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To: The Honorable Aaron Ling Johanson, Chair;
The Honorable Lisa Kitagawa, Vice Chair;
and Members of the House Committee on Consumer Protection & Commerce

From: Isaac W. Choy, Director
Department of Taxation

Date: February 4, 2021
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

Re: H.B. 65, Relating to Taxation

The Department of Taxation (Department) supports H.B. 65 and offers the following analysis, for your consideration.

H.B. 65 adds a new requirement for all applicants of new or renewed professional or vocational license issued by the Department of Commerce and Consumer Affairs (DCCA) to present a tax clearance from the Department. The measure is effective upon approval and applies to taxable year beginning after December 31, 2022.

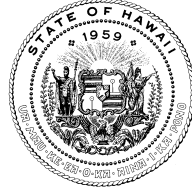
First, the Department notes that it does not provide a wet signature on the certificate of tax clearance. Therefore, the Department suggests replacing the word, "signed," on page 2, line 14, and page 3, line 8, with "authenticated".

Second, the Department notes that subsection (3) of Sections 2 and 3 of the bill allows the Department to issue a tax clearance certificate if an applicant of a professional or vocational license issued by DCCA is not subject to income tax in Hawaii. Generally, income earned from business activities in Hawaii are subject to Hawaii income tax. Thus, the Department suggests deleting this provisions and replacing it with:

"Is in compliance with all applicable tax laws contained in title 14."

Finally, the Department respectfully requests that a provision be inserted that allows the Department to enter into an agreement with DCCA so that the clearance requests and responses can be performed electronically and in bulk.

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



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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection & Commerce
Thursday, February 4, 2021
2:00 p.m.
Via Videoconference**

**On the following measure:
H.B. 65, RELATING TO TAXATION**

Chair Johanson and Members of the Committee:

My name is Ahlani Quiogue, and I am the Licensing Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional and Vocational Licensing Division (PVL). The Department offers comments on this bill.

The purpose of this bill is to require a tax clearance before a professional or vocational license may be issued or renewed. This requirement would apply to taxable years after December 31, 2022.

Currently, tax clearances are required for four professional and vocational business entities: cemeteries; pre-need funeral authorities; contractors; and pest control operators. The statutory and rule requirements of these entities require that they maintain financial integrity. A tax clearance is not required for the 124 remaining license types the PVL regulates. The merits of imposing this requirement on all PVL applicants and licensees should be thoroughly discussed with affected licensing boards, licensing programs, and other stakeholders to address the possible impacts and unintended consequences this requirement will pose on the respective professions.

In addition, the Department has concerns about the following issues:

- The majority of PVL licensees are individuals who are licensed based on their competency to practice. Competency is demonstrated through satisfying such requirements as education, experience, and passing a licensing exam. No nexus appears to exist between a tax clearance for these individuals and their competency to practice; therefore, it would be inappropriate to impose this requirement for licensing purposes.
- Of the 124 license types that would be subject to the new tax clearance requirement, shortages already exist in many of these areas. Adding this additional requirement could disincentivize an individual from becoming licensed and practicing in Hawaii. Should the Committee pass this bill, many professionals may see this requirement as a deterrent to licensure.
- Both PVL applicants for licensure and current licensees include practitioners who reside out-of-state and who may or may not actually work in Hawaii. The ability for these applicants and licensees to obtain a tax clearance, or to minimally obtain a meaningful tax clearance, is questionable.

Thank you for the opportunity to testify on this bill.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Tax Clearance to Obtain/Renew Professional License

BILL NUMBER: HB 65

INTRODUCED BY: LUKE

EXECUTIVE SUMMARY: Requires a tax clearance before a professional or vocational license may be issued or renewed. Applies to taxable years after 12/31/2022.

SYNOPSIS: Adds new sections to chapters 231 and 436B, HRS, to the effect that no professional or vocational license issued by DCCA may be issued or renewed without a tax clearance.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: The number of current licenses as of November 20, 2020, according to a report by DCCA (https://cca.hawaii.gov/pvl/files/2020/11/WebGeo_112020.pdf), exceeds 163,000. If each of these licenses need to be renewed every year, the Department of Taxation will need to issue many times more tax clearances than are done now. For comparison, the Department of Taxation's most recent Annual Report (<http://files.hawaii.gov/tax/stats/stats/annual/20annrpt.pdf>) states that all of the Neighbor Island offices collectively processed 2,673 clearances in FY 2020 and 4,545 clearances in FY 2019.

We question whether the benefit is worth the burden on the departments and on the public.

As a technical matter, paragraph (3) of both proposed new sections states that a tax clearance can be issued if the applicant is "not subject to income tax in Hawaii." Because we have several different taxes here, we suggest that the word "income" be removed.

Furthermore, 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 sections do not contain an exception for debts the validity of which is being contested in an administrative or judicial appeal. We suggest that this exception be added to maintain parity and to ensure fairness.

Digested 2/2/2021

PETER L. FRITZ

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HOUSE OF REPRESENTATIVES THE THIRTY-FIRST LEGISLATURE REGULAR SESSION OF 2021

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Testimony on H.B. 65
Hearing: February 4, 2021

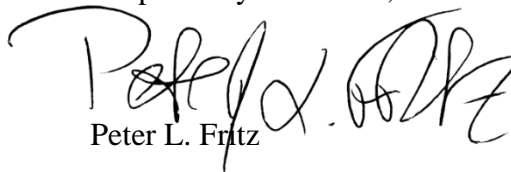
(RELATING TO TAXATION)

Chair Johanson, Vice Chair Kitagawa, and members of the Committee. My name is Peter Fritz. I am an attorney and a former rules specialist with the Department of Taxation. I am testifying **in support**.

This bill creates a requirement to submit a tax clearance to renew a professional or vocational license. A professional or vocational license (“PVL”) authorizes someone to engage in a particular profession. An individual that does not hold a license can be prosecuted. Why should a holder of a PVL enjoy the protection of a license while flaunting state tax laws? It’s a fairness issue; people who circumvent their tax responsibilities make everyone else pay more. Isaac W. Choy, the Director of Taxation, stated that the “tax department has a responsibility to protect the revenues of the state, for the sake of all of the people of Hawaii.” This bill will help the Department of Taxation protect the revenues of the state. I offer the following in support of this bill:

- This bill is similar to a bill submitted by Director Choy when he was a representative.
- Director Choy and I have spoken and he told me that the new TSM is able to handle the requests for tax clearances.
- DCCA license renewals are primarily online. Licenses are renewed at different times of the year. All licenses are not due on the same date and are often renewed for more than one year. Requiring a tax clearance is no different than requiring payment of fees for a license. It is just another document required for license renewal.
- The requirement to get a tax clearance is not new. Contractors are currently required to submit tax clearances when bidding on state contracts. The Hawaii legislature recognized that individuals and businesses should not receive benefits from the State if they are not complying with state tax laws when it amended 103D-310 in 2004.

Respectfully submitted,



Peter L. Fritz