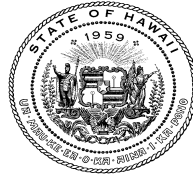


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To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Judiciary

Date: March 15, 2016

Time: 2:00 P.M.

Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2924, S.D. 2, Relating to the Disclosure of Tax Return Information.

The Department of Taxation (Department) strongly supports S.B. 2924, S.D. 2, an Administration measure, and provides the following comments for your consideration.

S.B. 2924, S.D. 2, amends section 231-18, Hawaii Revised Statutes (HRS), to allow disclosure of tax return information to the Department of the Attorney General for certain court proceedings, to federal or state officials for federal or state judicial or administrative tax proceedings, to federal, state, or local law enforcement officials for investigation or prosecution of identity theft or fraudulent tax refund claims, or to other persons, such as hardware and software contractors, to the extent necessary to provide services to the department for purposes of tax administration. S.B. 2924, S.D. 2, also clarifies that all information filed under chapter 235, HRS, with any state agency is confidential. S.D. 2 has a defective effective date of January 7, 2059.

The Department believes that the amendments to section 231-18, HRS, will help clarify some of the common, specific instances where the Department may disclose tax return information. These amendments are modeled after the exemptions codified in section 6103 of the Internal Revenue Code.

The Department notes that the proposed amendment to section 235-116, HRS, is necessary to clarify that the information filed with other state agencies is confidential. Hawaii income tax credits are often certified prior to filing of the credit claim with the Department in order to determine whether the taxpayer qualifies for the credit and to administer aggregate caps of such tax credits. The information being submitted to the other state agencies contains personal identifying information, as well as business and trade information that is generally not for public dissemination.

In addition, it is important to note that this amendment would not preclude the Legislature from enacting legislation that specifically states that certain information provided by a taxpayer would be made public. For example, a new tax credit could contain language that would require a taxpayer to submit a report to a state agency, which would be published, as a prerequisite to claiming a tax credit.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, ADMINISTRATION, Disclosure of Tax Return Information

BILL NUMBER: SB 2924, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: Technical amendments to allow explicitly certain forms of interagency disclosure, and to specify that income tax information is confidential even in the hands of another agency.

BRIEF SUMMARY: Amends section 231-18, Hawaii Revised Statutes, to allow disclosure of tax return information to the Department of the Attorney General, federal, state, or local officials, and other persons in specified situations. Specifies that the director of taxation may adopt rules, pursuant to chapter 91, to ensure that any parties to which a tax return or tax return information is disclosed shall take adequate measures to safeguard the tax return or tax return information disclosed.

Amends section 235-116, Hawaii Revised Statutes, to clarify that all information submitted, collected, or maintained under chapter 235, Hawaii Revised Statutes, with any state agency is confidential. Also amends section 235-116, Hawaii Revised Statutes, to clarify that all information filed under chapter 235, Hawaii Revised Statutes, with any state agency is confidential.

EFFECTIVE DATE: January 7, 2059.

STAFF COMMENTS: This bill is sponsored by the Department of Taxation TAX-04 (16).

According to the Department's justification sheet accompanying the bill, the amendment to section 231-18 will allow disclosure of tax return information to the Department of the Attorney General for certain court proceedings, to federal or state officials for federal or state judicial or administrative tax proceedings, to federal, state, or local law enforcement officials for investigation or prosecution of identity theft or fraudulent tax refund claims, or to other persons to the extent necessary to provide services to the department for purposes of tax administration. This provision appears to be comparable to federal provisions allowing disclosure of tax information (section 6103, Internal Revenue Code).

Also, the Department asserts that the amendment to section 235-116, HRS, is needed to clarify that all information filed under the Income Tax Law with any state agency is confidential. The proposed amendment extends this protection to any tax returns and return information required to be collected or maintained under the Income Tax Law. "Confidential" in this context means that the state agencies are prohibited from disclosing the information to others, although the same information is obtainable from the reporting company's files or personnel by judicial

Re: SB 2924, SD-2
Page 2

process. *St. Regis Paper Co. v. United States*, 368 U.S. 208, 218-19 (1961) (discussing IRC sections 6103 and 7213(a)).

Digested 3/12/2016

PETER L. FRITZ

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HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

COMMITTEE ON JUDICIARY

Testimony on S.B. 2924 SD2

Hearing: March 15, 2016

Time: 2:00 PM

(RELATING TO THE DISCLOSURE OF TAX RETURN INFORMATION.)

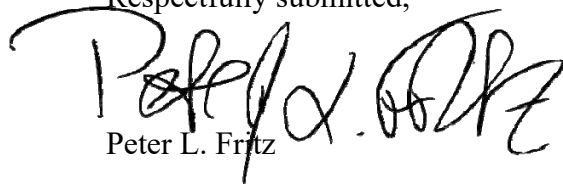
Chair Rhodes, Vice San Buenaventura, and members of the Committee. My name is Peter Fritz. I am an attorney and a former Rules Specialist for the Department of Taxation. I am testifying in support of this bill and recommending that this bill be amended to include specific language detailing the safeguards for taxpayers whose privacy interests are implicated.

Senate Bill 2924 SD2 takes language from Internal Revenue Code (“I.R.C.”) § 6103 and amends § 231-18, Hawaii Revised Statutes, to expand disclosure of tax return information to the Department of the Attorney General, federal, state, or local officials, and other persons in specified situations. Unfortunately, administration bill SB 2924 SB2 does not include the language that is a part of I.R.C. § 6103 that safeguards the information. While the bill does state that the “director **may** [emphasis added] adopt rules . . . to ensure . . . [that] adequate measures to safeguard the tax return information” are taken, the permissive nature of this language will leave taxpayer’s privacy interests exposed should the Department of Taxation decide not to write such rules or releases information before such rules are written.

The privacy of the taxpayer needs to be protected. Any procedure for making such information public cannot be a secret. To protect the privacy interests of taxpayers, the safeguards and the consequences of failing to protect such information must be known to by the parties that receive such information. It cannot be a secret. Releasing information before safeguards are in place will not protect these privacy interests. This can be corrected if a framework for such protection is included in this bill. I have attached proposed language that can substituted for paragraph b on page 5 of this bill.

There must be public confidence with respect to the confidentiality of personal and financial information given to the Department of Taxation for tax administration purposes. Protection of the public requires that this bill be amended to include language safeguarding taxpayer information be part of this bill.

Respectfully submitted,



Peter L. Fritz

1 (b) Any party, to which tax return information is disclosed
2 under paragraph (a), as a condition for receiving return
3 information shall:

4 (1) establish and maintain, to the satisfaction of the
5 Director, a permanent system of standardized records
6 with respect to any request, the reason for such
7 request, and the date of such request made by or of it
8 and any disclosure of return or return information made
9 by or to it;

10 (2) establish and maintain, to the satisfaction of the
11 Director, a secure area or place in which such returns
12 or return information shall be stored;

13 (3) restrict, to the satisfaction of the Director, access to
14 the returns or return information only to persons whose
15 duties or responsibilities require access and to whom
16 disclosure may be made under the provisions statute;

17 (4) provide such other safeguards which the Director
18 determines (and which are prescribes in rules) to be
19 necessary or appropriate to protect the confidentiality
20 of the returns or return information;

21 (5) furnish a report to the Director, at such time and
22 containing such information as the Director may
23 prescribe, which describes the procedures established
24 and utilized by such party, for ensuring the

1 confidentiality of returns and return information
2 required by this paragraph; and

3 (6) upon completion of use of such returns or return
4 information return to the Director such returns or return
5 information (along with any copies made therefrom) or
6 make such returns or return information undisclosable in
7 any manner and furnish a written report to the Director
8 describing such manner,

9 (7) After the close of each calendar year, the Director
10 shall furnish a report to the legislature which
11 describes the procedures and safeguards established and
12 utilized by such agencies, bodies, or commissions for
13 ensuring the confidentiality of returns and return
14 information as required by this subsection. Such report
15 shall also describe instances of deficiencies in, and
16 failure to establish or utilize, such procedures.