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**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 2486, Relating to Tax Enforcement.

BEFORE THE:

House Committee on Judiciary & Hawaiian Affairs

DATE: Tuesday, February 6, 2024

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

Chair Tarnas, Vice-Chair Takayama, and Members of the Committee:

The Department of Taxation ("Department") strongly supports H.B. 2486, an Administration measure, and offers the following comments for your consideration.

H.B. 2486 amends sections 231-7(c)(2) and 231-7(d)(2), Hawaii Revised Statutes (HRS), to authorize the Department to serve administrative subpoenas outside of the state. H.B. 2486 is effective upon approval.

Under current law, the Department is authorized to issue administrative subpoenas in a civil audit, civil investigation, civil hearing, or criminal investigation. Section 231-7, HRS, provides that the administrative subpoena "[m]ay be served at any place within the State." The statute, however, is silent as to whether service of the administrative subpoena may be executed outside the State.

The number of taxpayers who engage in business in the State, and who are therefore subject to State taxes, but who do not have a physical presence in the State or do not maintain a location for service of process in the State, has increased in recent years. This is especially true in light of the United States Supreme Court's ruling in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018), and the enactment of Act 41, Session Laws of Hawaii 2018, which subject taxpayers who do not have a physical presence in the State to general excise tax if the taxpayer has gross income of

\$100,000 or enters into 200 transactions sourced to the State in a year.

Despite the Department's authority to conduct an audit or investigation into any delinquent tax, the Department has encountered challenges with serving administrative subpoenas on out-of-state taxpayers who engage in business in the State, but who fail to pay their taxes, in part because of the "within the State" language in section 231-7, HRS.

This bill will authorize the Department to serve these out-of-state taxpayers with an administrative subpoena to obtain information on their liability for Hawai'i taxes. These proposed changes would empower the Department, including the Director and the Director's authorized representatives, to more robustly investigate potential tax issues without first requiring an assessment to be made or a specific amount of tax to be calculated. Eliminating in-state geographic restrictions for civil and criminal subpoenas would also provide a key tool to help the Department enforce tax laws and hold out-of-state taxpayers accountable for meeting their tax obligations. Altogether, these initiatives would help improve tax compliance and promote dynamic and efficient use of Department resources.

Thank you for the opportunity to provide testimony in support of this important measure.

TAX FOUNDATION OF HAWAII

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SUBJECT: MISCELLANEOUS, Tax Enforcement; Subpoena Powers

BILL NUMBER: HB 2486, SB 3175

INTRODUCED BY: HB by SAIKI; SB by KOUCHI (Governor's Package)

EXECUTIVE SUMMARY: Authorizes the Department of Taxation to serve administrative subpoenas outside the State.

SYNOPSIS: Amends section 231-7, HRS, to remove the requirement under current law that subpoenas issued by the Department of Taxation be served within the State.

Makes other nonsubstantive amendments.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This is an Administration measure sponsored by the Department of Taxation and designated TAX-03 (24).

Given the decentralized and Internet-dependent nature of modern business, it's fair to expect that taxpayers doing business in Hawaii might have witnesses and evidence physically present elsewhere. The amendment proposed in this bill appears to be a reasonable approach to this issue.

Digested: 2/4/2024