 235-108 and 237-36, Hawaii Revised Statutes, providing that taxes, interest, and penalties shall be paid within twenty days after the date of the final notice of assessed taxes.

We respectfully request that the language of H.B. 119, Page 5, Lines 15-16 be revised to be made consistent with sections 235-108 and 237-36, Hawaii Revised Statutes.