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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 & Means

The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair;
and Members of the Senate Committee on Judiciary

From: Isaac W. Choy, Director
Department of Taxation

Date: March 3, 2021

Time: 10:35 A.M.

Place: Via Videoconference, Hawaii State Capitol

Re: S.B. 1204, S.D. 1, Relating to Tax Appeals

The Department of Taxation (Department) strongly supports S.B. 1204, S.D. 1, an Administration measure, and offers the following comments for the Committee's consideration.

S.B. 1204, S.D. 1, 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. Moreover, the measure would 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.

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 will be able to implement it with its current effective date of January 1, 2022.

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

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To: Senate Committees on Ways and Means and on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 3, 2021, 10:35 a.m.
State Capitol, Conference Room

Re: Testimony on S.B. No. 1204, S.D. 1
Relating to Tax Appeals

Thank you for the opportunity to submit testimony on this bill, which would replace the four district tax boards of review with a single statewide board of review. The Office of Information Practices (OIP) testified on this bill as introduced, but the S.D. 1 version of the bill eliminated the language OIP was concerned about and OIP has no further concerns regarding this bill.

TAX FOUNDATION OF HAWAII

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SUBJECT: APPEALS, Consolidate district boards of review

BILL NUMBER: SB 1204, SD1

INTRODUCED BY: Senate Committee on Government Operations

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 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: 1/1/2022.

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 Taxation Board of 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 Taxation Board of 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 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 Board of Review for Oahu has only three members, two of which 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?)

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.