

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Sylvia Luke, Chair;
The Honorable Kyle T. Yamashita, Vice Chair;
and Members of the House Committee on Finance

From: Isaac W. Choy, Director
Department of Taxation

Date: Monday, February 28, 2022
Time: 11:00 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 2177, H.D. 2, Relating to State Tax Administration

The Department of Taxation (Department) strongly supports H.B. 2177, H.D. 2, an Administration measure, and offers the following comments for the Committee's consideration.

H.B. 2177, H.D. 2, makes the following important changes to Hawaii tax law in Chapters 231, 232, and 235, Hawaii Revised Statutes (HRS):

- Improves the Department's flexibility in requiring certain taxpayers to file electronically;
- Enhances accountability for paid tax return preparers;
- Modernizes the out-of-date rules and penalties for electronic funds transfer;
- Updates state law to eliminate redundancies and reflect current administrative processes;
- Clarifies the penalty provisions for failure to file informational returns;
- Adds necessary administrative provision to the withholding liability of certain entities for nonresident taxpayers' distributive share of income; and
- Clarifies the interest rate that the State must pay to taxpayers who have paid into the litigated claims fund and are due a refund.

H.B. 2177, H.D.2, has a defective effective date of January 1, 2050, with changes to electronic filing effective July 1, 2022.

These tax law changes will be a tremendous benefit to the State, both in increasing tax compliance and in streamlining administrative processes, and will also help provide taxpayers more clarity while minimizing their exposure to unexpected penalties. As such, the Department respectfully requests that the effective date in Section 10 be restored to read:

Section 10. This Act, upon its approval, shall take effect on January 1, 2023; provided that Section 1 shall take effect on July 1, 2022.

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

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, INCOME, Mandatory E-Filing and E-Payment; Penalty Enhancement; Nonresident Quarterly Withholding

BILL NUMBER: HB 2177 HD 2

INTRODUCED BY: House Committee on Consumer Protection & Commerce

EXECUTIVE SUMMARY: Expands the department of taxation's authority to require electronic filings. Requires certain tax return preparers to file returns electronically. Repeals the authorization to require electronic funds transfer or electronic filing if the federal government required that person to file or pay electronically. Removes the timeliness requirement from the electronic funds transfer penalty. Removes the authority of the department of taxation to charge for certified copies of tax clearances. Clarifies tax clearances for liquor license holders. Increases the aggregate cap on late filing penalties. Adds an additional penalty category for late filing of certain informational returns where no tax is due. Clarifies the interest calculations for taxes paid pending appeal. Provides that a partnership, estate, or trust is liable for the required withholding from a nonresident taxpayer's distributive share of income. Effective 1/1/2050.

SYNOPSIS: Amends section 231-8.5, HRS, to allow the department to require more classes of taxpayers to file electronically, including GE and TA filers with more than \$2,000 in annual liability (threshold under existing law is \$4,000). Allows the department to determine a penalty by administrative rule for returns where no tax is required to be shown on the return.

Requires tax preparers expecting to prepare more than 10 returns in a calendar year to file all tax returns electronically if an electronic filing option is available, and imposes a \$50 penalty on both the preparer and the taxpayer for failure to file electronically.

Amends section 231-9.9, HRS, to require tax return preparers expecting to prepare more than 10 returns in a calendar year to remit the payment of taxes by electronic funds transfer. Deletes language that now allows the director to grant an exemption to electronic filing and payment requirements for good cause.

Amends section 231-10.8, HRS, to delete the department's authority to charge \$5 for each certified copy of a tax clearance.

Amends section 231-28, HRS, to allow the department to disclose tax information relevant to a prospective liquor licensee's tax compliance to the licensing agency.

Amends section 231-39(b)(1), HRS, to allow the penalty for filing a tax return late, which now is capped at 25% of the tax deficiency, to swell to 75% of the tax deficiency.

Amends section 231-39, HRS, to add a new paragraph imposing a penalty of \$200 per partner, shareholder, or beneficiary for each month that an informational return (such as a partnership return or S corporation return) is not filed on time, up to a maximum of twelve months.

Amends section 232-24, HRS, to provide that where disputed taxes are paid pending appeal in the litigated claims fund and the taxpayer wins at least part of the dispute, the interest rate in IRC section 6621(a) will no longer be used. Instead, the following rates apply: (1) For corporations whose overpayments are \$10,000 or less, 3%; (2) For corporations whose overpayments exceed \$10,000, 1.5%; and (3) For all other taxpayers, 4%.

Amends section 235-64.2, HRS, to require partnerships, estates, and trusts that are withholding tax on behalf of their nonresident owners or beneficiaries to remit tax payments quarterly.

Makes other technical and conforming changes.

EFFECTIVE DATE: January 1, 2050; changes to E-filing effective on July 1, 2022.

STAFF COMMENTS: This is an omnibus Administration bill sponsored by the department of taxation and designated TAX-03 (22). It may look like a purely technical bill to tweak the niceties of tax administration, but there are some blockbusters buried inside.

Tripled Penalty for Filing a Late Return. The ceiling on this penalty gets jacked up to 75%, and that is before other penalties are applied. Unlike the comparable federal penalties, Hawaii penalties stack. Under present law, a non-filer can and does get written up for 70% in penalties (25% for late filing, 25% for negligence, 20% for substantial underpayment of tax). This will go up to **120%** (75% for late filing, 25% for negligence, 20% for substantial underpayment of tax).

Penalty for Failure to File Partnership, S Corporation, or Trust Returns. This type of penalty can add up very quickly. A partnership with 100 partners, for example, that files a year late could face a bill of 100 partners x 12 months x \$200 = \$240,000. This penalty is like that provided in section 6698 and 6699 of the Internal Revenue Code. The amount is also similar. The current federal penalty is \$210 per recipient per month and is indexed for inflation.

Interest on Tax Paid Pending Appeal: We need to remember that this interest is only paid on money that is adjudged to be overpaid. We are concerned that keeping this rate artificially low does not fairly compensate the taxpayer for the loss of its money during the years an appeal is pending and could incentivize the department to take outlandish or unjustifiable positions on appeal. A fairer method would be to pay the taxpayer the actual earnings of the litigated claims fund on the money that is determined to belong to the taxpayer. This was the approach for several years under *Hawaiian Land Co. v. Kamaka*, 56 Haw. 655, 661-62, 547 P.2d 581, 585 (1976).

Digested: 2/26/2022

HB-2177-HD-2

Submitted on: 2/27/2022 10:26:27 PM

Testimony for FIN on 2/28/2022 11:00:00 AM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Scott Smart | Individual | Oppose | No |

Comments:

I OPPOSE HB2177 with respect to requiring electronic filing of returns and payments. While I understand such a requirement might be beneficial to HI DoTax, it is not any benefit to the TAXPAYERS of this state.