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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: Friday, February 4, 2022
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 2178 Relating to Tax Expenditure Accountability

The Department of Taxation (Department) strongly supports H.B. 2178, an Administration measure, and offers the following comments for the committee's consideration.

H.B. 2178 adds new sections to chapter 231, Hawaii Revised Statutes (HRS), to require all laws that enact, modify, or extend the availability of a tax expenditure to include:

- An explanation of the intent in enacting each tax expenditure, including the expected economic and employment benefit to the State;
- An analysis of whether the economic or employment benefit to the State provided by the tax expenditure, if any, outweighs its cost;
- A repeal date that makes the tax expenditure available for no more than thirty-six months;
- A static revenue estimate of the tax expenditure for each of the fiscal years in the State's financial plan; and
- For existing tax expenditures that are modified or extended:
    - The total cost of the tax expenditure over the previous three fiscal years;
    - A static revenue estimate for each of the fiscal years in the State's financial plan if the tax expenditure were repealed; and
    - An analysis describing the extent to which the tax expenditure is fulfilling its desired purpose, including whether the State has realized the anticipated economic benefit and increase in tax revenue, the number of jobs created in the State, and whether the cost of the tax expenditure is outweighed by its benefits.

"Tax expenditure" is defined to mean any credit, deduction, exclusion, exemption, or any other tax benefit that provides a preferential rate of tax or deferral of tax liability, authorized under State law for the purpose of incentivizing economic activity, except for changes enacted to conform with the Internal Revenue Code, or any modifications required by the U.S. or State Constitutions.

The measure also requires the disclosure of claimant taxpayer identities and expenditure amounts for tax expenditures that encourage certain economic activities. The list of tax expenditures included in this disclosure provision can be found in Section 2 of the measure.

Requiring a thorough analysis of the value and efficacy of tax expenditures, as well as disclosure of the identity of taxpayers and amounts claimed, is critical for maintaining transparency, public trust, and fairness. 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.

THE CIVIL BEAT
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House Committee on Economic Development
Honorable Sean Quinlan, Chair
Honorable Daniel Holt, Vice Chair

RE: Testimony Supporting H.B. 2178, Relating to Tax Expenditure Accountability
Hearing: February 4, 2022 at 10:00 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony **supporting** H.B. 2178.

H.B. 2178 codifies a process for analyzing and explaining the costs and benefits of tax preferences, as well as providing public information about who receives certain tax benefits. To the extent such analysis occurs now, it does not occur consistently. Public confidence in government suffers when the people of Hawai`i cannot reliably obtain information to understand the scope and purpose of special preferences provided to certain taxpayers.

The Department of Taxation correctly summarized the issue in its Justification Sheet.

> The disclosure of the identity of the taxpayers and amount of tax expenditures claimed is important to support public trust and fairness. When only certain taxpayers receive preferential treatment, the other taxpayers have the right to know who the recipients are.

Thank you again for the opportunity to testify in support of H.B. 2178.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, Tax Expenditure Accountability

BILL NUMBER: HB 2178, SB 3146

INTRODUCED BY: HB by SAIKI by request, SB by KOUCHI by request (Governor's Package)

EXECUTIVE SUMMARY: Requires laws that enact, modify, or extend the availability of a tax expenditure to contain specific information, revenue estimates, and analyses before becoming law. Allows the public disclosure of certain tax credit information.

SYNOPSIS: Adds a new section to chapter 231, HRS, requiring that all laws that enact, modify, or extend the availability of a tax expenditure shall include: (1) An explanation of the intent in enacting each tax expenditure, including the expected economic and employment benefit to the State; (2) An analysis of whether the economic or employment benefit to the State provided by the tax expenditure, if any, outweighs its cost; (3) A repeal date that makes the tax expenditure available for no more than thirty-six months; (4) A static revenue estimate of the tax expenditure for each of the fiscal years in the State's financial plan; [and] (5) For tax expenditures that are modified or extended: (A) The total cost of the tax expenditure over the previous three fiscal years; (B) A static revenue estimate for each of the fiscal years in the State's financial plan if the tax expenditure were repealed; (C) An analysis describing the extent to which the tax expenditure is fulfilling its desired purpose, including whether the State has realized the anticipated economic benefit and increase in tax revenue. The analysis should also include the number of jobs created in the State and whether the cost of the tax expenditure is outweighed by its benefits.

Defines a "tax expenditure" as any credit, deduction, exclusion, exemption, or any other tax benefit that provides a preferential rate of tax or deferral of tax liability, authorized under title 14 for the purpose of incentivizing economic activity. The term "tax expenditure" does not include tax measures enacted as a result of conformity with the Internal Revenue Code, nor any modifications to tax measures required by the United States or state constitutions.

Adds another new section to chapter 231, HRS, providing that for tax expenditures that encourage certain economic activities, the claimant taxpayer's identity and the amount of tax expenditure claimed shall be subject to public disclosure under chapter 92F (the state Uniform Information Practices Act).

EFFECTIVE DATE: Upon Approval

STAFF COMMENTS: This is an Administration bill sponsored by the department of taxation and designated TAX-04 (22).

At present, the availability of estimated revenue impact information on bills wending their way through the legislature is spotty at best. Even when the Department of Taxation testifies on tax bills, some testifiers share revenue impact information with the legislature; others don't; others share information with the legislative committees and leave the public in the dark; and still others share information with the committees and the public only in response to questions asked at a hearing. Having the information would be a great step toward openness and transparency in important legislative decisions.

Is the current bill a way to make that happen? Probably not. No consequence is provided in the bill for noncompliance with its provisions, so lawmakers who really want discussion to proceed on a particular tax expenditure matter can just bulldoze ahead.

We note that the State Auditor is required to review existing income tax credits under HRS sections 23-91 to 23-96 on a five-year rolling basis, and the reports issued by the Auditor are supposed to trigger legislative review. New credits are supposed to be added to the list in those sections of chapter 23, but none of these sections were amended after 2017.

Regarding the provision of the bill requiring disclosure of tax expenditure recipients, current law, including sections 235-116 and 237-34, HRS, prohibits the disclosure of tax return information by any person or any officer or employee of the State. Violation of the law is punishable as a class C felony. If the Legislature decides, as a policy matter, that it is better to make such a public disclosure, then appropriate amendments need to be made to the tax return confidentiality statutes to allow for the disclosure contemplated.

Digested: 2/2/2022

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

LATE

HB-2178
Submitted on: 2/3/2022 1:38:41 PM
Testimony for ECD on 2/4/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Theodore Allen Peck	Individual	Oppose	No

Comments:

Aloha. My name is Ted Peck. I develop power purchase agreements for rooftop solar in Hawaii. I have been in the renewable energy industry for the better part of 2 decades in Hawaii, and served as the Hawaii Energy Administrator at the beginning of the Hawaii Clean Energy Initiative. Many projects are for condominiums and LMI residents, for Hawaii residents that are unable to finance solar themselves. We often are able to finance these projects with local investors that have the liquidity and debt capacity for these projects, thus we are using the Hawaii Renewable Energy Investment Tax Credit to bring clean energy into difficult-to-penetrate markets, per the Legislature's and State's policy intent.

Every investor that has applied for the Hawaii refundable credit which we have worked with has been audited by the Department of Taxation. This practice is a significant impediment for new and continuing investors, who do not want the delay, administrative hassle, and overall risk associated with the Hawaii REITC.

This bill further increases this impediment, and will further add to the disincentives for taxpayers to participate in fulfilling public policy. It furthers the administrative burden on the public associated with responsibilities as taxpayers, already quite significant. I oppose HB2178 as a former public servant, a renewable energy developer, and a citizen.

Ted Peck