

Honolulu, Hawaii

MAR 27 2015

RE: H.B. No. 968
H.D. 2
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 968, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO LIABILITY FOR AMOUNTS PASSED
ON AS TAX,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Create a conclusive presumption that a taxpayer is liable for any amounts passed on to consumers for any tax authorized by title 14, Hawaii Revised Statutes, unless returned to the consumer;
- (2) Require the Department of Taxation to adopt rules stating the maximum rates at which taxes may be passed on;
- (3) Assess a civil penalty of up to \$500 per violation for passing on a tax at a rate higher than the maximum rates at which taxes may be passed on; and
- (4) Require the Department of Taxation to notify the Department of Commerce and Consumer Affairs of the commencement of any judicial appeal in which the taxpayer passed on a tax and failed to remit those amounts to the State in a timely manner or was assessed



a civil penalty for passing on a tax at a rate higher than the maximum rates at which taxes may be passed on.

Your Committee received testimony in support of this measure from the Department of Taxation. Your Committee received testimony in opposition to this measure from the Chamber of Commerce Hawaii, Hawaii Society of Certified Public Accountants, and two individuals. Your Committee received comments on this measure from the Tax Foundation of Hawaii.

Your Committee finds that according to the Department of Taxation, there have been many instances where taxpayers openly passed on to consumers Hawaii taxes, such as the general excise and transient accommodations taxes, but did not remit those amounts to the State. Existing law allows the Office of Consumer Protection or the consumers to take legal action against businesses that collect more for taxes than are due to the State. However, aside from learning of these violations from consumer-related or consumer-generated actions, the State cannot recover the total collected for taxes or require the taxpayer to return the overpayment to consumers because the Department of Taxation is not authorized to disclose confidential taxpayer information. This measure will assist the Department of Taxation with administering assessments and collections and will expedite the resolution of tax disputes.

Your Committee notes the concerns raised by the Tax Foundation of Hawaii that this measure could potentially pose more problems for the Department of Taxation and that this measure is unnecessary.

Your Committee has amended this measure by:

- (1) Adopting language suggested by the Department of Taxation that:
 - (A) Requires a taxpayer to be liable for the amount passed on when the amount is passed on and separately stated as the tax owed by the taxpayer for the transaction in a receipt, contract, invoice, billing, or other evidence of the business activity; and



- (B) Specifies how adjustments are to be applied to any amounts passed on and separately stated as tax owed by the taxpayer;
- (2) Allowing, rather than requiring, the Department of Taxation to notify the Department of Commerce and Consumer Affairs of the commencement of any judicial appeal regarding the taxpayer failing to remit amounts to the State or the assessment of a civil penalty;
- (3) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 968, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 968, H.D. 2, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



GILBERT S.C. KEITH-AGARAN Chair



