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To: The Honorable Bertrand Kobayashi, Chair
and Members of the House Committee on Legislative Management

Date: Wednesday, February 8, 2017

Time: 2:00 P.M.

Place: Conference Room 423, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 765, Relating to the Auditor

The Department of Taxation (Department) respectfully opposes H.B. 765.

H.B. 765 authorizes the State Auditor to demand from the Department, as well as from other state departments that maintain confidential tax information, the release of any confidential tax information. This bill also authorizes the State Auditor to discretionarily release any of that confidential tax information in any report. H.B. 765 is effective upon approval.

The Department strongly opposes the vast erosion of taxpayer confidentiality this bill represents. It is important to remember that our State's tax system is based on voluntary compliance with the tax laws. A system based on voluntary compliance requires taxpayers to candidly report their income and to proactively pay the tax they owe. The primary incentive to encourage taxpayers to candidly report tax information is the guarantee of confidentiality of the information they report.

H.B. 765 would allow the State Auditor to acquire and disclose confidential tax information essentially at whim and without reprisal, representing a stark departure from the State's otherwise strong commitment to the confidentiality of tax information. The Department is concerned such an erosion of taxpayer confidentiality could negatively impact the public's confidence in the confidentiality of its tax information, thereby reducing voluntary compliance and impede the Department's ability to effectively enforce and collect the State's taxes.

Second, confidential tax information should only be disclosed on a need-to-know basis. The State laws in this area are very strict and the Department takes confidentiality of tax information very seriously. Department personnel and other state personnel authorized to receive confidential tax information are subject to strict criminal penalties for unauthorized disclosure, including the possibility of felony conviction and imprisonment. The Department does not believe that unfettered access to confidential tax information, as this measure allows, is

necessary to produce the reports required under sections 23-71 to 23-81 and sections 23-91 to 23-96, Hawaii Revised Statutes. In general, these reports focus on the cost of a tax expenditure, forecasting future costs of the expenditure, legislative intent or goals of such expenditure, whether the intent or goals of the expenditure were met, and whether the costs of such expenditure were born by low income individuals. Answers to these issues cannot be found by browsing through individual tax records.

Finally, the Department, upon request by the Auditor, is able and willing to provide relevant data in aggregated form for use in producing these reports. Data in this form may be republished by the Auditor without breaching confidentiality laws. Accordingly, for these reasons, the Department does not believe adoption of H.B. 765 is appropriate or necessary.

Thank you for the opportunity to provide comments.



HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT

The Honorable Bertrand Kobayashi, Chair
The Honorable John M. Mizuno, Vice Chair

H.B. No. 765, Relating to the Auditor

Hearing: Wednesday, February 8, 2017, 2:00 p.m.

The Office of the Auditor **strongly supports H.B. No. 765**, Relating to the Auditor. The bill requires all departments, offices, and agencies of the State and its political subdivisions to provide the Auditor access to all records and other information compiled or maintained as the Auditor deems necessary to facilitate our review of tax exemptions, exclusions, credits, and deductions as required under Hawai'i Revised Statutes sections 23-71 to 23-81 and sections 23-91 to 23-96. The bill also allows the Auditor to report such information as deemed necessary to explain and support our review of, and recommendations regarding, those tax exemptions, credits, exclusions, and deductions.

Among other things, the referenced sections above require the Auditor to review certain tax incentives to determine the amount of tax expenditures for the previous three fiscal years, estimate the amount of expenditures for the current and next two fiscal years, determine whether the incentive is necessary to promote or preserve tax equity or efficiency, and recommend whether the incentive should be retained, amended, or repealed. Access to all relevant records and information maintained by the department of taxation, department of labor and industrial relations, and other departments and agencies is essential to conduct a full and meaningful review of the tax exemptions, exclusions, credits and deductions. Accordingly, we strongly support this bill that would ensure we have such access.

Thank you for considering our testimony related to H.B. No. 765.



LATE

Headquarters
and Refining

91-480 Malakole St.
Kapolei, HI 96707

DATE: Wednesday, February 8, 2017
TIME: 2:00pm
PLACE: Conference Room 423
State Capitol
415 South Beretania Street

House Bill 765, Relating to the Auditor

Good afternoon Chair Kobayashi, Vice-Chair Mizuno and Members of the committee,

Island Energy Services, LLC (IES) purchased the assets of the formerly owned and operated Chevron on November 1, 2016, and continues to operate as a key supplier of petroleum products to the Hawaii market and economy. As a refiner and key supplier, IES would like to comment on HB 765 and raise two concerns.

On page 3, lines 9-13 of HB 765, the State Auditor requests authority as “the auditor deems necessary” to access tax information and other state agencies information, AND disclose whatever information “it deems necessary”. This authority is unprecedented and causes grave concern when dealing with confidential taxpayer information. We believe this overbroad authority should be struck from the bill. This provision could cause the release of confidential information and possible damage to the taxpayer and cause market disruptions if certain confidential information is made known to industry competitors.

Second, on page 3, lines 16-20 of HB 765, the State Auditor is requesting the authority to report aggregated tax information. This provision causes concern to IES. IES is one of two refineries in Hawaii. The Department of Taxation (DoTax) and Department of Business, Economic Development & Tourism (DBEDT) both enforce the policy and principle that aggregated information will not be disclosed if it would identify the taxpayer or its confidential financial information, and have not reported aggregated information



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concerning the refineries as it is illogical to aggregate two taxpayers. IES asks that the State Auditor follow this policy and principle of the DoTax and not report aggregate information that DoTax or DBEDT does not report.

Mahalo for the opportunity to offer our comments on this matter.

Mahalo,

Al Chee
Vice President
Island Energy
Retail Marketing & Community Relations

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GOVERNOR

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LATE

February 7, 2017

To: The Honorable Bertrand Kobayashi, Chair,
The Honorable John Mizuno, Vice Chair, and
Members of the House Committee on Legislative Management

Date: Wednesday, February 8, 2017
Time: 2:00 p.m.
Place: Conference Room 423, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 765 Relating to the Auditor

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend chapter 23, Hawaii Revised Statutes (HRS), by adding a new section to part I. The bill authorizes the auditor to receive, review confidential and other information. It also allows the auditor to report information necessary to explain and support its review and recommendations.

II. COMMENTS ON THE HOUSE BILL

The Department strongly opposes HB765 as it raises serious issues with state and federal statutes regarding confidentiality of Unemployment Insurance (UI) information. In particular, sections (a) and (b) of the bill allows the auditor broad, unrestricted access and redisclosure rights to any UI information, notwithstanding any other law to the contrary.

Section 383-95, HRS, provides that information obtained from any employing unit or individual pursuant to the administration of this chapter and determinations as to the benefits rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity except as necessary for the resolution of a claim made under Chapter 383, HRS. While very narrow statutory exceptions are considered for public officials, redisclosure of identifiable UI information is generally prohibited.

Further, section 303(a)(1) of the Social Security Act (SSA) provides that in order for the state UI program to be certified and granted federal funding, methods of administration to protect confidentiality and redisclosure of UI information is required.

Non-compliance with 303(a)(1), SSA jeopardizes \$13,000,000 in annual UI administrative grants to operate the UI program, which effectively shuts down UI offices statewide and precludes jobless workers from filing for UI compensation.