

TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, TRANSIENT ACCOMMODATIONS, Requires Proof of Payment of Taxes Before Writ of Possession May Issue

BILL NUMBER: SB 2879

INTRODUCED BY: SAN BUENAVENTURA, CHANG, KIDANI, MISALUCHA, RHOADS, Fevella, Kim

EXECUTIVE SUMMARY: Requires certain landlords, lessors, or plaintiffs in a summary possession action to provide proof of payment of taxes due to the State as a condition of the issuance of a writ of possession.

SYNOPSIS: Adds a new section to chapter 666, HRS, providing that as a condition to the issuance of a writ of possession, a landlord, lessor, or plaintiff in a summary possession action shall submit to the issuing court general excise tax returns showing a declaration of rents paid, a tax clearance certificate from the department of taxation showing payment of general excise tax on rentals, or both. These records shall serve as rebuttable evidence of payment of all general excise and transient accommodation taxes due to the State, including penalties if applicable, for the entirety of the tenancy at issue. For tenancies greater than twelve months, a general excise tax return or tax clearance certificate that reflects the preceding twelve months shall be deemed to satisfy the requirements of this section.

EFFECTIVE DATE: Upon Approval

STAFF COMMENTS: Unlike section 103D-328, HRS, the section in the Procurement Code requiring tax clearances for bidding and final payment on State jobs, the proposed new section does not contain an exception for debts the validity of which is being contested in an administrative or judicial appeal, or where the taxpayer is current on a payment plan with the Department of Taxation. We suggest that these exceptions be added, as a minimum, to maintain parity and to ensure fairness.

Other exceptions may be appropriate when the writ of possession is being requested for reasons unrelated to nonpayment of rent, such as when the tenant is conducting illegal activities (chicken fights on the premises, for example) or otherwise endangering health and safety.

We believe there is an oversight in the bill as written. The bill says that evidence showing payment of general excise taxes on rentals serves as rebuttable evidence of payment of all general excise and transient accommodations taxes due to the State. The two are different tax types. Different returns are filed. The tax rate is different.

Digested: 2/14/2022

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To: 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: Thursday, February 17, 2022
Time: 9:30 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 2879, Relating to Taxation

The Department of Taxation (Department) offers the following comments on S.B. 2879 for the committee's consideration.

S.B. 2879 would require a landlord, lessor, or plaintiff in a summary possession action to submit their general excise tax (GET) returns showing a declaration of rents paid, a tax clearance certificate from the Department, or both, before obtaining a writ of possession from the applicable court. For tenancies greater than twelve months, only a general excise tax return or tax clearance certificate that reflects the preceding twelve months would be required. The measure is effective upon approval

The Department notes that a tax clearance indicates general compliance with the applicable tax laws and does not indicate the amounts paid. The Department is able to provide copies of GET returns that are filed, however, it is important to remember that tax returns will indicate the amount of income reported and the amount of tax owed, but would not indicate the specific source of income. For example, if a landlord leases 3 units at \$1,000 per month and reports \$24,000 for the year, there is an underreporting of \$12,000. From the GET return itself, we would not know specifically which income was not reported.

Thank you for the opportunity to provide comments.

February 17, 2022

The Honorable Karl Rhoads, Chair

Senate Committee on Judiciary

Via Videoconference

RE: S.B. 2879 Relating to Taxation

HEARING: Thursday, February 17, 2022, at 9:30 a.m.

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **opposes** Senate Bill 2879, which requires certain landlords, lessors, or plaintiffs in a summary possession action to provide proof of payment of taxes due to the State as a condition of the issuance of a writ of possession.

While HAR believes that everyone should pay their taxes, a tax clearance should remain separate from a summary possession hearing. There are situations where eviction is due to health and safety concerns. Tenants could be threatening the safety and health of others in a household or damaging the property. In those situations, if a housing provider would need to first get a tax clearance and work out their taxation issues before being able to evict, this could put their own health and safety at risk.

Mahalo for the opportunity to testify.