

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

January 25, 2012

To: The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the House Committee on Judiciary

Date: January 26, 2012

Time: 2:00 p.m.

Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 1672 Relating to Taxation

HB 1672 creates a monetary award for whistleblowers who provide information that is the basis for a Department of Taxation proceeding with an administrative or judicial action for a violation of any tax law under Title 14 of the Hawaii Revised Statutes. The Department supports this measure, however recommends the bill be amended to more closely resemble the federal whistleblower incentive under Internal Revenue Code section 7623, including provisions related to the types of administrative actions that entitle the whistleblower to the incentive, language specifying that the award is not available in cases where other financial incentives are provided by law, and language specifying that the award be paid from the proceeds of amounts collected.

In addition, the Department notes that the requirement that the total amount of tax, penalties and interest in dispute exceed \$2 million is high. While \$2 million audits may be fairly common for the Internal Revenue Service (IRS), they are less common for the Department. To encourage greater use of this award, the Department recommends lowering this amount.

The Department also notes that the IRS whistleblower program is operated by a special office dedicated to receiving and following up on information it receives. The Department would need additional resources to fully implement a similar program.

Thank you for the opportunity to provide comments.

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126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, Whistleblower awards

BILL NUMBER: HB 1672

INTRODUCED BY: Choy

BRIEF SUMMARY: Adds a new section to HRS chapter 231 to provide that if the director of taxation proceeds with an administrative or judicial action for any violation of HRS Title 14 based on information received from an individual, that individual shall receive an award of at least 15% but not more than 30% of the collected proceeds including penalties, interest, additions to tax, and additional amounts; provided that no award shall be made unless: (1) in the case of actions brought against an individual taxpayer, the taxpayer's gross income exceeds \$200,000 for any taxable year subject to the action; (2) the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2,000,000; and (3) the information provided to the director of taxation by the individual is submitted under penalty of perjury.

The determination of the amount of any award under this subsection shall depend upon the extent to which the individual substantially contributed to the action, as determined by the director. If it is determined that an action is based principally on disclosures of specific allegations resulting from a judicial or administrative hearing, governmental report, hearing, audit, or investigation, or from the news media, the director may award a sum as the director deems appropriate up to 10% of the collected proceeds including penalties, interest, additions to tax, and additional amounts. If it is determined that the claim for an award is brought by an individual who planned and initiated the activities that led to the violation for which the director proceeded with an administrative or judicial action, the director may reduce the award accordingly provided that if the individual is convicted of criminal conduct arising from those activities, the director shall deny any award.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: While the proposed measure establishes monetary awards for individuals (whistleblowers) who provide information regarding violations of tax laws, it should be noted that it is applicable only to the department of taxation. Consideration should be given to extending a similar provision to all other state department and government agencies to allow each government entity to "police" itself and standardize awards and provisions relating to the payout of such awards. Consideration might also be given to tasking these duties to an impartial agency similar to the Auditor's office.

Digested 1/25/12