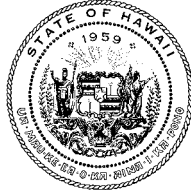


NEIL ABERCROMBIE
GOVERNOR

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

Date: February 7, 2012
Time: 9:15 a.m.
Place: Room 211, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2998, Relating to Tax Penalties

The Department of Taxation (Department) opposes S.B. 2998.

S.B. 2998 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 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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TAX FOUNDATION OF HAWAII

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SUBJECT: ADMINISTRATION, Penalty Provisions

BILL NUMBER: SB 2998; HB 1695 (Similar)

INTRODUCED BY: SB by Ige, Kidani, Shimabukoro, Waiki and 4 Democrats; HB 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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**THE SENATE
THE TWENTY-SIXTH LEGISLATURE
Regular Session of 2012**

**COMMITTEE ON WAYS AND MEANS
Chair Ige, Vice Chair Kidani, Members of the Committee:**

**Hearing date: Tuesday, February 7, 2012
Testimony on SB 2998
(Relating to Taxation)
Prohibits Stacking of Penalties**

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

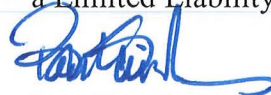
We urge passage of this bill which would prohibit penalties for wilful failure to collect and pay taxes, substantial understatements or misstatements, and erroneous claims for refund or credit from being added to tax underpayments on which certain other penalties are already imposed.

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

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: plflegis@fritzhq.com
Subject: Testimony for SB2998 on 2/7/2012 9:15:00 AM
Date: Sunday, February 05, 2012 11:01:53 PM

Testimony for WAM 2/7/2012 9:15:00 AM SB2998

Conference room: 211
Testifier position: Support
Testifier will be present: Yes
Submitted by: Peter L. Fritz
Organization: Individual
E-mail: plflegis@fritzhq.com
Submitted on: 2/5/2012

Comments:

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**TESTIMONY BEFORE THE SENATE COMMITTEE
ON WAYS AND MEANS**

Re: Senate Bill 2998

**Tuesday, February 7, 2012 at 9:15 am
State Capitol, Conference Room 211**

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

My name is Ronald Heller. I am a practicing attorney, and also licensed as a Certified Public Accountant. I support Senate Bill 2998.

This bill would prevent the unfair, unreasonable and often ineffective “stacking” of penalties when a tax assessment is made. While penalties are an appropriate part of our tax system, they should be applied in a manner that is reasonable and not excessive. Moreover, excessive penalties can actually be counter-productive – they may encourage taxpayers who are not in compliance with the law to stay “underground” rather than face huge liabilities. In some cases, excessive penalties could push taxpayers toward bankruptcy rather than payment.

Under federal law, there are provisions generally saying that where different levels of penalty might otherwise be applicable to the same tax liability, the highest level of penalty will apply, but the lower levels will not. For example, if the same taxpayer is potentially subject to a penalty of 20% and a penalty of 50%, normally the 50% penalty will apply, but the 20% penalty will not – they are not stacked to result in a 70% penalty. It should work the same way under Hawaii law.

Respectfully submitted,



Ronald I. Heller