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To: The Honorable Aaron Ling Johanson, Chair;
The Honorable Lisa Kitagawa, Vice Chair;
and Members of the House Committee on Consumer Protection & Commerce

From: Isaac W. Choy, Director
Department of Taxation

Date: Wednesday, February 2, 2022
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

Re: H.B. 2176 Relating to the Taxation Board of Review

The Department of Taxation (Department) strongly supports H.B. 2176, an administration measure, and offers the following comments for the committee's consideration.

H.B. 2176 amends section 232-7, Hawaii Revised Statutes (HRS), to make several important changes to the law governing the State Taxation Board of Review (Board). It clarifies the necessary administrative procedures for validating board actions, streamlines the legal notice and due process requirements for the Board to conduct contested case hearings, and further establishes the evidentiary frameworks that the Board must use in adjudicating issues and reaching its decisions. The measure is effective upon approval.

Establishing clear institutional guidelines for the Board would greatly help the Department work through its significant backlog of appeals and ensure that Hawaii's taxpayers have their tax appeal issues resolved fairly and expeditiously. 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: APPEALS, Board of Review as Contested Case Hearings

BILL NUMBER: HB 2176, SB 3144

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

EXECUTIVE SUMMARY: Authorizes the members of the State Taxation Board of Review to validate the board's actions with a concurrence of the majority of members who heard the appeal. Clarifies that board meetings are contested case hearings and provides notice requirements. Clarifies the legal and evidentiary framework the board may use in reaching its decisions.

SYNOPSIS: Amends section 232-7(b), HRS, to provide that notwithstanding sections 91-11 and 92-15, HRS, the board shall validate its actions by a concurrence of a majority of the members who heard the appeal. The board shall hear, as speedily as possible, all appeals presented for each year. The hearings shall be considered contested case hearings under section 91-9. Written notice of the hearing shall meet the requirements of section 91-9.5, provided that, if the notice is sent to the taxpayer's last known address, a return receipt shall not be required. In lieu of a return receipt, the department shall post the notice on its website for a minimum of fifteen consecutive days before the scheduled hearing date and provide confirmation that the notice was mailed.

Removes the requirement that the board hold public meetings at some central location in each taxation district at least once annually.

Amends section 232-7(d) and (e), HRS, to provide that the board shall base its decision solely on the law and evidence presented directly to it by the parties.

EFFECTIVE DATE: Upon Approval

STAFF COMMENTS: This is an Administration measure sponsored by the department of taxation and identified as TAX-02 (22).

Because Act 118, SLH 2021, changed the Board of Review to a ten-member board, section 92-15, HRS, requires that a majority of the entire membership, namely six members, concur in each decision of the board. This, of course, is difficult when only three members of the Board hear each tax appeal. The bill fixes this problem by explicitly specifying the vote necessary to validate an action of the board.

The other big change espoused by this measure, making a Board of Review proceeding a contested case hearing, will be beneficial because a Board decision will need to be reasoned and cannot be only a check-the-box result (which is what some Board of Review decisions in the past have been). HRS 91-12.

Digested: 1/31/2022