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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: Thursday, January 26, 2012

Time: 2:00 p.m.

Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 1785 Relating to Taxation

The Department of Taxation (Department) opposes this measure.

This measure would require the Department to develop and administer a tax amnesty program for the next four years. Any tax liability that arose on or before December 31 of the previous calendar year would be eligible for the amnesty program.

The Department first notes that it already has multiple vehicles to assist a taxpayer in meeting their tax obligations. For example, under Section 231-3(12), Hawaii Revised Statutes ("HRS"), the Department may (except in cases of fraud or willful violation of the tax laws) remit in whole or in part penalties and/or interest which have been assessed against a taxpayer. Likewise, HRS Section 231-3(10) authorizes the Department to enter into compromise agreements (upon the showing of good cause) with taxpayers when they are unable to pay in full the amount of taxes due.

The Department is extremely concerned that this measure negatively impacts those taxpayers that timely file and pay their taxes. This measure would require the Department to waive all penalties, regardless of whether or not good cause is shown, and in essence, rewards persons who fail to timely file and pay their taxes. By waiving all penalties, we would be encouraging non-compliance. At the very least, it encourages people not to file and pay their taxes timely, since they know that for the next four years, no penalties will be imposed under this amnesty program.

Thank you for the opportunity to provide comments.

TAXBILLSERVICE

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SUBJECT: ADMINISTRATION, Tax amnesty

BILL NUMBER: HB 1785

INTRODUCED BY: Keith-Agaran

BRIEF SUMMARY: Requires the director of taxation to develop and administer a four-year tax amnesty program. The director, upon the voluntary return and remission of taxes and interest owed by any taxpayer, shall waive all penalties for outstanding liabilities for taxable periods ending or transactions occurring on or before December 31st of the prior calendar year. The tax amnesty program shall begin by October 31, 2012 and shall be completed before January 1, 2016 and be applicable to all taxpayers owing taxes, penalties, or interest administered by the director of taxation under title 14 of the Hawaii Revised Statutes; not including any real property tax or any tax levied pursuant to HRS chapter 249. The program shall apply to tax liabilities for taxable periods ending or transactions occurring on or before December 31st of the prior calendar year.

Delineates eligibility requirements and general amnesty provisions. Requires the director of taxation to adopt rules pursuant to HRS chapter 91, as necessary, and to 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.

Repeals this Act on January 1, 2016 provided that any tax amnesty granted pursuant to this act and any installment payment agreement executed pursuant to this act shall remain in force.

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 on the federal liability 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.

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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?

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 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.

Digested 1/25/12