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To: The Honorable David Y. Ige, Chair
and Members of the Senate Committee on Ways and Means

Date: Tuesday, March 20, 2012

Time: 9:00 a.m.

Place: Conference Room 211, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 2328 HD 1 Relating to the Taxation

The Department of Taxation (Department) strongly supports this measure, which will greatly aid both the Department and taxpayers in applying the law.

H.B. 2328 HD1 replaces the current estate and generation skipping tax chapter with a completely rewritten chapter to correct the existing law. The Department supports this rewrite of the estate tax, which specifically sets forth the tax rate schedule, provides the necessary powers to the Department to enforce the tax, as well as provides the necessary protections for taxpayers. By tying the calculation of taxable estate to the federal tax return, the burden on taxpayers is lessened. The proposed new chapter also will greatly assist the Department in administering the tax. Furthermore, this measure adds back the generation-skipping tax in Hawaii, which has been dormant since 2005.

Act 60, Session Laws of Hawaii 2010, reenacted Hawaii's Estate & Transfer Tax under Chapter 236D, Hawaii Revised Statutes (HRS). It did so, however, by adopting certain conforming provisions of the Internal Revenue Code (IRC), Title 26, Subtitle B, Estate & Gift Tax, involving two separate points in time. While Act 60 attempted to create a stand-alone tax that is independent of the federal estate tax, among other things, it did not include the necessary powers for the Department to enforce the tax.

Prior to Act 60, Chapter 236D, HRS, included both an estate tax assessed against the taxable estate of persons dying as residents of Hawaii or as nonresidents with property interests in Hawaii and a generation-skipping transfer tax, which taxes certain transfers on the death of residents and nonresidents which skip at least one generation of the decedent to avoid paying estate taxes.

Prior law assessed an estate tax and a generation-skipping transfer tax in amounts equal to the federal credits for state taxes paid under Sections 2011 and 2604, IRC, respectively. This "pick-up" amount effectively reduced the amount of federal estate tax due. However, the federal Economic Growth & Tax Relief Reconciliation Act of 2001 (EGTRRA) phased out the credit for

state estate taxes paid such that Hawaii's Estate & Transfer Tax became "dormant" beginning in 2005, when the federal tax credit for state taxes was completely eliminated. While EGTRRA originally provided that the federal estate and generation-skipping tax would be reenacted beginning on January 1, 2011 in a form similar to the law that existed prior to the passage of EGTRRA, Congress has delayed such reenactment until at least 2013.

While Act 60 provided for an applicable exclusion amount of \$3.5 million, because of the interaction of the IRC as adopted by Act 60, the Hawaii estate tax currently does not become due until the estate exceeds \$3.6 million. In addition, Act 60 adopted the tax rate schedule but not the method that was used in calculating the federal state tax credit, which has created confusion among practitioners.

Because Act 60 uses the IRC as of different points in time, the complexity to taxpayers has increased. The adoption of a fixed applicable exclusion amount of \$3.5 million, can cause some taxpayers who are not required to file a federal estate tax return, to file a Hawaii estate tax return. This measure would conform the Hawaii exclusion amount to the federal amount, which currently stands at \$5,120,000 for 2012; unless changed by Congress, the amount will drop down to \$1 million thereafter.

For further clarification, the Department recommends the following amendments:

- 1) A new section be added to the measure to provide that Chapter 236D, HRS, the current estate and transfer tax, shall not apply to decedents passing away on or after January 1, 2012; and
- 2) Additional language be added to the end of new section 4 of this measure to clarify that for purposes of this new chapter, Internal Revenue Code provisions that apply to a husband and wife, spouses, or person in a legal marital relationship are deemed to apply to partners in a civil union with the same force and effect.

Thank you for the opportunity to provide comments.

March 20, 2012

The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

RE: H.B. 2328, H.D. 1, Relating to Taxation

HEARING: Tuesday, March 20, 2012, at 9:00 a.m.

Aloha Chair Ige, Vice Chair Kidani, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR supports H.B. 2328, H.D. 1, which adds a chapter to the HRS entitled "Estate and Generation-Skipping Transfer Tax".

H.B. 2328, H.D.1, is intended to clarify and to prospectively conform current HRS Chapter 236D to current federal Internal Revenue Code provisions. By conforming to current federal law exemption provisions, Hawaii estate and generation-skipping transfer tax returns should generally have to be filed only when federal returns are required to be filed.

Because Hawaii has never had a gift tax, under H.B. 2328, H.D.1, the Hawaii generation-skipping tax does not apply to "direct skip" transfers that are subject to federal gift tax.

Mahalo for the opportunity to testify in support of this important housekeeping measure.