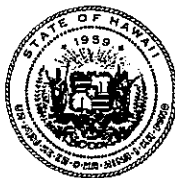


NEIL ABERCROMBIE
GOVERNOR

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LT. GOVERNOR



STATE OF HAWAII
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

HOUSE COMMITTEE ON FINANCE

**TESTIMONY OF THE DEPARTMENT OF TAXATION
REGARDING SB 1356, SD 1
RELATING TO TAXATION**

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR
DESIGNEE)
COMMITTEE: FIN
DATE: MARCH 23, 2011
TIME: 2:30PM
POSITION: SUPPORT INTENT

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

The Department of Taxation (Department) supports the intent of this measure; however requests a delayed effective date of January 1, 2013 in order to implement this measure. Changes to the Department's computer system will need to be made to implement this legislation.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, Penalty provisions

BILL NUMBER: SB 1356, SD-1

INTRODUCED BY: Senate Committee on Ways and Means

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, 2010

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 3/22/11

ANDREW V. BEAMAN
ANDREW R. BUNN
ANDREW W. CHAR
LEROY E. COLOMBE
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1933-1998

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1945-1991

**THE HOUSE
THE TWENTY-SIXTH LEGISLATURE
Regular Session of 2011**

COMMITTEE ON FINANCE

Chair Oshiro, Vice Chair Lee, Members of the Committee:

**Hearing date: Wednesday, March 23, 2011
Testimony on SB 1356 SD1
(Relating to Taxation)
Prohibits Stacking of Penalties**

Chair Oshiro, Vice Chair Lee, Members of the Committee:

Thank you for scheduling this bill for hearing. We urge passage of this bill which would prohibit penalties for wilful failure to collect and pay 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.

Many new tax penalties were enacted in 2009 through the passage of Act 166. While these penalties are similar to those imposed under the federal Internal Revenue Code, the federal provisions do not stack onto one another for the same violation. This bill will ameliorate the impact of these penalties by prohibiting the assessment of multiple penalties relating to the same tax error.

Thank you for affording me the opportunity to testify.

Very truly yours,

CHUN, KERR, DODD, BEAMAN & WONG,
a Limited Liability Law Partnership


Ray Kamikawa

RKK/lmt : 141336.1

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**TESTIMONY BEFORE THE HOUSE COMMITTEE
ON FINANCE**

In Support of Senate Bill 1356, SD 1
(no stacking of tax penalties)

Wednesday, March 23, 2011 at 2:30 pm
State Capitol, Conference Room 308

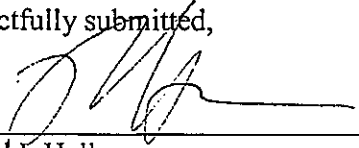
Chair Oshiro, Vice-Chair Lee, and Members of the Committee:

Thank you for the opportunity to testify. My name is Ronald Heller. I am a practicing attorney, and also licensed as a Certified Public Accountant. I represent taxpayers who are trying to resolve issues with the Department of Taxation.

In 2009, Act 166 added various tax penalties to Hawaii law. Most of these new penalties were based on federal law. Under federal law, there are certain limits on the extent to which multiple penalties can be added to a tax assessment. When the penalties were adopted in Hawaii, however, the statutory language regarding multiple penalties did not track the federal law.

Penalties should not be excessive and unreasonable. Excessive penalties are not only unfair, but they present an obstacle for taxpayers who are genuinely trying to work out payment plans or otherwise resolve their situation with the Department of Taxation. SB 1356, SD 1 would establish clear and reasonable limitations on the "stacking" of multiple penalties.

Respectfully submitted,



Ronald I. Heller

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HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

COMMITTEE ON FINANCE

Hearing Date: March 23, 2011
Testimony on S.B. 1356, SD1
(Relating to Taxation)

Chair Oshiro, Vice-Chair Lee, and members of the Committee, thank you for the opportunity to testify in support of Senate Bill 1356, SD1.

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 the Hawaii tax administrative law. 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."¹

In testimony in support of this bill, 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."² 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.

I urge the Committee to pass this bill.

Thank you for the opportunity to testify.

Very truly yours,



Peter L. Fritz

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

² Ibid.