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March 28, 2024

Representative Kyle T. Yamashita, Chair  
Representative Lisa Kitagawa, Vice Chair  
House Committee on Finance  
Hawai'i State Legislature

*Via E-mail*

### **Re: COST Opposes S.B. 3176, Relating to Tax Enforcement**

Dear Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing to express opposition to S.B. 3176, which unduly penalizes and burdens taxpayers. Senate Bill 3176, as amended, would require a taxpayer under a tax audit to produce all documents and evidence relevant to the determination of income or wages within 30 days after a written demand is mailed to the taxpayer by the Department of Taxation (Department). If a taxpayer fails to produce all documents or evidence within the prescribed 30 days, then the taxpayer is prohibited from introducing or relying on such documents or evidence in any future tax appeal or action, unless the taxpayer can show that the failure was due to reasonable cause.

This bill unreasonably and arbitrarily penalizes all taxpayers in a manner that is incongruent with reasonable audit and assessment processes, and it does not provide fair, efficient, and customer-focused tax administration.

### **About COST**

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 500 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities. Many COST members have operations in Hawai'i that would be negatively impacted by this legislation.

### **S.B. 3176 Does Not Promote Fair, Efficient, and Customer-Focused Tax Administration**

The COST Board of Directors adopted a formal policy statement supporting fair, efficient, and customer-focused tax administration as follows:

*Fair, efficient and customer-focused tax administration is critical to the effectiveness of our voluntary system of tax compliance. A burdensome,*

*unfair, or otherwise biased administrative system negatively impacts tax compliance and hinders economic competitiveness.<sup>1</sup>*

Senate Bill 3176 does not provide taxpayers with enough time to produce documents and evidence during an audit. Although S.B. 3176 may be convenient for the Department, the bill does not promote fairness, accuracy, compliance, transparency, or efficiency in the audit process. It does not ensure that both taxpayers and the Department can participate in the audit process in a thorough, efficient, and respectful manner.

Taxpayers need adequate time to gather and organize necessary documents and evidence to support their tax returns and filing positions. It is imperative to give taxpayers a reasonable opportunity to present their case. Further, rushing taxpayers in such a manner will likely produce incomplete or inaccurate information, which creates inefficiencies in the audit process.

This bill is also inconsistent with practical considerations. It is already difficult to produce data sets in specific formats requested by the Department. Many taxpayers also maintain records in various formats and locations, requiring time to compile and review. Moreover, there are other legal and regulatory obligations that taxpayers (and the Department) need to be sensitive towards. Producing certain documents as part of complying with the Department's request, may infringe on taxpayers' legal rights that are not associated with audits (e.g., trade secret protections) or may cause taxpayers to violate their other regulatory obligations (e.g., consumer data protection). Failing to provide taxpayers adequate time to assess and evaluate the circumstances runs the risk of infringing on taxpayers' legal rights and/or exposing taxpayers to undue damage and other legal challenges. These challenges are heightened for taxpayers with broader mixes of taxes and fees they are obliged to comply with (e.g., industry-specific taxes).

Failure to comply with the bill's demands unreasonably penalizes all taxpayers in future tax appeals in a manner that diminishes transparency and trust in the audit process and Hawai'i's tax administration.

### **Conclusion**

Fair, efficient and customer-focused tax administration is fundamental to a state tax system. Senate Bill 3176, however, is contrary to this fundamental principle of good tax governance. For the foregoing reasons, we respectfully urge the Committee to vote "no" on S.B. 3176.

Respectfully,



Stephanie T. Do

cc: COST Board of Directors  
Patrick J. Reynolds, COST President & Executive Director

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<sup>1</sup> COST, *Fair, Efficient, and Customer-Focused Tax Administration*, <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/fair-efficient-and-customer-focused-tax-administration---revised-april-2023---final.pdf> (last visited Mar. 10, 2024).