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To: The Honorable Donovan M. Dela Cruz, Chair;  
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;  
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director  
Department of Taxation

Date: March 2, 2021  
Time: 9:30 A.M.  
Place: Via Video Conference, State Capitol

**Re: S.B. 1196, S.D. 1, Relating to Withholding Tax**

The Department of Taxation (Department) strongly supports S.B. 1196, S.D. 1, an Administration measure.

S.B. 1196, S.D. 1, amends the due date for employers to furnish a wage and tax statement (Form W-2) to their employees and with the Department from the last day of February to January 31 following the close of the calendar year. This amendment will align the State's filing deadlines with the Internal Revenue Service (IRS). Employers will benefit from having a single deadline for filing.

S.B. 1196, S.D.1, also imposes a penalty on an employer who fails to furnish a Form W-2 to an employee by the prescribed due date, fails to file a copy of the Form W-2 with the Department by the prescribed due date, or fails to electronically file a copy of the Form W-2 if required to file electronically. The proposed penalty is \$25 per violation, and limited to \$50 per employee.

Under current law, there is currently no State penalty if an employer fails to furnish an employee with their Form W-2 or fails to file a copy with the Department. The IRS imposes a similar penalty at a rate of \$50 per violation. The Department believes that a flat fee penalty is appropriate and necessary as there is no tax that is owed based on Form W-2 itself that would allow for an accurate method of calculating a percentage-based penalty. In regards to tax administration, penalties are established to encourage voluntary compliance.

Thank you for the opportunity to testify in support of this measure.

# TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, Due Date for Withholding Statements

BILL NUMBER: SB 1196, SD1

INTRODUCED BY: Senate Committee on Judiciary

EXECUTIVE SUMMARY: Amends the due date for employers to file the wage and tax statement from the last day of February to January 31 following the close of the calendar year. Imposes a penalty on employers that fail to timely furnish and file the wage and tax statement..

SYNOPSIS: Amends section 235-63, HRS, to change the deadline for an employer's annual wage and tax statement (Form HW-2) from the end of February to January 31. Imposes penalties for failure to: (1) furnish the statement to the employee by the prescribed due date; (2) file the statement with the department by the prescribed due date; or (3) electronically file the statement with the department if the employer is required to file electronically under section 231-8.5. The penalty amount is \$25 per failure, up to \$50 per employee.

EFFECTIVE DATE: The income tax provisions are effective to taxable years beginning after December 31, 2020; the estate and generation-skipping tax provisions apply to decedents dying or taxable transfers occurring after December 31, 2020.

STAFF COMMENTS: This is an Administration measure submitted by the department of taxation and identified as TAX-02 (21).

Currently, employers are required to file federal Forms W-2 by January 31 under IRC section 6051. An employee terminated before the close of the calendar year is entitled to request a W-2 within 30 days upon written request (if the 30-day period ends before January 31).

If an employer fails to file the information return with IRS on or before the required filing date, or fails to include all of the information (or includes incorrect information) required to be shown on the return, a penalty of \$250 may be assessed for each failure, but the penalty is reduced to \$50 if the failure is corrected within 30 days and may be further reduced if the information omitted is de minimis, under IRC section 6721.

If an employer willfully furnishes a false or fraudulent statement, or willfully fails to furnish a statement timely and showing the information required, IRS may assess a penalty of \$50 under IRC section 6674.

One premise behind this bill is that the state deadline sought aligns with the federal one. That statement is correct in most circumstances.

The penalty provisions sought are also asserted to align with the federal penalties. That statement is true in a general sense. Specifically, with regard to furnishing the statement to employees, federal law requires an element of willfulness before the penalty is imposed. The

proposed State penalty does not. A willfulness element is desirable so that the employer has a defense if the employer is not at fault. Suppose an employer who mails the statement to an employee's old address because the employee neglected to inform the employer of the new address. Should the employer be penalized in that case?

Thus, the Committee may wish to consider making the following change to have better alignment with federal law:

(b) In regard to the statement required under subsection (a), an employer that:

- (1) Willfully fails to furnish the statement to the employee by the prescribed due date;
- (2) Fails to file the statement with the department by the prescribed due date; or
- (3) Fails to electronically file the statement with the department if the employer is required to file electronically under section 231-8.5;

shall be subject to a penalty of \$25 dollars per failure; provided that the penalty imposed under this section shall not exceed \$50 per employee.

Digested 2/25/2021