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To: The Honorable David Y. Ige, Chair  
and Members of the Senate Committee on Ways and Means

Date: Wednesday, February 26, 2014  
Time: 10:30 a.m.  
Place: Conference Room 211, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. No. 2483, Relating to Condominium Associations

The Department of Taxation (Department) provides the following comments on S.B. 2483 for the Committee's consideration.

S.B. 2483 amends section 514B-146, Hawaii Revised Statutes (HRS), by amending both subsection (a) and subsection (g). The Department's testimony only pertains to the amendment to subsection (a), which would amend the rule governing priority of liens in the event a condominium association places a lien on an owner's condominium for unpaid maintenance fees. Under current law, liens for all taxes have priority over liens for maintenance fees. This measure would amend the law to state that only liens for real property taxes have such priority.

The Department opposes this amendment to subsection (a), as all it will accomplish is to give the Internal Revenue Service priority in all collection matters of tax debts. The Department notes that there is a sister provision to section 514B-146(a), located in Chapter 514A, HRS, (which governs condominiums established before July 1, 2006 which have not opted into the new rules under Chapter 514B); the provisions are identical. The Department further notes that an examination of the different versions of S.B. 2210 (2004), which became Act 164, Session Laws of Hawaii 2004 (Condominium Property Act), show that the current statutory language is reflected in all drafts. The Department interprets this consistency throughout the various drafts to indicate that the drafters intended to prioritize all tax liens, not just real property tax liens. Since the relevant provisions in Chapter 514A and Chapter 514B are identical, the Department believes that all tax liens should continue to have statutory priority.

It should also be noted that federal tax liens will not be affected by this measure, since federal law controls federal matters, including tax liens. Under Internal Revenue Code section

6321, a very broad lien is created upon it's the filing of a notice of federal tax lien which encompasses all of the taxpayer's property or rights to property. This lien acts as security for the federal tax liability.

While State law is very significant in determining whether property and rights to property to which the federal tax lien attaches, the federal government only looks to state law to determine a taxpayer's rights in a particular piece of property. However, federal law determines whether such interests qualify as property or rights to property. "[One] look[s] to state law to determine what rights the taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state-delineated rights qualify as 'property' or 'rights to property' within the compass of federal tax lien legislation." United States v. Craft, 535 U.S. 274 (2002); Drye v. United States, 528 U.S. 49, 58 (1999).

As a matter of policy, the State and counties have a vested interest in protecting claims for amounts owed to them. Repealing lien priority for State taxes will weaken the State's ability to collect money owed, if the asset that can be collected from is a condominium subject to Chapter 514B. The Department prefers subsection (a) remain unamended and that all tax liens continue receiving statutory priority.

It has also been brought to the Department's attention that the reason this amendment has been included is due to a belief that, as a matter of practice, only real property tax liens would ever attach to condominium units. However, this is not the case. The Department may seek to attach a lien to a condominium or any other real property interests in an effort to collect on any unpaid tax, including income tax, general excise tax, or any other kind of tax. Without the super-priority of liens established under this section, the Department's liens will be less effective and will negatively impact the Department's ability to collect amounts owed to the State.

Thank you for the opportunity to provide comments.