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STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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DAMIEN A. ELEFANTE  
DEPUTY DIRECTOR

To: The Honorable Jill N. Tokuda, Chair  
and Members of the Senate Committee on Ways and Means

Date: Thursday, February 23, 2017

Time: 1:30 P.M.

Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: S.B. 100, S.D. 1, Relating to Taxation

The Department of Taxation (Department) has serious concerns regarding Section 2 of S.B. 100, S.D. 1, and provides the following comments for your consideration.

Section 2 of this measure requires the Department to release confidential tax information upon request by the State Auditor. This bill also authorizes the State Auditor to release to the Legislature tax information in aggregated form that does not explicitly identify any specific taxpayer. S.B. 100, S.D.1 is effective upon approval.

While the Department appreciates the restriction on the Auditor's ability to report confidential tax information contained in Section 2 of the bill's paragraph 231-\_\_ (b)(2), and further appreciates the requirement that the Legislature keep such information confidential, the Department has the following concerns regarding access to confidential tax information.

First, the Department is seriously concerned about the erosion of taxpayer confidentiality this bill represents. It is important to remember that our State's tax system is based on voluntary compliance with the tax laws. A system based on voluntary compliance requires taxpayers to candidly report their income and to proactively pay the tax they owe. The primary incentive to encourage taxpayers to candidly report tax information is the guarantee of confidentiality of the information they report.

The Department is concerned such an erosion of taxpayer confidentiality could negatively impact the public's confidence in the confidentiality of its tax information, thereby reducing voluntary compliance and impeding the Department's ability to effectively enforce and collect the State's taxes.

Second, confidential tax information should only be disclosed on a need-to-know basis. State laws in this area are very strict and the Department takes confidentiality of tax information

very seriously. Department personnel and other state personnel authorized to receive confidential tax information are subject to strict criminal penalties for unauthorized disclosure, including the possibility of felony conviction and imprisonment.

Moreover, the Department does not believe that access to confidential tax information, as this measure seems to contemplate, is necessary to produce the reports required under sections 23-71 to 23-81 and sections 23-91 to 23-96, Hawaii Revised Statutes. In general, these reports focus on the cost of a tax expenditure, forecasting future costs of the expenditure, legislative intent or goals of such expenditure, whether the intent or goals of the expenditure were met, and whether the costs of such expenditure were born by low income individuals. Answers to these issues cannot be found by browsing through individual tax records.

Finally, the Department, upon request by the Auditor, is able and willing to provide relevant data in aggregated form for use in producing these reports. Data in this form may be republished by the Auditor without breaching confidentiality laws. For these reasons, the Department does not believe that Section 2 of S.B. 100, S.D. 1, is appropriate or necessary.

Thank you for the opportunity to provide comments.



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SENATE COMMITTEE ON WAYS AND MEANS  
The Honorable Senator Jill N. Tokuda, Chair  
The Honorable Senator Donovan M. Dela Cruz, Vice Chair

**S.B. No. 100, S.D. 1, Relating to Taxation**

Hearing: Thursday, February 23, 2017, 1:30 p.m.

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The Office of the Auditor **strongly supports** S.B. No. 100, S.D. 1, Relating to Taxation. The purpose of the measure is to amend provisions requiring the auditor to review certain tax exemptions, exclusions, credits, and deductions established under Acts 245 and 261, Session Laws of Hawai'i 2016 (codified as sections 23-71 through 23-81 and 23-91 through 23-96, Hawai'i Revised Statutes).

Specifically, Acts 245 and 261 require the auditor to determine the amount of tax expenditures for the previous three fiscal years, estimate the amount of expenditures for the current and next two fiscal years, determine whether the incentive is necessary to promote or preserve tax equity or efficiency, and recommend whether the incentive should be retained, amended, or repealed. Acts 245 and 261 also require the auditor to determine whether the incentive has achieved or continues to achieve the purpose for which it was enacted by the legislature.

S.B. No. 100, S.D. 1, amends sections 23-71 through 23-81, HRS, and sections 23-91 through 23-96, HRS, by, among other things: (1) delaying the auditor's review of the tax incentives; (2) providing the auditor with access to department of taxation records that are necessary to conduct the reviews; and (3) clarifying the criterion that the auditor is to apply to assess whether the tax incentive has achieved its legislative purpose.

We strongly support these provisions of the bill. As Section 1 of the bill notes, delaying the review is necessary because certain tax incentive data currently is not readily available. Without information from the department of taxation about the amounts of certain tax incentives, we are unable to provide a meaningful review of those incentives. The bill reflects that the department of taxation is undertaking a tax system modernization project that likely will make data relating to the incentives more readily available. While we agree it is prudent to delay the review until after the tax system modernization project has developed more fully, we note that, until the department of taxation collects at least three years of tax incentive-related data, we likely will be unable to provide much of the requested review, including assessing whether the incentive should be retained, amended, or repealed.

In addition, to perform the required review of the tax incentives, we must have access to tax records and other information necessary to perform the reviews. The department of taxation has advised us that certain tax incentive-related information likely necessary for our review is confidential, and therefore, we may not be provided access to that information for our review of those incentives. Section 2 of the bill creates a new section in chapter 231 that provides us access to the department of taxation's confidential records necessary to perform our review and assessment of the tax incentives. **We strongly support that provision.** Without such access to the department's records that we deem necessary and relevant for our review, our reports likely will be of little value to the legislature.

We, however, note that the bill also states, "any information marked confidential by the department shall be kept confidential by the legislature." S.B. No. 100, S.D. 1, at page 5, lines 4-5. Our reports are addressed to and primarily intended for the legislature; however, the reports are public records, accessible through our website or upon request. **If the intent is for the legislature to protect the tax information that the department deems confidential, we suggest that the legislature clarify whether it intends our reports on the tax incentives to be confidential reports to the legislature.**

As the bill notes, we have found that the legislative history for some incentives is not helpful in identifying the legislature's purpose for the incentive. Amendments noted in Section 3 (page 4, lines 9-13) allow us reasonable discretion to identify the purpose of the tax incentive in order to determine whether the incentive is meeting its purpose. We strongly support this amendment to ensure we can conduct the reviews required by Acts 245 and 261.

**We also strongly support Section 20 of the bill,** which appropriates an undetermined amount of funds for our review of the tax incentives. We note that the Joint Legislative Audit and Review Committee (JLARC), which is the State of Washington's functional equivalent of our office, has been conducting a similar review of Washington State's tax incentives. That office has four full-time analysts dedicated to tax incentive reviews as well as one-half of both the director and deputy director's time. We currently have 2 senior analysts and 11 analysts, all of whom are assigned to audit projects. Given the number of audits and the additional audits, reports, and studies that the legislature likely will request us to perform, we have concerns about our ability to commit sufficient resources to perform the review of the tax incentives. We request that \$300,000 in additional appropriation to allow us to hire a senior analyst and two analysts to work on the tax incentives as well as to retain an economist or other consultant to, for example, assess the economic impact of the incentive to the state.

Lastly, we note what appears to be a typographical error in Section 1, page 3, lines 3-5. The bill states that its purpose is to require "**the auditor** to provide access to department of taxation records that are necessary to conduct its review." (Emphasis added.) We suggest that the bill's purpose is to require "**the department of taxation** to provide access to the auditor records that are necessary to conduct its review."

Thank you for considering our testimony related to S.B. No. 100, S.D. 1.

# TAX FOUNDATION OF HAWAII

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126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

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**SUBJECT:** ADMINISTRATION, Review of Tax Credits and Deductions

**BILL NUMBER:** SB 100, SD-1

**INTRODUCED BY:** Senate Committee on Government Operations

**SYNOPSIS:** Delays the reviews by the Auditor of tax exemptions, exclusions, credits, and deductions. Provides the Auditor with access to DOTAX records for the reviews and authorizes the Auditor to include data from the records in its reports to the legislature that do not explicitly identify any specific taxpayer. Adds the organic foods production income tax credit to the schedule of review. Amends the review criterion regarding the legislative purpose of an exemption, exclusion, credit, or deduction to provide more discretion to the Auditor.

**EFFECTIVE DATE:** Upon approval, provided the appropriation shall take effect on July 1, 2018.

**STAFF COMMENTS:** Act 261, SLH 2016, requires the State Auditor to periodically review the myriad exemptions, deductions, and other tax benefits now provided under the excise tax chapters, HRS chapters 237, 238, and 239, as well as some miscellaneous provisions.

Act 245, SLH 2016, requires the State Auditor to periodically review the myriad exemptions, deductions, and other tax benefits now provided under the income and franchise tax chapters, HRS chapters 235 and 241, as well as some miscellaneous provisions.

This bill facilitates the processes required by the above Acts and includes within the review schedule the organic foods production income tax credit that was enacted as Act 258, SLH 2016.

Digested 2/21/2017



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Headquarters  
and Refining

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91-480 Malakole St.  
Kapolei, HI 96707

DATE: Thursday, February 23, 2017  
TIME: 1:30pm  
PLACE: Conference Room 211  
State Capitol  
415 South Beretania Street

Senate Bill 100, SD 1, Relating to Taxation

Good afternoon Chair Tokuda, Vice-Chair Dela Cruz and Members of the Senate Ways & Means committee,

Island Energy Services, LLC (IES) purchased the assets of the formerly owned and operated Chevron on November 1, 2016, and continues to operate as a key supplier of petroleum products to the Hawaii market and economy. As a refiner and key supplier, IES would like to comment on SB 100, SD 1 and raise a concern for clarification.

In Section 2, subpart (b) of SB 100, SD 1, the bill states:

(b) Notwithstanding any other law to the contrary, the auditor may include in a report of a review that is submitted to the legislature data that:

(1) The auditor deems necessary and relevant for the purpose of legislative review, including information received from the department of taxation pursuant to subsection (a); and

(2) Does not explicitly identify any specific taxpayer or beneficiary of a tax exemption, exclusion, credit, or deduction;

provided that any information marked confidential by the department shall be kept confidential by the legislature."



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IES's concern is pertaining to the phrase in paragraph (2)... "Does not explicitly identify any specific taxpayer...". It would be IES's contention that any use of aggregated numbers by the State Auditor WOULD explicitly identify a specific taxpayer. IES is one of two refineries in Hawaii. The Department of Taxation (DoTax) and Department of Business, Economic Development & Tourism (DBEDT) both use the policy and principle that aggregated information will not be disclosed if it would identify the taxpayer or its confidential financial information, and have not reported aggregated information concerning the petroleum refineries as it is illogical to aggregate two taxpayers. IES requests that any aggregated information as it relates to a taxpayer that DoTax considers as confidential in its mode of business operation, also be considered confidential by the State Auditor in carrying out of its functions under SB 100, SD 1.

Mahalo for the opportunity to offer our comments on this matter.

Mahalo,

Al Chee  
Vice President  
Island Energy  
Retail Marketing & Community Relations