



April 19, 2024

The Honorable Donna Kim
Chair, Conference Committee
Hawai'i Senate
Hawai'i State Capitol, Room 218
415 South Beretania St.
Honolulu, HI 96813

The Honorable Karl Rhoads
Chair, Conference Committee
Hawai'i Senate
Hawai'i State Capitol, Room 204
415 South Beretania St.
Honolulu, HI 96813

The Honorable David Tarnas
Chair, Conference Committee
Hawai'i House of Representatives
Hawai'i State Capitol, Room 442
415 South Beretania St.
Honolulu, HI 96813

The Honorable Scott Nishimoto
Chair, Conference Committee
Hawai'i House of Representatives
Hawai'i State Capitol, Room 441
415 South Beretania St.
Honolulu, HI 96813

Dear Chairs Kim, Rhoads, Tarnas, and Nishimoto, and members of the Conference Committee:

On behalf of CTIA®, the trade association for the wireless communications industry, I write to respectfully request the conferees' consideration of three proposed amendments to Senate Bill 3176. These amendments are included in this letter and were requested in submitted testimony to the House Finance Committee.

The amendments would: (1) clarify when evidentiary restrictions may be asserted by the Department in instances where the taxpayer's failure to timely produce documents was the result of willful neglect, (2) incorporate explicit language allowing for time extensions for audit requests, and (3) provide additional time (60 days) so that taxpayers can adequately respond to Department of Taxation requests to produce documents.

CTIA's membership is made up of telecommunications companies who conduct business in nearly every state in the country, including Hawaii. Like other taxpayers, our members regularly participate in audits as required in states where they are subject to taxes. We understand the Department of Taxation's goals with this bill, and we offer amendments intended to remain consistent with the Department's goals while addressing our members' concerns.

Evidentiary Restriction

Our members are very concerned with the language in the bill that prohibits documents or other evidence from being used during an appeals process if such materials were not provided to the Department during the audit process.

We understand from the Director's prior testimony that the intent of the bill is to encourage taxpayers to participate in the audit process and that the primary purpose of the proposed restriction is to be



used against those who ignore or refuse to cooperate with the Department. However, the current language could be read as requiring documents or evidence not provided in the audit process to be *automatically* prohibited unless a taxpayer can provide a reason why such document was not provided earlier. This is broad and could unnecessarily burden taxpayers who have cooperated with the Department in good faith. As such, we propose the following amendments:

Any person who fails to produce documents or evidence as provided in this subsection ~~shall~~ **may** be prohibited from introducing the documents or matters in evidence, or otherwise relying upon or utilizing said documents or matters, in any tax appeal or action under section 40-35 arising from the audit in which the documents or matters were demanded, ~~unless it is shown that the failure is due to reasonable cause and not neglect or refusal~~ **if it is shown that the failure is due to willful neglect.**

Our intent by proposing to change the word “shall” to “may” is simply for the restriction to not occur automatically while leaving the ability for the restriction to be applied as the Department envisions. We also propose to change the standard that must be met to a standard that may be easier for a court to apply. The current language provides two standards for a court to decide: reasonable cause and neglect/refusal. It could be assumed that proving one shows evidence of the other but having both standards in statute could make it unnecessarily difficult for the taxpayer to overcome even when working in good faith, which is why we propose the “willful neglect” standard. We removed the term “refusal” because there are circumstances where a taxpayer may be unable to provide the Department with requested information without first obtaining a protective order.

Timelines

We understand that the Department is seeking to impose a timeline by which taxpayers must respond to their requests. We also appreciate a prior amendment to extend the timeline from “twenty days” to “thirty business days.” We respectfully request that the timeline be extended further to sixty business days and for language to be included to explicitly authorize the Director to provide for extensions. We propose the following amendments:

Any person liable for any tax imposed under this chapter or for the collection or deduction thereof at the source shall produce all account books, bank books, bank statements, records, vouchers, copies of federal tax returns, and any and all other documents and evidence relevant to the determination of the income or wages as required to be returned under this chapter within ~~thirty~~ **sixty** business days after a written demand is ~~mailed to that person by the department~~ **received by a designated person**, or as soon thereafter as the director may deem reasonable under the circumstances. **The director may upon a timely request setting forth good and sufficient cause or at the director’s discretion extend the 60-day period. A request may not be denied unreasonably by the director.**

A request from the Department could take more than thirty days to be routed to the right person or people who would be responsible for engaging with the Department on their request. Collecting and



organizing the information in a manner acceptable to the Department may take additional time if the request involves a large number of transactions. Information may also require legal review prior to remittance to ensure sensitive information is not inadvertently disclosed. If this is the case, information may need to be reviewed by companies' departments outside of their general audit group. Finally, it may take longer to obtain information if it is held by third party companies that facilitate transactions on the taxpayer's behalf.

We appreciate the Director's comments in prior testimony that he would be willing to provide extensions and our goal with the proposed language is to incorporate that intent in the bill.

Again, our intent with the proposed amendments included in our letter is to address our members' concerns without compromising the Department's goals to hold taxpayers accountable as appropriate. We appreciate the opportunity to submit comments and the Conference Committee's consideration of our proposed amendments.

Sincerely,

Annissa Reed

Annissa Reed
Director
State and Local Affairs