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To: The Honorable Sylvia Luke, Chair;
The Honorable Ty J.K. Cullen, Vice Chair;
and Members of the House Committee on Finance

From: Isaac W. Choy, Director
Department of Taxation

Date: April 1, 2021
Time: 1:30 P.M.
Place: Via Videoconference, Hawaii State Capitol

Re: S.B. 1204, S.D. 2, H.D. 2, Relating to Tax Appeals

The Department of Taxation (Department) strongly supports S.B. 1204, S.D. 2, H.D. 2, an Administration measure, and offers the following comments for the Committee's consideration. H.D. 2 has a defective effective date of July 1, 3021.

S.B. 1204, S.D. 2, H.D. 2, would make significant amendments to chapter 232, Hawaii Revised Statutes (HRS), to replace the four district tax Boards of Review with a single statewide Board of Review (BOR) appointed by the Governor, consisting of ten members with three required for quorum. The measure also clarifies that any vacancy in the BOR would not impair the authority of the remaining members to exercise their powers, as long as there is quorum. The measure would also authorize the Governor to appoint acting members to the BOR to temporarily fill vacancies created by a current member's illness, recusal from a case, or temporary absence from the State. Additionally, taxpayers and others appearing before the BOR will be allowed to participate via teleconference or any other permissible cost-efficient means.

The Department stresses that the currently existing BOR appeals structure, with one board for each tax district, is overwhelmed with challenges to the point where it has become essentially inoperable. A substantial number of tax appeals have been unable to be heard, or have been substantially delayed in being heard, due to the boards' inability to constitute quorum. The Department believes that Hawaii taxpayers will greatly benefit from improved efficiency in tax administration and having their appeals decided expeditiously. Accordingly, the Department strongly supports this measure, and respectfully requests that the measure be amended to be effective on January 1, 2022.

Thank you for the opportunity to provide testimony on this measure.

TAX FOUNDATION OF HAWAII

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SUBJECT: APPEALS, Consolidate district boards of review

BILL NUMBER: SB 1204, HD2

INTRODUCED BY: House Committee on Judiciary & Hawaiian Affairs

EXECUTIVE SUMMARY: Replaces the four district tax boards of review with a single statewide board of review appointed by the Governor, consisting of ten members with three required for quorum. Authorizes board members and taxpayers to appear and conduct official business using cost-saving measures such as teleconferencing.

SYNOPSIS: Amends section 232-6, HRS, to replace the different district boards of review with one statewide board of review.

Provides that any vacancy in the board shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint, without regard to section 26-34 (relating to the advice and consent of the Senate) an acting member of the board during the temporary absence from the State, temporary inability to act due to recusal, or illness of any regular member. An acting member, during the acting member's term of service, shall have the same powers and duties as the regular member; provided further that an acting member appointed due to a regular member's recusal shall be appointed for the case in which the recusal occurred, and the acting member's appointment shall terminate when the final decision is filed or the case is withdrawn.

Amends section 232-7, HRS, to specify that any three board members constitute a quorum, and may conduct meetings via teleconference or any other cost-efficient means of the board's choosing.

Also specifies that the decisions of the board shall be reduced to writing and shall state separately the board's findings of fact and conclusions of law.

Makes technical and conforming changes. Clarifies that the Act shall not affect county real property tax appeals and the respective county boards of review to which they are appealed, nor shall it abrogate any county ordinance relating to a county's real property tax appeal procedures.

EFFECTIVE DATE: 7/1/3021.

STAFF COMMENTS: This is an Administration bill sponsored by the Department of Taxation and identified as TAX-10 (21).

In Hawaii, we have a beast called a Board of Taxation Review that is quickly following the dodo bird down the path to extinction. This is why we should be concerned.

None of us relish a tax audit, knowing that the person across the table from you represents a government agency that has the power to garnish your wages, seize your bank accounts, force the sale of your home, shut down your business, and file criminal charges. And yet, because the person in that position is a person and not some divine being, mistakes can and will happen. That's why our laws provide for review of tax assessments.

There are two principal ways state tax assessments can be reviewed by people who aren't employees of the Department of Taxation. One way is through the court system. The other way is through a citizen panel known as a Board of Taxation Review. The Boards were established in 1932, three years before the Territory of Hawaii adopted the General Excise Tax. Boards are in each of the principal counties, and have the power to hear and determine tax disputes arising in their county.

Each Board is supposed to have five members appointed by the Governor and confirmed by the Senate. The Board can't make a decision unless there is a "quorum" of three members that hears a particular case. Under a 2013 law, there may be up to three panels of five in each county, and a quorum can be gathered from any members available, so in each county there is a potential pool of fifteen members, three of which are needed to hear any particular case.

At present, only one Board exists in each county, so the "powers that be" either don't know or don't care that there can be three panels. (Let's not get confused. There are different boards of review for county real property taxes. The City & County of Honolulu, for example, has had three boards since 2006, and they are functioning.)

To compound the problem, each of the boards has several vacancies. At the moment, the State Board of Taxation Review for Oahu has only three members, two of whom are holdover members. Maui has only two members and can do nothing because the quorum of three will not be met. Kauai's five positions are all vacant. The Big Island has four members out of a possible five.

Finding members for the Boards might not be an easy task. Most of the people in our community who know about the fine points of state tax law use that knowledge to make a living. But if you are on a Board, you are subject to the same ethics laws that apply to state employees, which means you can't represent any clients for money before the Department of Taxation for the time you are on the Board, and for one year afterward. (See HRS section 84-18.) This prohibition doesn't apply to task forces, but it does apply to boards and commissions. The requirement was designed to make sure the people in positions of influence don't turn around after their service is done and parlay that influence into profit. So how do you get people to fill the vacancies? Not with pay; Board members are paid only a nominal \$10 per day for their service. Retired practitioners, and practitioners serving only one client (such as CFOs) might be willing to go along with this, but folks who represent clients before the Department to feed their families probably won't. (And why is it that task forces can skate around the one-year restrictions while other boards and commissions can't?)

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In any event, we have problems here and they need to be fixed. This bill appears to be a reasonable means of addressing the problem so that this avenue of appeal does not completely evaporate.

Digested 3/30/2021

SB-1204-HD-2

Submitted on: 3/30/2021 1:14:59 PM

Testimony for FIN on 4/1/2021 1:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| John D. Smith | Individual | Support | No |

Comments:

I support this to be passed through legislature.



March 31, 2021

Rep. Sylvia Luke, Chair
Rep Ty J.K. Cullen, Vice Chair
Members of the House Committee On Finance

Re: **SB 1204, SD 2, HD 2**

Relating to Tax Appeals

Hearing Date: 4/1/2021, 1:30 p.m.

Dear Chair Luke & Honorable Committee Members:

I am offering Comments on this Bill. Three points:

- 1) Language requiring the Department to assist in preparation of a BoR appeal is appropriate and should be retained;
- 2) Compensation for the Board is inadequate;
- 3) Persons with tax problems should not be allowed to sit on the Board of Review.

1. Taxpayers Should Have the Assistance of The Department of Taxation In Preparing Appeals to Avoid Procedural Snafus and the Appearance of an Unfair System.

This bill deletes a phrase from 232-15 that I believe you should restore because it protects pro se taxpayers from procedural missteps that could preclude them from a meaningful hearing.

“Upon the necessary information being furnished by the taxpayer to the assessor, the assessor shall prepare the notice of appeal upon request of the taxpayer and any notice so prepared by the assessor shall be deemed sufficient as to its form.”

This simple language will continue to enable Taxpayers to file the appropriate form of appeal in a way that will avoid dismissals. The burden upon the Department of Taxation is minimal because *whatever the Department prepares will be deemed sufficient* to preserve the Taxpayer’s rights.

An entire category of Byzantine or Kafka-esque episodes will thereby be avoided.

2. Compensation of the Board

This Bill requires written findings of fact and conclusions of law to be rendered in each decision.

Frequently, tens or hundreds of thousands of dollars in tax, penalty, and interest will be involved.

Many tax appeals will involve multiple issues, and your august body has crafted a complicated system of taxation especially on the application of the General Excise Tax and its exemptions.

\$10 per day per Board member suggests a lack of seriousness towards the matters before this Tribunal and the duties of its members.

District Court Judges presiding over Regular and Small Claims Court proceedings are paid \$195,276 per year. Assuming a six-day work week, District Court Judges work 313 days per year and are therefore paid (in salary alone) \$624 per day.

Something along the lines of \$100-\$150 per day for Board members, with an additional 15-25% for Chair and Vice-Chair, is more appropriate.

Impose a filing fee if the budget is a concern. Scale it to the amount declared to be in dispute if fairness is a concern.

3. Board Members Should Be Required To Maintain a Tax Clearance And/Or Be In Full Tax Compliance at All Times.

A Board Member with ongoing tax problems might be subject to undue influence from, or attempt to curry favor with, the Department of Taxation.

It is also unseemly for person(s) with tax problems to sit in judgment of persons with tax disputes, for obvious reasons.

To avoid this conflict of interest, language should be inserted requiring Board members to maintain a tax clearance at all times. As you are aware, the Department of Taxation has an automated system for tax compliance.

I suggest you add appropriate language at 232-6(b).

Sincerely,

/s/ Richard McClellan