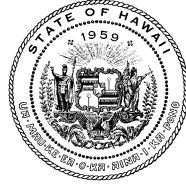


DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
Phone: (808) 587-1540 / Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

RONA M. SUZUKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Rona M. Suzuki, Director
Department of Taxation

Re: S.B. 2923, Relating to Tax Administration

Date: Tuesday, February 4, 2020

Time: 10:30 A.M.

Place: Conference Room 211, State Capitol

The Department of Taxation (Department) **strongly supports** S.B. 2923, an Administration measure. S.B. 2923 makes the following amendments to Hawaii Revised Statutes (HRS) chapters 231 and 232 to improve general tax administration:

1. Authorizes the Department to **require electronic filing of certain partnership and S corporation returns** under certain circumstances;

Electronic filing improves accuracy and efficiency. S.B. 2923 authorizes the Department to require partnerships and S-corporations to file electronically, but only if their gross income exceeds \$250,000 for the taxable year and there is an electronic filing option available. By only including partnerships and S-corporations with gross income exceeding \$250,000, the Department believes the bill will only affect taxpayers with the ability and sophistication to easily comply with the electronic filing requirement. In addition, these taxpayers are likely already required to file general excise tax returns electronically.

2. Amends the penalty for **failure to file electronically** to allow the Department to **define the penalty if there is no tax shown on the improperly filed return**;

This will allow the Department some flexibility to determine the penalty in situations where there is no tax liability shown on the return. Currently, the penalty is a percentage of the tax required to be shown on the return. The exception to the penalty for reasonable cause is still available. The Department proposes to set the penalty by administrative rule.

3. Requires **tax return preparers to file electronically** if the preparer prepares more than ten returns of the same tax type in the calendar year and imposes a penalty for failure to do so;

This is another way to increase electronic filing and thus fully utilize the new tax system. The bill also imposes a penalty on tax return preparers for failing to file electronically of \$50 per

failure and includes an exception to the penalty for reasonable cause. The proposed requirement matches the IRS; other states have begun to implement their own similar requirements.

4. Streamlines the rules for **payment of taxes by electronic funds transfer;**

The Department has been granted separate authority to require electronic filing since the enactment HRS section 231-9.9. Therefore, the language authorizing mandatory electronic filing in that section is redundant. S.B. 2923 also amends the information required to be reported to the legislature each year.

5. **Repeals the fee of \$5 for a certified copy** of a tax clearance.

The Department does not issue certified copies of tax clearances. Therefore, the \$5 fee provision is out of date and should be repealed.

6. Authorizes the Department to make **limited disclosures of liquor licensees' tax compliance information directly to the license issuing agency;**

Liquor license holders are required to obtain a tax clearance prior to the initial application and renewals. This authorization will leverage functionality in our new tax system to streamline the tax clearance process, which benefits both taxpayers and government.

Alternately, because a number of other government agencies require a tax clearance for various purposes, a separate section could be added to enable the Department to provide this information directly to partner agencies.

7. Amends the **interest rate the state must pay on amounts paid pending appeal** that are subsequently determined to be owed to the taxpayer;

The Department pays interest if the taxpayer prevails in the appeal. Under current law, the interest rate was calculated by reference to Internal Revenue Code section 6621(a) as of January 1, 2010. This reference and the date of January 1, 2010 has led to confusion as to how the rate is calculated. S.B. 2923 repeals the reference to the Internal Revenue Code and defines the interest rate as a fixed rate, consistent with the Internal Revenue Code. The fixed rate proposed is the rate that would be calculated under the Department's interpretation of current law, thus, there is no substantive change in the interest rate.

Thank you for the opportunity to provide testimony in strong support of this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TAX ADMINISTRATION, Omnibus Bill

BILL NUMBER: SB 2923; HB 2367

INTRODUCED BY: SB by KOUCHI by request; HB by SAIKI by request

EXECUTIVE SUMMARY: Allows the Department of Taxation to mandate the electronic filing of partnership and S-corporation returns if the taxpayer's gross receipts exceed \$250,000. Requires certain tax return preparers to file returns electronically. Amends the rules for electronic funds transfer to remove the authorization to require electronic funds transfer or electronic filing if the federal government required that person to file or pay electronically. Removes the timeliness requirement from the electronic funds transfer penalty. Removes the authority of the department to charge for certified copies of tax clearances. Amends the statute that mandates tax clearances for liquor license holders. Clarifies the interest rate for payments made to taxpayers out of the litigated claims fund.

SYNOPSIS: Amends section 231-8.5, HRS, to require partnerships and S corporations to e-file if the entity's gross income exceeds \$250,000 for the taxable year.

Also requires tax preparers to e-file all returns if the preparer reasonably expects to prepare more than 10 returns of that same tax type in the year. Imposes a penalty of \$50 per failure if this is not done.

Provides that the penalty for failure to e-file may be set by the Department by administrative rule if no tax is required to be shown on the return.

Amends section 231-9.9, HRS, to remove the provisions allowing the department to require e-filing when the federal return is e-filed, and allowing the department to grant an exemption to the electronic filing and payment requirements for good cause.

Amends section 231-10.8, HRS, to remove the provision allowing the department to charge \$5 for a certified copy of a tax clearance.

Amends section 231-28, HRS, to explicitly allow the department to disclose tax information relevant to a liquor license applicant's state tax compliance to the county liquor agency.

Amends section 232-24, HRS, to change the interest rate for taxes paid in dispute pending appeal from the federal overpayment rate to: (1) for corporations, 3%; (2) for corporations whose overpayments exceed \$10,000, 1.5%; and (3) for all other taxpayers, 4%.

Also makes technical and conforming changes.

EFFECTIVE DATE: This Act shall take effect upon its approval, provided the amendment to section 231-9.9, HRS, shall take effect on January 1, 2021.

STAFF COMMENTS: This is an Administration measure from the Department of Taxation, identified as TAX-04 (20).

On page 4, lines 18-20, we suggest that the legislature provide a dollar amount of the penalty rather than leaving the penalty amount up to the Department.

On page 5, lines 15-17, we suggest that the language “The director is authorized to grant an exemption to the electronic filing and payment requirements for good cause” not be removed. Otherwise the implication will be that no exceptions to the penalties will be tolerated, although the taxpayer may have extenuating circumstances.

On page 8 line 19 to page 9 line 3, we note that the refund is caused by a judgment that the money in question was not held lawfully by the State. We believe that the interest rate that should be paid should not be less than the overpayment rate specified in HRS section 231-23(d), which is 4% for individuals and all corporations.

Digested 1/30/2020