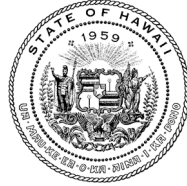


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TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 2578, H.D.1, Relating to Due Process for Establishing Personal Liability for Tax

BEFORE THE:

House Committee on Finance

DATE: Thursday, February 26, 2026

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 308

Chair Todd, Vice-Chair Takenouchi, and Members of the Committee:

The Department of Taxation (DOTAX) offers the following comments regarding H.B. 2578, H.D.1, for your consideration.

H.B. 2578, H.D.1, amends section 237-41.5, Hawaii Revised Statutes (HRS), which imposes personal liability for the general excise tax (GET) on any officer, member, manager, or other responsible person who has control or supervision over amounts collected to pay the GET, or who is charged with responsibility for the filing of returns or the payment of GET. Personal liability will attach if the officer, member, manager, or responsible person willfully fails to pay or to cause to be paid the GET owed by the business.

Under current law, after GET liability is assessed against a business, and appeals have been exhausted or the time to appeal has expired, if the tax remains unpaid, personal liability may be imposed on the officer, member, manager, or other responsible person who willfully failed to pay the GET, or caused to be paid, upon DOTAX's issuance of a written notice to the officer, member, manager, or responsible person.

This bill will require DOTAX to issue the officer, member, manager, or responsible person an “assessment,” subject to the procedures for assessment and appeal set forth in sections 237-36 and 237-42, HRS.

This bill has a defective effective date of July 1, 3000.

Should this bill advance, DOTAX requests that the effective date be amended to January 1, 2027 to allow DOTAX sufficient time to change its assessment processes, procedures, and forms.

Thank you for the opportunity to provide comments on this measure.

TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, TRANSIENT ACCOMMODATIONS, Due Process to Determine Personal Liability

BILL NUMBER: HB 2578 HD 1

INTRODUCED BY: JHA

EXECUTIVE SUMMARY: Provides that a determination of personal liability for another person's unpaid taxes is an assessment subject to the due process procedures and appeals available for other assessments..

SYNOPSIS: Amends section 237-41.5, HRS, in the General Excise Tax Law, to provide that a determination that a person is liable for the unpaid taxes of another under this section shall be an assessment to which section 237-36 shall apply and from which a person aggrieved may appeal under section 237-42. Any appeal of an assessment made pursuant to this section shall be limited to a determination that the person is an officer, member, manager, or other person described in subsection (b), and that the person wilfully failed to pay or caused to be paid any taxes due from the taxpayer.

This procedure is also expected to apply to the Transient Accommodations Tax, which incorporates this section by reference. Section 237D-16(a)(3), HRS.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: Section 237-41.5, part of the General Excise Tax Protection Act of 2010 (Act 155, SLH 2010), provides that if the taxpayer is an entity, and it has unpaid taxes, then the Department can go after the personal assets of any responsible person within the entity, as long as that person “willfully fails to pay or cause to be paid” the tax. That would include any decision to pay any creditor of the company before the tax liability.

As applied, however, the Department typically looks for significant people within the entity – officers, shareholders, check signers – and goes after all of them. An accounts payable clerk, for example, could be sent a million-dollar tax bill for signing checks that she was told to sign while she had no knowledge that her employer actually owed a million dollars in back GET taxes. The question is whether, and how, the clerk can contest the bill and prove that she wasn’t in fact a responsible person.

Under current law, the Department will receive and review a Form D-30, Personal Assessment/Liability Questionnaire, and sometimes will let an individual off the hook. But it has taken the position that if it doesn’t and the individual wants independent judicial review of the

Department's determination, then the individual must pay the disputed tax under protest and file suit for a refund. Which means that our clerk must pony up the \$1 million before the courts can hear her case. In the great majority of cases, such a person will be unable to do this. So our clerk may have her life ruined by Department liens, levies, and other collection action when the only thing she may have done wrong is follow her employer's orders.

The bill provides that if the Department determines that a person is personally liable for the tax of another, then that determination may be appealed to the Tax Appeal Court or Board of Review like any other assessment of taxes made against any other taxpayer.

The bill in subsection (f) is trying to express the idea that the appeal brings up only the issue of personal liability, and does not allow the person being assessed to challenge the validity of the underlying tax (which the entity, as opposed to the person, would have the right to challenge). We recommend the following substitute language for this to reduce ambiguity in the use of the term "person":

(f) A determination that a person is liable for the unpaid taxes of another taxpayer under this section shall be an assessment to which section 237-36 shall apply and from which a person aggrieved may appeal under section 237-42; provided that the appeal is limited to the issue of whether the appellant has personal liability under this section because the appellant is an officer, member, manager, or other person described in subsection (b) and that the appellant wilfully failed to pay or caused to be paid any taxes due from the other taxpayer pursuant to this chapter.

Digested: 2/3/2026

HB-2578-HD-1

Submitted on: 2/24/2026 1:05:35 PM

Testimony for FIN on 2/26/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ron Heller	Individual	Support	Written Testimony Only

Comments:

The Department of Taxation has made "determinations" of liability against individuals, in amounts far greater than they could ever actually pay, and then said that their only remedy was to pay first and then bring a refund claim. This is effectively a denial of due process, and is a tremendous hardship to the individuals affected.

There is no good reason why the Department should not use the same assessment process in "personal liability" cases that it uses in ordinary tax audit situations.