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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 and 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: Wednesday, March 2, 2022
Time: 9:30 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 2378, Relating to the Taxation Board of Review

The Department of Taxation (Department) strongly supports S.B. 2378 and offers the following comments for the committee's consideration.

S.B. 2378 amends section chapter 232, Hawaii Revised Statutes (HRS), to make several important changes to the State Taxation Board of Review (Board). It changes the Board's composition from ten volunteer members to three compensated members with two required for quorum, streamlines administrative procedures for validating board actions, and clarifies the legal, procedural, and evidentiary frameworks that the Board must use in providing notice, adjudicating contested case hearings, and reaching its decisions. It also makes appropriations for Board member salaries and administrative support and legal staff. The measure is effective upon approval, with the switch to a three-member paid board taking effect on January 1, 2023.

Establishing a paid professional Board with robust institutional support 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 on this measure.

DAVID Y. IGE
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BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON WAYS AND MEANS AND JUDICIARY
ON
SENATE BILL NO. 2378

March 2, 2022
9:30 a.m.
Room 211 and Videoconference

RELATING TO THE TAXATION BOARD OF REVIEW

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2378 amends Section 232-6, HRS, to change the composition of the Taxation Board of Review (Board) from ten volunteer members to three full-time members; establish that the Chairperson of the Board shall be paid 85% of the salary of the Director of Taxation and the other Board members shall be paid 90% of the Chairperson's salary; decrease the quorum requirement from three members to two; and clarify the legal, procedural, and evidentiary framework that the Board must use in providing notice, adjudicating a contested case hearing, and reaching its decision. This bill also appropriates \$518,452 in general funds in FY 23 for 3.00 Board members, 2.00 administrative staff members, and other related administrative expenses.

B&F notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.

TAX FOUNDATION OF HAWAII

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SUBJECT: APPEALS, Change Taxation Board of Review to Three Paid Members

BILL NUMBER: SB 2378

INTRODUCED BY: MORIWAKI, DECOITE, MISALUCHA, Keith-Agaran, San Buenaventura

EXECUTIVE SUMMARY: Adjusts membership of the State Taxation Board of Review to three paid, full-time members, and sets a two-member quorum. Establishes compensation schedule for board members. Authorizes board members to validate board actions by a majority of the 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. It seems a bit early to be changing the system yet again, after a bill to consolidate the district boards of review into a statewide one was enacted only last year.

SYNOPSIS: Amends section 232-6, HRS, to change the Taxation Board of Review from ten volunteer members, three of which would constitute a quorum, to three full-time employees, whose salaries would be pegged to the salary of the Director of Taxation.

The Governor is to appoint all members of the board and to designate one as Chair. The chair, who needs to be an attorney, is to be paid 85% of the Director of Taxation's salary, and the other two members are paid 90% of the Chair's salary. No member, during the member's term, shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization.

Amends section 232-7, HRS, to clarify that board meetings are contested case hearings as defined in section 91-9, HRS.

Makes additional technical and conforming amendments.

EFFECTIVE DATE: Upon approval, except that the appropriation is effective on July 1, 2022, and the new structure of the Board is effective on January 1, 2023.

STAFF COMMENTS: 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 now 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 were

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. A 2013 law allowed 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. Under Act 118, SLH 2021, this was all replaced with a statewide panel of ten members, all volunteers as in previous years.

The current bill proposes to replace the volunteer board with a paid board of three people, appointed by the governor for six-year terms.

One of the problems with volunteer boards was that it was difficult to staff. Due to state ethics rules, board members, for their terms and for one year afterward, cannot practice before the Department of Taxation; however, most of the folks who are qualified to sit on the board of review are tax practitioners and rely on their practice to feed their families.

It seems a bit early to be changing the system yet again, after a bill to consolidate the district boards of review into a statewide one was enacted only last year; if the Department is convinced that the volunteer system isn't going to work, however, perhaps it is time to try the system prescribed by this bill.

Digested: 2/27/2022