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To: The Honorable Sharon Y. Moriwaki, Chair;
The Honorable Donovan M. Dela Cruz, Vice Chair;
and Members of the Senate Committee on Government Operations

From: Isaac W. Choy, Director
Department of Taxation

Date: February 9, 2021
Time: 3:05 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 787, Relating to Taxation

The Department of Taxation (Department) offers the following comments regarding S.B. 787 for your consideration.

S.B. 787 adds a new section in Hawaii Revised Statute (HRS) to requires any revenue estimate provided by the Department to the Legislature or to any executive or administrative office of the State to be accompanied by a description of the methodology used and assumptions made in providing the estimate. S.B. 787 also requires that the revenue estimate and description be open to public disclosure notwithstanding HRS sections 235-116, 237-34, and 237D-13, or any other law restricting disclosure of tax return or tax return information. The measure is effective upon its approval.

The Department has serious concerns regarding the disclosure of confidential taxpayer information as allowed by S.B. 787. Mandating the disclosure of confidential taxpayer information would lead to distrust in the voluntary tax compliance system and the erosion of tax revenue.

The Department is able provide a description of methodology used and assumptions made in providing the revenue estimate without disclosure of any confidential taxpayer information. Therefore, the Department strongly recommends that lines 10 to 12 (“notwithstanding sections 235-116, 237-34, and 237D-13, or any other law restricting disclosure of tax return or tax return information to the contrary”) be deleted.

Thank you for the opportunity to provide comments on this measure.

THE CIVIL BEAT
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Senate Committee on Government Operations
Honorable Sharon Y. Moriwaki, Chair
Honorable Donovan M. Dela Cruz, Vice Chair

RE: Testimony Supporting S.B. 787, Relating to Taxation
Hearing: February 9, 2021 at 3:05 p.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** S.B. 787.

This bill would codify an important principle of public access. Revenue estimates often are motivating factors in significant policy decisions. The public cannot have faith in the quality of the State's decisions if it cannot evaluate the quality of the underlying assumptions that drive that decision. Requiring access to revenue estimates allows public scrutiny of the State's assumptions toward the collective goal of developing better public policy and greater public confidence in government decisions.

So that the Committee is aware, in May 2019, OIP issued Opinion 19-05. That Opinion held that DOTAX may not withhold from the public "the underlying assumptions, source data and documents, and computations it uses to create revenue estimates presented in legislative testimony."¹ In a subsequent informal decision, OIP held that DOTAX may withhold any data that reflects tax return information from a specific taxpayer or aggregated data from less than 10 taxpayers – in that specific instance, data on income of REITs. U Memo No. 20-04. DOTAX challenged Opinion 19-05 in court, but did not further appeal after the circuit court affirmed OIP's opinion. See www.civilbeatlawcenter.org/case/revenue-estimates/.

This bill would do two things that go beyond OIP's interpretation of existing law.

1. DOTAX would be required to prepare descriptions of its methodology and assumptions. The public records law only requires disclosure if those records already exist. If DOTAX did not prepare written methodologies and assumptions, then the public would not be able to force DOTAX to provide that

¹ Although that Opinion concerned revenue estimates in legislative testimony, the same rationale would seem to apply to revenue estimates for executive purposes.

information. Beyond the issue of public access, it would be common sense that revenue estimates should be accompanied by methodologies and assumptions for purposes of robust discussion. Thus, the proposed requirement in the bill is good policy.

2. DOTAX would not be permitted to withhold revenue estimate assumptions simply because it concerns a small subset of taxpayers. Some tax policy issues of significant impact for the State concern taxes for a small number of taxpayers. If DOTAX is presenting information as part of a revenue estimate to the Legislature or Executive Branch, it presumably is significant enough to have policy implications, and the public should have access to the extent that the data informs DOTAX's methodology. Thus, the limited exception to the confidentiality laws in the bill also is good policy.

Thank you again for the opportunity to testify in **support** of S.B. 787.

SB-787

Submitted on: 2/6/2021 12:39:50 PM

Testimony for GVO on 2/9/2021 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ray Kamikawa	Individual	Support	No

Comments:

Dear Chair Moriwaki, Vice Chair Dela Cruz, members of the committee:

My name is Ray Kamikawa and I support passage of this bill. The Department of Taxation changed its practice over the years from full disclosure to nondisclosure of the assumptions and methodology behind its revenue estimates. In opposing disclosure, the Department cited to a governmental privilege, which a circuit court recently rejected. There should therefore be no bar to the Department reinstating the practice of full disclosure of its methodology for revenue estimates. The Legislature depends solely on the Department for such revenue estimates and should be fully apprised of how the Department arrives at such estimates. In fact, the Department should be doing this voluntarily without need for legislation.

Thank you, Ray Kamikawa 808 528 8211