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To: The Honorable Sean Quinlan, Chair;
The Honorable Daniel Holt, Vice Chair;
and Members of the House Committee on Economic Development

From: Isaac W. Choy, Director
Department of Taxation

Date: Wednesday, February 9, 2022
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 1490, Relating to Taxation

The Department of Taxation (Department) supports H.B. 1490 and offers the following comments for the committee's consideration.

H.B. 1490 adds a new provision to chapter 231, Hawaii Revised Statutes (HRS), creating a new penalty for failure to respond or reply to the Department's correspondence or inquiry within a timely manner during an official inspection or examination of records. The allowed penalty is no more than 25 per cent of assessed tax; the Director of Taxation is authorized to waive the penalty if the failure was due to reasonable cause. The measure takes effect upon approval.

The Department appreciates every effort to empower it with the tools and resources to help promote taxpayer compliance and efficient tax administration. The Department is in strong support of this bill and is able to implement the measure as drafted. Thank you for the opportunity to testify.

TAX FOUNDATION OF HAWAII

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SUBJECT: ADMINISTRATION, Establish Civil Penalty for Failure to Respond

BILL NUMBER: HB 1490

INTRODUCED BY: YAMASHITA

EXECUTIVE SUMMARY: Establishes a civil penalty for failure to respond to an inquiry or request for information during a state tax examination or investigation.

SYNOPSIS: Adds a new section to chapter 231, HRS, stating that a penalty shall be added to any tax assessed under this title if a taxpayer fails to respond to any department inquiry or request for information during an examination or investigation at the time or times required by law. The amount of the penalty shall be no more than twenty-five per cent of the assessed tax. The director may waive or reduce the penalty if the failure to respond was due to reasonable cause and not due to neglect.

EFFECTIVE DATE: Upon Approval

STAFF COMMENTS: During the course of a return examination, auditors typically will ask the taxpayer for several rounds of information and documents. Sometimes the taxpayer is able to provide the information and documents; sometimes the documents don't exist or can't be located; sometimes documents can be located and are produced but are not what the auditor is looking for.

Under current law auditors who do not get the information they need as quickly as they need are able to assess the taxpayer based on "best available information." This type of assessment is sometimes based on arbitrary assumptions, such as "150% of the prior year's income," and the onus is then placed on the taxpayer to prove what the taxpayer can.

In our view, failing to cooperate with the tax authorities carries hefty consequences even without an additional penalty.

If this bill is to go forward, consideration should be given to capping the penalty at 25% of the tax deficiency (the amount due under law less what was paid) as is the case with other penalties, instead of pegging it to the assessed amount which may be arbitrary. Language also could be added to say that failures to respond to multiple rounds of information requests do not multiply the penalty cap; if not, the penalty could spiral out of control quickly.

Digested: 2/7/2022

HB-1490

Submitted on: 2/7/2022 2:29:15 PM

Testimony for ECD on 2/9/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

Unconsitutional!!!