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To: The Honorable Sean Quinlan, Chair;
The Honorable Daniel Holt, Vice Chair;
and Members of the House Committee on Economic Development

From: Isaac W. Choy, Director
Department of Taxation

Date: March 17, 2021
Time: 10:30 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 1196, S.D. 2, Relating to Withholding Tax

The Department of Taxation (Department) strongly supports S.B. 1196, S.D. 2, an Administration measure. This measure has a defective effective date of July 1, 2050.

S.B. 1196, S.D. 2, 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.2, also imposes a penalty on an employer who willfully 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.

The Department respectfully requests that this measure be amended to be effective upon its approval. Thank you for the opportunity to testify in support of this measure.

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SUBJECT: INCOME, Due Date for Withholding Statements

BILL NUMBER: SB 1196, SD2

INTRODUCED BY: Senate Committee on Ways and Means

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: 7/1/2050.

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 also appear to align with the federal penalties.

Digested 3/15/2021