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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:** Room 325, State Capitol

**From:** Frederick D. Pablo, Director  
Department of Taxation

**Re:** H.B. No. 1695, Relating to Taxation

This measure prohibits the stacking of the penalties for willful failure to collect and pay over, for substantial understatement or misstatements, and for erroneous refund claims.

After the careful deliberation, the Department has changed its position and stands in opposition to this measure. This bill would remove the Department's discretionary authority to impose additional penalties upon egregious tax law violators. For example, under this measure, if penalties were assessed in a criminal proceeding, the Department would then be unable to assess civil penalties in a follow-up civil audit. The Department also notes that it has the power to waive penalties in instances where it feels that the stacking of penalties is unwarranted.

Under the current law, the threat of stacked penalties helps ensure compliance while the Department's discretionary waiver power helps prevent excessively high penalties.

Thank you for the opportunity to provide comments.

# TAXBILLSERVICE

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SUBJECT: ADMINISTRATION, Penalty Provisions

BILL NUMBER: HB 1695

INTRODUCED BY: Choy

BRIEF SUMMARY: Amends HRS sections 231-36.4, 231-36.6 and 231-36.8 to prevent the multiple imposition of the penalty provision of 20% on any underpayment that is imposed under HRS section 231-36 (false and fraudulent statements), HRS section 231-36.6 (substantial understatements or misstatements of amounts) or HRS section 231-36.8 (erroneous claim for refund or credit).

EFFECTIVE DATE: Tax years beginning after December 31, 2011

STAFF COMMENTS: Act 166, SLH 2009, established penalties of 20% of the: (1) portion of any underpayment for an understatement of a taxpayer's tax liability; and (2) excessive amount of the filing of a claim for refund or credit in the event of an erroneous claim for refund or credit. While it appears that multiple penalties for more than one violation of the underpayment provisions may be imposed under the state laws, federal laws prohibit the imposition of more than one penalty even though they are attributable to more than one violation. Adoption of this provision would allow taxpayers to mitigate their burden of an underpayment penalty similar to the federal treatment of a like infraction.

Digested 1/25/12

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HOUSE OF REPRESENTATIVES  
THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

COMMITTEE ON JUDICIARY

Hearing Date: January 26, 2012  
Testimony on H.B. 1695  
(Relating to Taxation)

Chair Keith-Agaran, Vice-Chair Rhoads, and members of the Committee, thank you for the opportunity to testify **in support of House Bill 1695**.

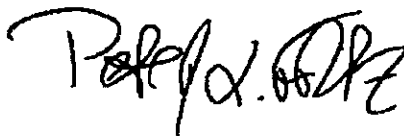
This bill will conform Hawaii law to federal law by prohibiting penalties for willful failure to collect and pay over taxes, substantial understatements or misstatements, and erroneous claims for refund or credit from being added to tax underpayments on which certain other penalties are already imposed.

In 2009, the Lingle administration introduced a bill proposing changes to Hawaii's tax administrative law to include penalties similar to penalties in the Internal Revenue Code. This bill was signed into law and became Act 166 Session Laws Hawaii 2009. Among other things, Act 166 added §§ 231-36.4 through 231-36.8 to Hawaii's administrative statutes. These new sections were designed to "level the tax administration playing field between state and federal levels."<sup>1</sup>

In testimony in support of the bill which became Act 166, the Department of Taxation ("Department") said that "[f]undamentally, this measure is about fairness in the administration of taxes amongst the government, taxpayers and practitioners."<sup>2</sup> However, while advocating fairness, the Department's bill failed to incorporate the anti-stacking fairness provisions that are part of the Internal Revenue Code ("IRC"). This bill provides fairness to taxpayers.

Thank you for the opportunity to testify.

Very truly yours,



Peter L. Fritz

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<sup>1</sup> Testimony of Kurt Kawafuchi, Director of Taxation, on February 5, 2009, in support of SB 973.

<sup>2</sup> Ibid.