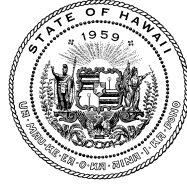


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**SENATE COMMITTEES ON ECONOMIC DEVELOPMENT AND TECHNOLOGY &
JUDICIARY AND LABOR**

**TESTIMONY OF THE DEPARTMENT OF TAXATION
REGARDING HB 828 HD 2
RELATING TO TAXATION**

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR
DESIGNEE)
COMMITTEE: EDT/JDL
DATE: MARCH 22, 2011
TIME: 9:30AM
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.

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SUBJECT: ADMINISTRATION, Clarify receipts and record keeping

BILL NUMBER: HB 828, HD-2

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 231-84 to clarify that the right to inspect books, records and premises shall be allowed only under the following conditions: (1) the licensee fails to openly display the license; and (2) upon request by the special enforcement section if the licensee fails to produce the license.

Amends HRS section 231-96 to provide that it shall be unlawful to knowingly conduct more than ten taxable business transactions per day in cash and fail to: (1) offer a receipt or other record of the transaction; and (2) maintain a contemporaneously generated record of all business transactions conducted each day; whether hand written or generated by a manually operated or electronic cash register. If a person is in compliance with Title 14 at the time of violation, the fine under this section shall not exceed \$100.

Repeals HRS section 231-97 requiring the recording of transactions by a cash register.

EFFECTIVE DATE: January 7, 2009

STAFF COMMENTS: The legislature by Act 134, SLH 2009, enacted a law to address and police the “cash economy” in the state to insure that cash transactions are properly reported and general excise taxes are paid on such transactions. It also provided for the creation of a “goon squad” to police those transactions. Since Act 134 was adopted in 2009, merchants/taxpayers have been pondering compliance with this act since it requires the issuance of receipts for all transactions. However, telephone inquiries to the department of taxation have resulted in various answers from providing receipts **only upon request** to providing receipts on each transaction. In addition, Act 134 also contains a provision relating to failure to record transactions by register.

This measure repeals the penalty for failure to record transactions by cash register and clarifies that a receipt and record of cash transactions may be hand written or generated by a cash register. While this measure is a step in the right direction to clarify the provisions of Act 134, education of the merchants/taxpayers and the issuance of administrative rules would also greatly assist in the compliance of Act 134.

That said, the department must also do its part in educating and informing the public about compliance with the law. If the department’s efforts to enforce the way they expect taxpayers to record and report receipts, then they need to do a better job of telling taxpayers about the new requirements before imposing penalties and sanctions. Thus, while the department may oppose this measure despite the protest of taxpayers, then the department must offer a compromise that is fair and equitable to both the department and taxpayers.

Digested 3/21/11