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LIEUTENANT GOVERNOR



LAWRENCE M. REIFURTH
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CELIA C. SUZUKI
ACTING LICENSING ADMINISTRATOR

STATE OF HAWAII
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. BOX 3469
HONOLULU, HAWAII 96801
www.hawaii.gov/dcca/pvl

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Monday, January 25, 2010
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1906, RELATING TO TAXATION.

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Celia Suzuki, Acting Licensing Administrator of the Professional and Vocational Licensing Division of the Department of Commerce and Consumers Affairs ("PVLD/DCCA"). I appreciate the opportunity to present testimony on H.B. 1906, Relating to Taxation, to ensure that the Committee is made aware of the impacts of this bill on applicants for licensure, licensees, and PVLD/DCCA.

As the bill sets forth, in order for a person or entity to obtain a professional or vocational license or to renew such license, a tax clearance will be required. Currently, other than for Cemetery and Pre-Need Funeral Authorities, Contractors, and Pest Control Operators, a tax clearance is not required of the 118 remaining license types regulated under PVLD/DCCA (see the Table starting on page 4 of this testimony for the exact listing of these license types). Based on FY 09 data and if such statistics remain

steady going forward, this new requirement would affect, on an annual basis, a total of 11,445 applicants seeking licensure and approximately 60,000 licensees renewing their license. Thus, a significant population is affected by this bill.

The merits of imposing this requirement on all PVLD/DCCA applicants and licensees should be thoroughly discussed with affected licensing boards and other affected stakeholders and all negative impacts addressed. Other policy issues to be resolved are:

- Tax clearances, as currently used for licensing purposes by PVLD/DCCA licensing authorities, are required to license a business where financial integrity is among the (statutory) qualifications to be licensed (as in the case of Cemetery and Pre-Need Funeral Authorities, Contractors, and Pest Control Operators). The other business license types that are regulated by PVLD/DCCA do not have a financial integrity component and thus requiring a tax clearance would appear to have no nexus to the basis for licensure;
- The majority of licensees of PVLD/DCCA 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. A tax clearance for such individuals would not appear to have a nexus to their competency to practice and if there is no nexus to competency, it would appear inappropriate to impose this requirement for licensing purposes;

- Of the 118 license types to be subjected to the new tax clearance requirement, shortages exist in many of these areas and adding a requirement for a tax clearance could disincentivize licensing and practicing in Hawaii. In addition, if there is no nexus to or reason they need to obtain a tax clearance to demonstrate their competency to practice, this could be regarded as a deterrent to licensing which would be contrary to all efforts by the PVLD/DCCA licensing authorities to make the licensing process free of restrictive requirements;
- PVLD/DCCA applicants for licensure and current licensees include practitioners who reside out-of-state, who may or may not actually work in Hawaii. The ability for such out-of-state applicants and licensees to obtain a tax clearance, or minimally obtain a meaningful tax clearance, is questionable;
- PVLD/DCCA expects that with imposition of a tax clearance, processing of applications and renewals may be delayed. With current resources and the fact that checking for compliance with the tax clearance requirement may extend our review and processing time, delays may be expected with approving new licenses and renewing licenses. Whereas we strive to be timely to enable the newly licensed and renewed individual and business to practice in Hawaii – and thus make a living, this bill may work against that goal; and

- Our online renewal system is a user friendly tool for licensees to renew online and our overall user rate is 73.42%. As a tax clearance would be part of the renewal process, DoTax's ability to confirm tax clearances through PVLD/DCCA online renewal system is critical. If they are unable to, PVLD/DCCA would have to reconsider whether online renewal is a workable option for these professionals.

Thank you for allowing us to provide our perspective on this bill.

TABLE

**PROFESSIONAL AND VOCATIONAL LICENSING DIVISION
LICENSE TYPES**

ACU	ACUPUNCTURIST
AD	ACTIVITY DESKS
ADB	ACTIVITY DESK BRANCH
AMD	CERTIFIED PHYSICIAN ASSISTANT
APRN	ADVANCED PRACTICE REGISTERED NURSE RECOGNITION
AR	ARCHITECT
AUC	AUCTION
AUD	AUDIOLOGIST
BAR	BARBER
BAS	BARBER SHOP
BEO	BEAUTY OPERATOR
BSC	BEAUTY SCHOOL
BSH	BEAUTY SHOP
CB	MOTOR VEHICLE BROKER
CCV	CONSUMER CONSULTANT VEHICLE
CGA	CERTIFIED GENERAL APPRAISER
CHO	CONDOMINIUM HOTEL OPERATOR
COLA	COLLECTION AGENCY
COLAX	EXEMPT OUT-OF-STATE COLLECTION AGENCY
COLB	COLLECTION AGENCY BRANCH LOCATION
CPA	CERTIFIED PUBLIC ACCOUNTANT
CRA	CERTIFIED RESIDENTIAL APPRAISER
CS	MOTOR VEHICLE SALESPERSON
CSDH	COMMUNITY SERVICE DENTAL HYGIENIST
CSDT	COMMUNITY SERVICE DENTIST
DC	CHIROPRACTOR
DH	DENTAL HYGIENIST
DIO	DISPENSING OPTICIAN
DIS	DISTRIBUTOR
DOS	OSTEOPATHIC PHYSICIAN AND SURGEON
DOSR	OSTEOPATHIC RESIDENT
DT	DENTIST
EJ	JOURNEYMAN ELECTRICIAN
EJI	JOURNEYMAN INDUSTRIAL ELECTRICIAN
EJS	JOURNEYMAN SPECIALTY ELECTRICIAN
EL	ELECTROLOGIST
EM	MAINTENANCE ELECTRICIAN
EMA	EMPLOYMENT AGENCY
EMP	PRINCIPAL AGENT OF EMPLOYMENT AGENCY
EMTB	EMERGENCY MEDICAL TECHNICIAN-BASIC
EMTP	EMERGENCY MEDICAL TECHNICIAN-PARAMEDIC
ES	SUPERVISING ELECTRICIAN
ESI	SUPERVISING INDUSTRIAL ELECTRICIAN
ESS	SUPERVISING SPECIALTY ELECTRICIAN
EVM	ELEVATOR MECHANIC

F	MANUFACTURER
GD	GUARD
GDA	GUARD AGENCY
HA	HEARING AID DEALER & FITTER
I	BEAUTY INSTRUCTOR
LA	LANDSCAPE ARCHITECT
LBSW	LICENSED BACHELOR SOCIAL WORKER
LCSW	LICENSED CLINICAL SOCIAL WORKER
LPN	LICENSED PRACTICAL NURSE
LS	LAND SURVEYOR
LSW	LICENSED SOCIAL WORKER
MAE	MASSAGE ESTABLISHMENT
MAT	MASSAGE THERAPIST
MB	MORTGAGE BROKER
MBB	MORTGAGE BROKER BRANCH OFFICE
MC	CERTIFIED MECHANIC
MD	PHYSICIAN
MDA	PHYSICIAN-TEMPORARY (ABSENCE)
MDG	PHYSICIAN-LIMITED (GOVERNMENT)
MDR	PHYSICIAN-RESIDENT
MDS	PHYSICIAN-LIMITED (SPONSORSHIP)
MDT	MEDICAL BOARD TEACHER
MFT	MARRIAGE AND FAMILY THERAPIST
MHC	MENTAL HEALTH COUNSELOR
MR	REGISTERED MECHANIC
MRC	REGISTERED AND CERTIFIED MECHANIC
MS	MORTGAGE SOLICITOR
MVB	MOTOR VEHICLE BRANCH LOCATION
MVD	MOTOR VEHICLE DEALER
MXC	MIXED MARTIAL ARTS CONTESTANT
MXD	MIXED MARTIAL ARTS PHYSICIAN
MXJ	MIXED MARTIAL ARTS JUDGE
MXM	MIXED MARTIAL ARTS MANAGER
MXP	MIXED MARTIAL ARTS PROMOTOR
MXR	MIXED MARTIAL ARTS REFEREE
MXS	MIXED MARTIAL ARTS SECOND
ND	NATUROPATHIC PHYSICIAN
NHA	NURSING HOME ADMINISTRATOR
OD	OPTOMETRIST
OT	REGISTERED OCCUPATIONAL THERAPIST
PA	PUBLIC ACCOUNTANT
PCFR	FIELD REPRESENTATIVE
PD	PRIVATE DETECTIVE
PDA	PRIVATE DETECTIVE AGENCY
PE	PROFESSIONAL ENGINEER
PH	PHARMACIST
PHY	PHARMACY
PJ	JOURNEYMAN PLUMBER
PM	MASTER PLUMBER

PMP	MISCELLANEOUS PERMIT
PO	PODIATRIST
PP	PORT PILOT
PSY	PSYCHOLOGIST
PSYI	INDUSTRIAL PSYCHOLOGIST
PT	PHYSICAL THERAPIST
PWD	WHOLESALE PRESCRIPTION DRUG DISTRIBUTOR
RB	REAL ESTATE BROKER
RBO	REAL ESTATE BRANCH OFFICE
RD	MOTOR VEHICLE REPAIR DEALER
RDS	MOTOR VEHICLE REPAIR SALVAGE DEALER
RN	REGISTERED NURSE
RS	REAL ESTATE SALESPERSON
RX	APRN-RX ADVANCED PRACTICE RN PRESCRIPTIVE AUTHORITY
SLA	STATE LICENSED APPRAISER
SP	SPEECH PATHOLOGIST
TAR	TRAVEL AGENCY
TBR	TRAVEL AGENCY BRANCH OFFICE
TSA	ACQUISITION AGENT
TSAS	SALES AGENT & ACQUISITION AGENT
TSRA	RESALE AGENT
TSS	SALES AGENT
UAA	UNIFORM ATHLETE AGENT
VE	VETERINARIAN

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, Tax clearance required for issuance of professional licenses

BILL NUMBER: HB 1906

INTRODUCED BY: Say

BRIEF SUMMARY: Adds a new section to HRS chapter 231 to provide that no professional or vocational license shall be issued or renewed by the department of commerce and consumer affairs unless the applicant obtains a tax clearance certificate from the department of taxation, showing that all tax returns due have been filed and all taxes, penalties, or interest owed have been paid by the applicant.

Makes conforming amendments to HRS chapter 436B

EFFECTIVE DATE: Tax years beginning after December 31, 2009

STAFF COMMENTS: A tax clearance certificate issued by the department of taxation is required to acquire or renew a state contractor's license, a county liquor license, to submit a bid or receive the final payment on a contract with a state or county government agency, or to provide information as to whether a taxpayer has filed a resident or nonresident tax return.

If this measure is adopted, it would require all applicants to obtain a tax clearance as a prerequisite to the issuance or renewal of a professional or vocational license. Inasmuch as this proposal is silent in the case of an applicant who has worked out a payment plan to make good on any taxes that may be owed, this measure denies approval of such an application. Thus, the proposal would prevent applicants who may have established a payment plan with the department of taxation or the IRS from practicing and working to payoff their tax liabilities. Since a tax clearance certificate is not issued until all taxes, penalties, or interest owed have been paid by the applicant, the adoption of this measure would prohibit these taxpayers from obtaining or renewing a professional license.

Digested 1/22/10



Taketa, Iwata, Hara & Associates, LLC

Certified Public Accountants & Consultants

101 Aupuni Street, Suite 139

Hilo, Hawaii 96720-4260

Before the Committee on Consumer Protection & Commerce

**Monday, January 25, 2010 at 2:00 p.m.
Conference Room 325**

Re: Support for HB 1906
Relating to Taxation

Testimony of Gregg M. Taketa

Chair Herkes, Vice Chair Wakai and committee members:

I respectfully ask that you vote YES on HB 1906.

I am a CPA and the immediate past State President of the Hawaii Association of Public Accountants (HAPA). I am also a member of the Hawaii Society of Certified Public Accountants (HSCPA) and the American Institute of Certified Public Accountants (AICPA). I support HB 1906 that requires holders of professional or vocational licenses to provide a tax clearance certificate as a condition to license issuance or renewal for the following reasons:

- Holding a professional or vocational license in Hawaii is a privilege, not a right. Obtaining a tax clearance certificate does not create an undue burden on the applicant.
- This requirement will bring the State closer to a "level playing field" as independent contractors doing business with the state and liquor license holders fulfill similar requirements.
- The Hawaii Association of Public Accountants (HAPA) conducted a study of the demand and process involved with the issuance of temporary CPA permits to out-of-state CPAs during 2007 and 2008. In conjunction with that study, HAPA found that approximately 70% of out-of-state CPA firms had not obtained Hawaii General Excise Tax licenses.
- Requiring a tax clearance certificate as a condition to license issuance or renewal is an effective way to enforce compliance with the general excise tax laws among the professional and vocational license holders in this State.
- The income generated by Hawaii's professional and vocational license holders is significant and full compliance with the general excise tax laws will have an impact on the State's finances.

I urge the committee to support HB 1906 for these reasons.

To strengthen this legislation further, I suggest that HB 1906 be amended to include "or permits" to lines 5, 6, 16 and 17 after "vocational licenses".


Gregg M. Taketa, CPA • Brian M. Iwata, CPA • Janet W. Hara, CPA

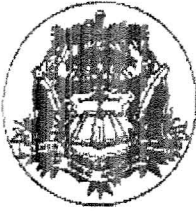
Tel (808) 935-5404 Fax (808) 969-1499 E-mail: info@tihcpa.com Website: www.tihcpa.com

The additional language is necessary because certified public accountants must also obtain a permit to practice from the department of commerce and consumer affairs in order to practice public accounting. Also, the proposed rules changes recently approved by the Board of Public Accountancy will require firm permits. It would be appropriate to include accounting firms under this legislation as the firms are usually the taxpaying entity for general excise taxes.

Thank you for this opportunity to testify.

Respectfully submitted,


Gregg M. Taketa, CPA

**HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS**

Organized August 7, 1943
P.O. BOX 61043
HONOLULU, HAWAII 96839

**Before the Committee on Consumer Protection
& Commerce**

**Monday, January 25, 2010 at 2:00 p.m.
Conference Room 325**

**Re: Support for HB1906, with Amendments
Relating to Taxation**

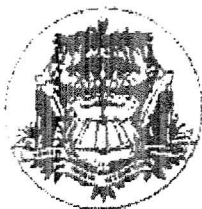
**John W. Roberts, M.B.A., CPA
President of the Hawaii Association of Public Accountants**

Chair Herkes, Vice Chair Wakai, and committee members:

I am state president of the Hawaii Association of Public Accountants (HAPA). I am also a certified public accountant (CPA), and a principal in Niwao & Roberts, CPAs, a P.C., located on Maui. HAPA supports HB1906, with amendments, based on the results of a study just completed by HAPA.

HAPA conducted a study to assess the demand and process involved with the issuance of temporary CPA permits to out-of-state CPAs during 2007 and 2008. The study was based upon redacted approved applications provided by the Department of Commerce and Consumer Affairs (DCCA) in response to our request. The HAPA study had two findings relevant to this committee:

- **Non-compliance with Hawaii tax laws:** Approximately 70% of outside CPA firms whose owners and/or employees obtained a temporary permit to practice in Hawaii did not obtain Hawaii General Excise Tax (GET) license numbers. Without the GET license numbers, the firms would not have been able to pay Hawaii General Excise taxes on their Hawaii source income. This also raises serious questions whether the firms and their owners and employees filed income tax returns and paid taxes due on Hawaii source income.



HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS

Organized August 7, 1943
P.O. BOX 61043
HONOLULU, HAWAII 96839



January 19, 2010

Chairperson Doreen Griffith and Members
State of Hawaii Board of Public Accountancy
P.O. Box 3469
Honolulu, Hawaii 96801-3469

RE: 2007 and 2008 CPA Temporary Permits to Practice

Dear Chair Griffith and Members:

The Hawaii Association of Public Accountants (HAPA) conducted a study to assess the demand and process involved with the issuance of temporary CPA permits to out-of-state CPAs during 2007 and 2008. The study was based upon temporary permit information provided to HAPA by the Department of Commerce and Consumer Affairs (DCCA) in response to our request. As noted below, the results of this study were not what we expected, and, in some cases, reflect poorly on the CPA profession as a whole.

The following are HAPA's findings and requests for action by the Board of Public Accountancy.

Summary of Findings:

The study revealed what HAPA regards as three systemic problems which need to be addressed in considering CPA "no notice, no fees" mobility legislation in Hawaii as currently advocated by the Hawaii Accountants Coalition and the Hawaii Society of Certified Public Accountants (HSCPA):

- **Non-compliance with Hawaii tax laws:** Approximately 70% of outside CPA firms whose owners and/or employees obtained a temporary permit to practice in Hawaii did not obtain Hawaii General Excise Tax (GET) license numbers.

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Chairperson Doreen Griffith and Members of the Board of Public Accountancy

January 19, 2010

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Without the GET license numbers, the firms would not have been able to pay Hawaii General Excise taxes on their Hawaii source income. This also raises serious questions whether the firms and their owners and employees filed income tax returns and paid taxes due on Hawaii source income.

- **Non-compliance with Hawaii business registration requirements:** Of the outside CPA firms who did not obtain Hawaii GET numbers, none of those sampled had registered to do business with the Department of Commerce and Consumer Affairs as required by Hawaii laws.
- **Non-compliance with statutory definition of Incidental Practice:** Many of the applicants receiving temporary permits to practice appear to be ineligible for temporary permits under the definitions of Incidental Practice contained in Hawaii Revised Statutes §466-7(c) and Hawaii Administrative Rules §16-71-10.

Action Requested:

HAPA requests that the Board of Public Accountancy investigate each of the above findings, take appropriate action, and inform HAPA of the Board's findings and actions taken.

Discussion of Findings:

Non-Compliance with Hawaii Tax Laws:

As described in more detail in the attached letter dated December 16, 2009 to the State of Hawaii Director of Taxation, Kurt Kawafuchi, HAPA found that approximately 70% of out-of-state CPA firms had not obtained Hawaii GET license numbers. The redacted documents upon which we based our study did not provide sufficient information to determine whether the firm owners and/or employees who received temporary individual permits to practice in Hawaii filed and paid their Hawaii individual income tax obligations. The failure of out-of-state CPA firms to obtain GET licenses, however, raises questions whether the firms as well as the individual temporary permit holders paid their Hawaii taxes. If they did not file and pay, then local CPA firms and their employees are at a competitive disadvantage in the Hawaii market.

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The failure to follow Hawaii tax laws raises consumer protection questions regarding the quality of advice out-of-state CPA firms are providing to their Hawaii clients. We wish to emphasize that failure of an out-of-state CPA firm to obtain a Hawaii GET license number greatly impairs the ability of the Hawaii Department of Taxation to identify and collect any taxes owed by out-of-state practitioners.

Non-Compliance with Hawaii Business Registration Requirements:

Using the list of firms with no Hawaii GET license numbers (see attachment to letter to Director Kawafuchi), we sampled to obtain an indication of compliance with Hawaii business registration requirements using the DCCA Business Registration Division website.¹ None of the sampled firms on the "no GET list" showed up as having registered to do business in Hawaii as required by Hawaii laws. The failure of out-of-state CPA firms to register to do business in Hawaii fails to inform the public of who is authorized to do business in the State of Hawaii, and the form of entity and other information concerning out-of-state CPA firms.

Incidental Practice:

As you know, a certified public accountant licensed in another state may apply for a temporary permit to practice in Hawaii for work incidental to their mainland practice if they meet certain requirements under Hawaii Revised Statutes §466-7(c) and Hawaii Administrative Rules (HAR) §16-71-10. HAR §16-71-10 describes "incidental practice" as follows:

§16-71-10 Incidental to person's practice in such other state or country.

The phrase "incidental to the person's practice in such other state or country" used in section 466-7(c)(4), HRS, shall mean services rendered in this State by a non-licensee for work performed for a client outside the State such as the audit of a Hawaii subsidiary of an out-of-state parent corporation, or an audit of a Hawaii branch or division of an out-of-state partnership, joint venture, or individual proprietorship. [Eff 5/12/78; am and ren §16-71-10, 6/25/81; am and comp 6/8/84; am and comp 10/23/87; am and comp 2/22/94; comp 6/3/95; comp 1/22/01] (Auth: HRS §466-4) (Imp: HRS §466-7)

¹ The address for the website used for this limited test is <http://hbe.ehawaii.gov/documents/search.html>.

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In reviewing redacted copies of approved temporary permit applications, however, HAPA noted that temporary permits were granted to those who did not meet the "incidental practice" requirement. The following is a partial list of the explanations of incidental practice from the applicants in support of their applications for temporary permits:

- The Hawaii engagement is not material to the firm's overall revenues (and is therefore incidental).
- No new Hawaii clients will be solicited while performing the Hawaii engagement.
- The engagement requires special expertise that is not otherwise available in Hawaii. Examples of "special expertise" included, but are not limited to, the following:
 - A-133 audits and A-133 HUD audits.
 - Audits of Association of Apartment Owners.
 - Audits of a securities broker/dealer registered with the SEC.
 - Audits of Japanese owned subsidiaries requiring fluency in Japanese.
 - Audits of Medicare and Medicaid Services.
 - Supervision of auto parts physical inventories.
 - Litigation support for the mediation of a dispute over residential construction costs.
 - Audits of Pension Plans, 401(k) Plans, and ESOP Plans.
 - Audits of Union employee benefit plans.
 - Type 1 and 2 SAS 70 audits.

Most, if not all of this type of work, is already performed by Hawaii CPA firms and we do not consider this as work requiring "special expertise" that is not available from Hawaii-licensed CPAs. This takes away work and jobs for Hawaii-licensed CPAs. In our opinion, the above explanations do not meet the definition of "incidental practice".

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January 19, 2010

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- A number of other ownership-related justifications were given as to why an out-of-state CPA needs a temporary permit to practice in Hawaii. For example, an owner of one unit in a condominium project is a client of an out-of-state CPA firm, therefore, that out-of-state CPA firm should perform the annual audit of the related association of condominium owners. HAPA regards this justification of "incidental practice" as absurd.

Some of the approved application packets contained a letter from the Board of Public Accountancy to the applicant which stated, "Once a temporary permit has expired, the practitioner must obtain a Hawaii permit to practice public accountancy in Hawaii." Nevertheless, we noted a number of applicants paid fees for and received several (more than one) temporary permits in each year. This starts looking like a permanent permit to practice without going through the necessary application process.

After reviewing the application packets provided, HAPA was left with the impression that the applicants were allowed considerable latitude in tailoring the definition of "incidental practice" to meet their circumstances. It also appears that the Board is not following the temporary permit requirements under the Hawaii law and administrative rules.

Other Anomalies:

In copies of all approved applications provided to us, "OK" was handwritten on a space adjacent to the line labeled "Board" near the bottom of the applications. HAPA representatives who attended Board meetings in 2007 and 2008 cannot recall the Board ever reporting on reviewing and approving individual applications for temporary permits to practice during the course of the Board's public meetings or in any of its minutes of meetings. HAPA considers this significant because some of the approved applications appeared on their face to be nonsensical, incomplete, or late. Some of the anomalies noted include:

- The incidental practice line on the approved application form is blank.

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Chairperson Doreen Griffith and Members of the Board of Public Accountancy

January 19, 2010

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- One partner in an international accounting firm received several temporary permits to practice. His cover letters accompanying his approved applications stated that he was going to perform work on captive insurance companies. Additional documentation in some of his related application packets, however, indicated that his work would actually be on Hawaii clients in industries other than insurance.

When viewed collectively, it is unclear to what degree members of the Board of Public Accountancy actually reviewed the applications. HAPA would appreciate receiving clarification as to what the Board's procedures are for reviewing and approving temporary permits to practice.

General Comments:

Our findings were not what we expected. More out-of-state individuals received temporary permits to practice than we expected. Moreover, temporary permits were issued to individuals employed by or owning a cross section of CPA firms, both large and small. In addition, we did not note evidence that processing of temporary permit applications were needlessly delayed by actions of the Hawaii Board or the DCCA. Instead, we noted in a few instances that the Boards of Accountancy for other jurisdictions occasionally were to blame because they were slow in providing a letter or other certification indicating that the applicant was in good standing. This, in turn, delayed issuance of a few temporary permits to practice.

Problems with tax compliance and business registration requirements surprised us. Frankly, we expected CPA firms and their owners and/or employees would follow Hawaii tax laws and pay Hawaii taxes on their Hawaii source income. The results of HAPA's study is an embarrassment to all CPAs. Without formally incorporating GET numbers, business registration, and income tax filing into the temporary permit application process, we believe the Hawaii Department of Taxation will have a difficult time identifying what out-of-state CPAs and CPA firms are failing to pay their fair share of Hawaii taxes.

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Chairperson Doreen Griffith and Members of the Board of Public Accountancy

January 19, 2010

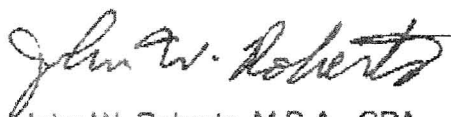
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We were also surprised with the problems in defining and applying a standard definition of "incidental practice". Since "incidental practice" was one of the reasons given in the past by the HSCPA as a reason for CPA mobility, more work needs to be done before CPA mobility legislation can be adopted in a manner that protects Hawaii consumers and is fair and equitable to Hawaii CPAs.

HAPA believes application packets or files for Hawaii temporary permits to practice contain a wealth of information that will help the Board identify and anticipate potential problems with CPA mobility before attempting to implement CPA "no notice, no fees" mobility legislation. Again, HAPA requests a review and action by the Board on the above concerns regarding temporary CPA permits granted to out-of-state CPAs.

Thank you for your consideration of the above. We look forward to hearing from you regarding the results of your own investigation.

Very truly yours,

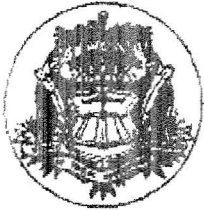


John W. Roberts, M.B.A., CPA
HAPA State President

Enclosure: Copy of letter to the Director of Taxation, Kurt Kawafuchi,
dated December 16, 2009

cc: The Honorable Senator Colleen Hanabusa (without detailed portion of study)
The Honorable Senator Rosalyn H. Baker (without detailed portion of study)
The Honorable Senator Donna Mercado Kim (without detailed portion of study)
The Honorable Representative Calvin Say (without detailed portion of study)
The Honorable Representative Robert N. Herkes (without detailed portion of study)
The Honorable Representative Marcus R. Oshiro (without detailed portion of study)
The Honorable Representative Isaac W. Choy (without detailed portion of study)
Director Lawrence Reifurth, Department of Commerce and Consumer Affairs
(with detailed portion of study)

8/10

**HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS**

Organized August 7, 1943
P.O. BOX 61043
HONOLULU, HAWAII 96839



December 16, 2009

Director Kurt Kawafuchi
State of Hawaii
Department of Taxation
Princess Ruth Keelikolani Building
830 Punchbowl Street
Honolulu, HI 96813-5094

RE: Tax Non-Compliance by Mainland and Foreign CPA Firms Doing Business in Hawaii

Dear Director Kawafuchi:

The Hawaii Association of Public Accountants (HAPA) conducted a study to assess the demand and process involved with the issuance of temporary CPA permits to out-of-state CPAs during 2007 and 2008. In conjunction with that study, HAPA found that approximately 70% of out-of-state CPA firms had not obtained Hawaii General Excise Tax (GET) numbers (see the attached schedule).¹ We also sampled a number of those out-of-state CPA firms without GET numbers to see whether they had registered to do business with the Business Registration Division of the Department of Commerce and Consumer Affairs. None in our sample had registered.

The redacted documents from which our study was made were obtained through an Office of Informational Practices request to the Department of Commerce and Consumer Affairs. As a result, personal addresses and certain other personal information were unavailable to us. Your department, however, should be able to obtain full access to the source documents in order to determine whether the many firm owners and/or employees who received temporary individual permits to practice in Hawaii filed and paid their Hawaii individual income taxes.

¹ All data regarding tax compliance is preliminary and subject to change. Actual tax compliance status for any firm or individual is a determination that can only be made by the Hawaii Department of Taxation after a thorough investigation.

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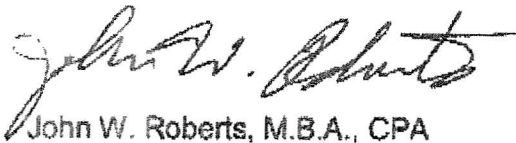
Director Kawafuchi
Page 2
December 16, 2009

The implications of this apparent non-compliance with Hawaii tax laws are alarming. Not only does it appear that most of the out-of-state CPA firms and possibly their owners and/or employees may not have paid their fair share of Hawaii taxes, thereby placing CPA firms based in Hawaii at a competitive disadvantage, but these out-of-state CPA firms may also be ignorant of and may have misinformed their Hawaii clients about their clients' Hawaii tax liabilities.

We are bringing this matter to the attention of you and the Department of Taxation so that you can take appropriate action. Should you have any questions or require additional information, please telephone me at (808) 242-4600, extension 223, or e-mail me at hapapresident@aol.com.

Thank you for your attention to this matter.

Very truly yours,



John W. Roberts, M.B.A., CPA
HAPA State President

Enclosure: Copy of Non-Compliance Study by HAPA

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**NIWAO
&
ROBERTS**

Certified Public Accountants, A Professional Corporation

**Before the Committee on Consumer Protection
& Commerce**

Monday, January 25, 2010 at 2:00 p.m.

Conference Room 325

**Re: Support for HB1906, with Amendments
Relating to Taxation**

Marilyn M. Niwao, J.D., CPA

Chair Herkes, Vice Chair Wakai, and committee members:

I am a certified public accountant (CPA) and attorney licensed in the State of Hawaii. I am also the principal of Niwao & Roberts, CPAs, a P.C., located on Maui, and have practiced public accounting for 31 years. I have had extensive experience in tax compliance and consulting. I support HB1906 for the following reasons:

1. All licensees should comply with Hawaii tax laws and pay their fair share of taxes. If there was more tax compliance, there would be less of a need to raise taxes for those individuals and businesses who presently do comply with Hawaii tax laws. Tax rates can be lower if there is a broader base of people paying taxes.
2. Submitting a tax clearance certificate from the State is a relatively simple process, assuming the requisite tax returns have been filed and any outstanding taxes paid. There is currently no fee to request a tax clearance (see attached Form A-6 and instructions, with note that a mailed-in or electronically filed tax clearance application generally takes 10-15 days to process. Same day "walk-in" tax clearance is also generally available for those who have complied with Hawaii tax laws).
3. Our firm has observed problems with licensees not complying with Hawaii tax laws.
4. A recent study by the Hawaii Association of Public Accountants (HAPA) also showed that approximately 70% of out-of-state CPA firms (where individual CPAs were granted temporary permits to practice in Hawaii during 2007 and 2008) did not obtain Hawaii General Excise tax license numbers for work done in Hawaii.

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5. Even though there will be additional administrative costs in handling tax clearance requests, those costs are likely to be outweighed by additional taxes that will be collected by previously noncompliant individuals and businesses. In addition, less effort would have to be spent by the Hawaii Department of Taxation in finding and auditing noncompliant licensees.

Amendments Requested and Other Considerations

1. Since CPA firms will receive permits, not licenses, and out-of-state CPAs receive permits, not licenses, the language should be expanded to require tax clearances not only for professional and vocational licenses, but also for permit holders. Therefore, it should be "tax clearance before issuance and renewal of professional and vocational licenses and permits."
2. In this bad economy where bank financing is oftentimes unavailable, consideration should be given to allow licenses or permits to be given to those who are not in default of current installment agreements for payment of back taxes with the State of Hawaii.
3. The State tax department should be given additional resources to allow for expedited issuances of tax clearance certificates.

Thank you for your consideration of the above testimony.

Respectfully submitted,



Marilyn M. Niwao, J.D., CPA
Principal

FORM A-6
(REV. 2009)STATE OF HAWAII — DEPARTMENT OF TAXATION
TAX CLEARANCE APPLICATION
PLEASE TYPE OR PRINT CLEARLY1. APPLICANT INFORMATION:

(PLEASE PRINT CLEARLY)

Applicant's Name _____

Address _____

City/State/Postal/Zip Code _____

DBA/Trade Name _____

2. TAX IDENTIFICATION NUMBER:

HAWAII TAX ID # W _____

FEDERAL EMPLOYER ID # _____
(FEIN)

SOCIAL SECURITY # (SSN) _____

3. APPLICANT IS A/AN: (MUST CHECK ONE BOX)

- ☐ CORPORATION ☐ S CORPORATION ☐ TAX EXEMPT ORGANIZATION
☐ INDIVIDUAL ☐ PARTNERSHIP ☐ ESTATE ☐ TRUST
☐ LIMITED LIABILITY COMPANY ☐ LIMITED LIABILITY PARTNERSHIP
☐ Single Member LLC disregarded as separate from owner; enter owner's FEIN/SSN _____
☐ Subsidiary Corporation; enter parent corporation's name and FEIN _____

4. THE TAX CLEARANCE IS REQUIRED FOR: (MUST CHECK AT LEAST ONE BOX)

- ☐ CITY, COUNTY, OR STATE GOVERNMENT CONTRACT IN HAWAII * ☐ LIQUOR LICENSE *
☐ REAL ESTATE LICENSE ☐ CONTRACTOR LICENSE ☐ BULK SALES**
☐ FINANCIAL CLOSING ☐ PROGRESS PAYMENT ☐ PERSONAL
☐ HAWAII STATE RESIDENCY ☐ FEDERAL CONTRACT ☐ LOAN
☐ SUBCONTRACT ☐ OTHER _____

* IRS APPROVAL STAMP IS ONLY REQUIRED FOR PURPOSES INDICATED BY AN ASTERISK.

** ATTACH FORM G-84, REPORT OF BULK SALE OR TRANSFER

5. NO. OF CERTIFIED COPIES REQUESTED:☐6. SIGNATURE:

SIGNATURE _____

DATE _____

TELEPHONE _____

FAX _____

PRINT NAME _____

PRINT TITLE: Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, Executor

FOR OFFICE USE ONLY

BUSINESS START DATE IN HAWAII

IF APPLICABLE

/ /

HAWAII RETURNS FILED

IF APPLICABLE

20____ 20____ 20____

STATE APPROVAL STAMP
(Not valid unless stamped)

*IRS APPROVAL STAMP

CERTIFIED COPY STAMP

POWER OF ATTORNEY. If submitted by someone other than a Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, or Executor, a power of attorney (State of Hawaii, Department of Taxation, Form N-848) must be submitted with this application. If a Tax Clearance is required from the Internal Revenue Service, IRS Form 5821, or IRS Form 2848 is also required. Applications submitted without proper authorization will be sent to the address of record with the taxing authority. UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.

PLEASE TYPE OR PRINT CLEARLY — THE FRONT PAGE OF THIS APPLICATION BECOMES THE CERTIFICATE UPON APPROVAL.

SEE PAGE 2 ON REVERSE & SEPARATE INSTRUCTIONS. Failure to provide required information on page 2 of this application or as required in the separate instructions to this application will result in a denial of the Tax Clearance request.

(Page 1 of 2)

HB1906

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INSTRUCTIONS
FORM A-6
(REV. 2009)

STATE OF HAWAII — DEPARTMENT OF TAXATION
INSTRUCTIONS FOR FORM A-6
TAX CLEARANCE APPLICATION

GENERAL INSTRUCTIONS

- This form is used to obtain a **State Tax Clearance**. (If you are reporting a bulk sale of business assets, you must also complete and attach Form G-6A, Report of Bulk Sale or Transfer.)
- This form may only be used to obtain a **Federal Tax Clearance** for the purpose of liquor licensing or entering into contracts/submitting bids with and/or seeking final payment of contracts from state or county agencies in Hawaii. Contractors winning the bids are not required to have their subcontractors obtain a tax clearance.
- The current version of Form A-6 must be used. Type or print clearly with a pen. After approval, the front page of the application will be your tax clearance certificate.
- Applications (Form A-6) are available at Department of Taxation and Internal Revenue Service (IRS) offices in Hawaii, and may also be requested by calling the Department of Taxation on Oahu at 808-587-4242 or toll free at 1-800-222-3229. This form can be downloaded from the Department of Taxation's website (www.hawaii.gov/tax).

LINE-BY-LINE INSTRUCTIONS

Line 1 — Applicant Information

Applicant's Name. — Enter your legal name. The name appearing on your application must match the name on file with the State Department of Taxation, IRS, and, if applicable, the State Department of Commerce and Consumer Affairs.

Address. — Enter the address to which correspondence regarding this application for tax clearance should be mailed. In most cases, the address should be that which is on file with the Department of Taxation and/or IRS.

DBA (Doing Business As)/Trade Name. — If you have a trade or business name which is different from your legal/registered name, enter that name here.

Line 2 — Tax Identification Numbers

Hawaii Tax ID #. — Enter your Hawaii tax identification number. Enter "NONE" if you do not have one.

Federal Employer ID #. — Enter your 9-digit federal employer identification number (FEIN). Enter "NONE" if you do not have one.

Social Security #. — If you are an individual/sole proprietor, enter your social security number (SSN).

Line 3 — Applicant is a/an

Check the box which best describes your entity type.

If you are a Single Member LLC disregarded as separate from the owner, enter the owner's FEIN/SSN in the space provided.

If you are a Subsidiary Corporation, enter the parent corporation's name and FEIN in the space provided.

Line 4 — The Tax Clearance is Required For

Check the box(es) which correspond to your reason(s) for obtaining the tax clearance. The asterisks (**) indicate reasons for which a state and federal clearance is required.

Check the "Other" box if you are required to obtain a tax clearance for the credit for school repair and maintenance or for the purchase of cigarette tax stamps at the reduced rate.

Line 5 — No. of Certified Copies Requested

Enter the number of certified copies you are requesting. Please retain the copy of the tax clearance that is stamped with the green certification stamp. When you require additional copies prior to the expiration date of the tax clearance certificate, submit the copy of the tax clearance that is stamped with the green certification stamp with a request for the number of copies required. Each copy will bear an original green certified copy stamp.

Line 6 — Signature

Signature. — The application must be signed by an individual/sole proprietor/owner, trustee, executor, corporate officer (president, vice-president, secretary, treasurer, etc.) or general partner or member. An employee of your company or authorized agent may sign the application if he/she possesses a valid power of attorney. Power of attorney forms are available at the Department of Taxation (Form N-848) and IRS (Form 8821 or Form 2848) as indicated on page 1 of the application. Unsigned or unauthorized signatures on applications will be returned.

Print Name. — Enter the name of the person signing the application.

Print Date/Telephone/Fax/Title. — Enter the date the application is signed, and the telephone/fax number which the Department of Taxation or IRS can call during business hours should any questions arise while processing the application for tax clearance. Also enter the title of the person signing the application.

Line 7 — City, County, or State Government Contract

Indicate whether you are submitting a bid for a contract, entering into a contract, have an ongoing contract, completing a contract, and/or waiting for final payment on a contract.

If you are requesting a tax clearance for a completion/final payment of contract, please provide the name and telephone number of the contact person at the State or County Agency in the spaces provided.

Line 8 — Liquor Licensing

For liquor licensing purposes, indicate whether you are applying for an initial liquor license, renewing your current liquor license, transferring a liquor license, or applying for a one time special event license.

Please Note: If you are renewing your liquor license or transferring the business to another entity (or person), the federal tax clearance requires compliance with the Bureau of Alcohol, Tobacco, and Firearms (ATF).

Line 9 — Contractor Licensing

Indicate whether you are applying for your initial contractor's license or renewing your current license.

Line 10 — State Residency

Enter the date you arrived in the State of Hawaii or returned to the State of Hawaii if your reason for applying is residency status.

Line 11 — Accounting Period

If you file your tax returns on a calendar year basis (1/1 — 12/31), check the first box. If you file your tax returns on a fiscal year basis other than a calendar year, check the second box, and enter the month and day your fiscal year ends. For example, a corporation whose tax year is July 1st through June 30th would write "06/30" on the line provided.

Line 12 — Tax Exempt Organization

Tax exempt organizations must enter the Internal Revenue Code section that applies to your exempt status. For example: IRC §501 (c)(3). Also, check the box to indicate whether your organization files federal Form 990, Return of Organization Exempt from Income Tax; federal Form 990-T, Exempt Organization Business Income Tax Return; or none of the above.

Line 13 — Individual

If you are an individual/sole proprietor who is married, enter your spouse's name and social security number on the lines provided.

Line 14 — If You Do Not Have a General Excise Tax License and Require a Tax Clearance for a Government Contract

If you do not have a general excise tax license and require a tax clearance for a government contract, you must complete this section. Contact the State Department of Taxation if you have additional questions. Refer to page 2 of Form A-6 for the telephone number or mailing address.

Line 15 — Filing the Application for Tax Clearance

Applications may be submitted either in person, fax or by mail. Mailing addresses for the State Department of Taxation and the IRS are provided on page 2 of the application.

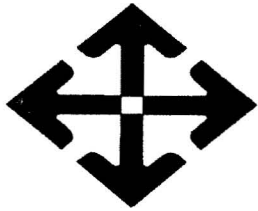
A "mailed-in" tax clearance application generally takes **10 - 15 business days** to process.

If all required returns have been filed and all required taxes, penalties, and interest have been paid, a "walked-in" tax clearance to any district tax office will generally be processed the same business day.

Form A-6 also can be filed electronically through the State's Internet portal. An electronically filed tax clearance application generally takes **10 - 15 business days** to process. For more information, go to www.ehawaii.gov/efile.

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The Hawaii Business League

Century Square 1188 Bishop St., Ste 1003 Honolulu, HI 96813-3304
Phone: (808) 533-6819 ♦ Facsimile: (808) 533-2739

January 25, 2010

Testimony To: House Committee on consumer Protection & Commerce
Representative Robert N. Herkes, Chair

Presented By: Tim Lyons
President

Subject: H.B. 1906 – RELATING TO TAXATION

Chair Herkes and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization.

We do not oppose this bill but we would suggest an amendment.

It is common, particularly in this poor economy, that certain small businesses may run into financial problems in the payment of their taxes and even other obligations. We would only recommend that this bill be amended to allow for payment programs to be entered into and then allow the renewal of the professional or vocational license. Anyone can run into trouble, particularly in this economy, and it is our feeling that as long as they make an agreement and, of course, follow that agreement to pay their back amounts, they should be allowed to continue to earn income not only for themselves but also to pay off their debts. In many cases, if you

deny their renewal of their license you are cutting off their only visible means of financial support.

Based on the above, and with that amendment, we do not object to everyone playing by the same rules.

Thank you.

January 22, 2010

The Honorable Robert N. Herkes, Chair

House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1906 Relating to Taxation

HEARING: Monday, January 25, 2010 at 2:00 p.m.

Aloha Chair Herkes, Vice-Chair Wakai and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members in Hawai'i. HAR **expresses concerns** regarding H.B. 1906, which requires all professional vocational licensees to provide the Department of Commerce and Consumer Affairs ("DCCA") with a tax clearance issued by the Department of Taxation ("DoTax"), as a condition of license issuance or renewal.

This legislation would require the 47 different professions and vocations that fall under the Professional and Vocational Licensing Division ("PVL") to obtain a tax clearance to obtain or maintain their licenses. To put this into perspective, in 2009, the real estate profession alone had 18,707 real estate licensees registered with PVL.

HAR has concerns that the sheer volume of tax clearances that would have to be processed by both DoTax and PVL could have a significant impact on the licensee registration and renewal system. The recent technology added by PVL enabling license renewals online has streamlined renewal procedures. However, any delays in obtaining and processing tax clearances may ultimately hinder licensees from continuing to do business in the State, even if they have no tax issues.

Another issue is the effective date and the impact this may have on the processing of the tax clearance requirement. All real estate licensees presently fall into a 2-year renewal cycle which ends on December 31, 2010. Because the legislation, as written, would be effective beginning January 1, 2010, every real estate licensee will effectively be required to comply with the tax clearance requirement by the end of 2010.

Mahalo for the opportunity to testify.

Testimony of Ronald I. Heller

700 Bishop Street, Suite 1500
Honolulu HI 96813

phone 523 6000 fax 523 6001
e-mail rheller@torkildson.com

Before the House Committee on Consumer Protection & Commerce

Monday January 25, 2010
2:00 pm
Conference Room 325

Re: HB 1906
Taxation/Professional Licensing

Chair Herkes, Vice Chair Wakai, and Committee members:

Thank you for the opportunity to testify in opposition to the current version of House Bill 1906.

This Bill would create a requirement that an applicant for the issuance or renewal of any professional or vocational license submit a tax clearance from the Director of Taxation, as a condition of licensing. While I do not oppose the basic idea, the current wording of the Bill would create serious problems, which I believe are unintended.

As drafted, the bill requires "a tax clearance signed by the Director of Taxation showing that all tax returns due have been filed and all taxes, penalties or interest owed by the applicant have been paid."

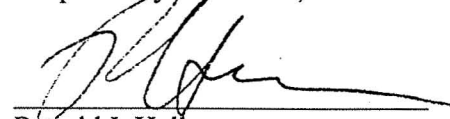
The problem is that the Department of Taxation often enters into installment payment agreements with taxpayers. Upon request, the Department of Taxation will issue a letter confirming that a payment plan exists and that the taxpayer is current under the plan, but **that letter is not a clearance**. A taxpayer who has an agreed-upon installment payment plan with the Department of Taxation, and who is current and compliant under that plan, cannot get a tax clearance.

Thus, under the current version of HB 1906, a taxpayer who has an agreement with the Department of Taxation and is complying with the agreement will be unable to obtain or renew any professional license. I think that the exact opposite would be more consistent with the overall intent of the Bill -- a taxpayer should be able to obtain or renew a license upon proof that

the taxpayer has an agreement with the Department of Taxation and is complying with that agreement. (That is the way it works now for contractors and holders of liquor licenses.)

Thank you for your attention to this matter.

Respectfully submitted,



Ronald I. Heller