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LATE TESTIMONY

HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 1159 RELATING TO TAXATION

TESTIFIER: FREDERICK D. PABLO, INTERIM DIRECTOR OF TAXATION (OR DESIGNEE)

COMMITTEE: ERB

DATE: FEBRUARY 8, 2011

TIME: 8AM

POSITION: OPPOSED; CONCERNED WITH CONSTITUTIONALITY

This measure would require that a taxpayer who is owed a refund because of a refundable tax credit be paid in the form of a debit card valid only for purchases from a person licensed under chapter 237, Hawaii Revised Statutes (HRS).

The Department of Taxation (Department) **opposes** this measure because of the **burdens placed upon the Department and the anticipated costs with implementation of the program, and the possible unconstitutionality of restricting use of the card only in Hawaii.**

THE DEPARTMENT WILL NEED TO DIVERT RESOURCES IN ORDER TO IMPLEMENT THIS MEASURE—Only refunds that are a result of a refundable tax credit are to be paid with a debit card. In order to determine whether a refund is a result of a refundable tax credit, the Department will have to expend considerable resources to reprogram its computers to identify these refunds. This will divert the already strained resources of the Department away from its core mission of collecting taxes and insuring compliance with the tax law. It is doubtful that any substantial benefit will accrue to the state as a result of this measure. Given that this measure

applies only to the 2011 and 2012 tax years, the Department will have to expend additional resources in 2013 to bring the system back to its original configuration.

DEBIT CARDS ARE PREMATURE AT THIS TIME—While the Department of the Treasury has recently announced a pilot program which will provide federal tax refunds on a prepaid debit card for select taxpayers, the Treasury program is actually randomly sending out four different types of cards:

1. Card with no monthly fee and no linked savings account;
2. Card with no monthly fee and a linked savings account;
3. Card with a \$4.95 monthly fee and no linked savings account; and
4. Card with a \$4.95 monthly fee and a linked savings account.

The Treasury will evaluate "which product features, fee structures and marketing messages generate the greatest positive response from taxpayers." These results will assist the Treasury in determining whether a debit card account should be "an integrated part of the tax filing and refund process" for all taxpayers. Until a determination is made in favor of continuing debit cards for tax refunds, the State should refrain from committing to its use as a tax refund vehicle.

UNWORKABLE FOR REFUNDABLE BUSINESS CREDITS—As currently drafted, this bill would apply to the film credit and renewable energy credit. For example, the film credit has a limit of \$8 million. The credit is to reimburse the company for prior incurred costs that may have been paid with debt financing. A debit card could not be used to pay this debt. The same analysis would apply to the renewable energy credit. A debit card refund would inhibit the usefulness of these tax incentive programs.

CONCERN RELATING TO POSSIBLE UNCONSTITUTIONALITY—This measure provides that the debit card is valid only for the purchase of goods and services from a person licensed under Chapter 237, HRS. The Department would first note that it would be difficult, if not impossible, for the transaction processor to determine if the seller is a licensed person and still timely approve or disapprove the transaction. A question also arises as to who bears responsibility if a transaction occurs in which the seller is not licensed. The Department is also concerned that the requirement of use only in Hawaii is a violation of the US Constitution's right to travel. The Department

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defers to the Department of the Attorney General for a determination on this matter.