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ISAAC W. CHOY  
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To: The Honorable Donovan M. Dela Cruz, Chair;  
The Honorable Gil-Keith Agaran, Vice Chair;  
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director  
Department of Taxation

Date: Friday, February 18, 2022  
Time: 10:00 A.M.  
Place: Via Video Conference, State Capitol

**Re: S.B. 2377, Relating to State Tax Examinations**

The Department of Taxation (Department) supports S.B. 2377 and offers the following comments for the committee's consideration.

S.B. 2377 adds a new provision to chapter 231, Hawaii Revised Statutes (HRS), creating a new penalty for failure to respond or reply to the Department's correspondence or inquiry within a timely manner during an official inspection or examination of records. The penalty is either equal to 25 per cent of tax owed, or not more than \$10,000; the Director of Taxation is authorized to waive the penalty if the failure was due to reasonable cause. The measure takes effect upon approval.

The Department appreciates every effort to empower it with the tools and resources to help promote taxpayer compliance and efficient tax administration. The Department is in strong support of this bill and is able to implement the measure as drafted. Thank you for the opportunity to testify.

# TAX FOUNDATION OF HAWAII

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SUBJECT: ADMINISTRATION, Establish Civil Penalty for Failure to /Respond

BILL NUMBER: HB 1492, SB 2377

INTRODUCED BY: HB by YAMASHITA, SB by MORIWAKI, MISALUCHA, RHOADS, Gabbard, Shimabukuro

EXECUTIVE SUMMARY: Establishes a civil penalty for failure to respond to the Department of Taxation in relation to an inspection or examination of records.

SYNOPSIS: Adds a new section to chapter 231, HRS, stating that no person shall fail to timely (1) Reply to the department; or (2) Acknowledge correspondence or an inquiry from the department, with respect to the department's actual or attempted inspection or examination of a taxpayer's records. A violator shall be subject to a civil penalty equal to twenty-five per cent of any state taxes owed, as based on the records; provided that the penalty shall not exceed \$10,000. The director may waive the penalty imposed in subsection (b) for reasonable cause.

EFFECTIVE DATE: July 1, 2022.

STAFF COMMENTS: During the course of a return examination, auditors typically will ask the taxpayer for several rounds of information and documents. Sometimes the taxpayer is able to provide the information and documents; sometimes the documents don't exist or can't be located; sometimes documents can be located and are produced but are not what the auditor is looking for.

Under current law auditors who do not get the information they need as quickly as they need are able to assess the taxpayer based on "best available information." This type of assessment is sometimes based on arbitrary assumptions, such as "150% of the prior year's income," and the onus is then placed on the taxpayer to prove what the taxpayer can.

In our view, failing to cooperate with the tax authorities carries hefty consequences even without an additional penalty.

If this bill is to go forward, consideration should be given to capping the penalty at 25% of the tax deficiency (the amount due under law less what was paid) as is the case with other penalties, instead of "any state taxes owed," which could bring in debts entirely unrelated to the examination. Language also could be added to say that failures to respond to multiple rounds of information requests do not multiply the penalty cap; if not, the penalty could spiral out of control quickly.

Digested: 2/7/2022

**SB-2377**

Submitted on: 2/11/2022 7:24:09 PM

Testimony for WAM on 2/18/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Gerard Silva	Individual	Oppose	No

Comments:

Collecting Taxes is eligal!!!