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LATE

HOUSE COMMITTEE ON FINANCE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 828 HD 1 RELATING TO TAXATION

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR
DESIGNEE)
COMMITTEE: FIN
DATE: MARCH 1, 2011
TIME: 12:30PM
POSITION: OPPOSED

This measure modifies the Cash Economy Enforcement Act by:

- 1) Limiting the inspection rights of investigators to instances where a licensee fails to openly display the license and fails to produce the license;
- 2) Modifying the citation for Failure to Record Transaction by Receipt to provide for the violation in instances where a receipt is not offered and records are not contemporaneously maintained each day; and
- 3) Repealing the Failure to Record Transaction by Register violation.

The Department of Taxation (Department) is opposed to these amendments.

I. OPPOSED TO LIMITING SPOT-CHECK ENFORCEMENT RIGHTS

Based on observations of Special Enforcement Section (SES), spot checks for business records and citation for the failure to keep records adequately is effective in deterring tax evasion.

SES has collected evidence that almost all tax evasion at the largest venues is perpetrated by vendors who have Hawaii GE licenses. Therefore this amendment will make it necessary to obtain search warrants to perform spot checks for business records at open markets. Obtaining search warrants for each spot check at a swap meet is time consuming and impractical. Therefore, the effect of the amendment will be to make it impossible for SES to verify that businesses are in fact keeping the contemporaneous records required throughout the State tax code.

The Department opposes this amendment because the silent majority of all law-abiding tax-paying businesses and other taxpayers must absorb the tax burden of those who fail to keep a contemporaneous record and fail to pay their fair share of taxes, even if the evader has a GET license.

The imposition of a search warrant requirement may make sense for an actual search of a private place in which a person has an expectation of privacy, but it makes little sense in an open area set aside for selling to the public and in which a person has no reasonable expectation of privacy. Search warrant requirements should not apply to requests to see evidence of contemporaneously kept books and records of one day's worth of sales at a swap meet. Requesting to quickly look at the contemporaneously kept records of a business selling to the public in an open and public place is not an unreasonable use of the government's right to verify that taxes are being properly paid.

II. OPPOSED TO AMENDMENTS TO THE FAILURE TO RECORD TRANSACTION VIOLATIONS

The Department also opposes the amendments to the Failure to Record Transaction violations. The insertion of the "knowing" requirement of Sec 231-96 creates an incentive for employers to encourage employees to fail to record business transactions and then claim a lack of knowledge of the noncompliant behavior. The effect of this amendment will be to encourage tax evasion. SES has observed numerous taxpayers who engage in tax evasion who could escape liability under this part of the amendment.