THE SENATE
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

S.B. NO. 2047 S.D. 2

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The legislature finds that as the number of elderly individuals in the State increases, it is important to allow these individuals to age-in-place with the help of family caregivers. Enabling these elderly individuals to remain in their own, or their families,' homes will allow them to live happier and healthier lives, and also allow the State to benefit from the value of the services provided by family caregivers through the deferral of paid caregiving and institutionalization.

Unfortunately, many homes are not readily equipped with the safety and accessibility measures necessary to facilitate caring for elderly or disabled individuals. Many elderly or disabled individuals require modifications for increased accessibility when entering and exiting a home and maneuvering within a home. Safety features are also necessary for using the facilities in a bathroom, such as the sink, toilet, tub, or shower. Increased support and services must be provided to family caregivers to facilitate family caregiving and aging-in-place efforts. Although these types of home modifications can prove to be very costly, it will be more costly to move an elderly individual into an outside care facility, if such a facility is even available.

The purpose of this part is to provide a refundable tax credit for taxpayers who make modifications to their homes to accommodate individuals with disabilities or facilitate aging-in-place.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235- Home accessibility features for the disabled tax credit.** (a) Each individual taxpayer who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, may claim a home accessibility features for the disabled tax credit against the taxpayer's net individual income tax liability for the taxable year for which the individual's income tax return is being filed; provided that:

(1) An individual who has no income or no income taxable under this chapter and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Hawaii state individual income tax purposes may claim this tax credit;

(2) A husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed; and

(3) No tax credit may be claimed for amounts less than $1.

(b) The tax credit under this section shall be equal to fifty per cent of the qualified costs incurred by a taxpayer to renovate a residence with one or more accessibility features up to the following maximums in qualified costs:

(1) $5,000 for a taxpayer filing as single or married filing separately;

(2) $7,500 for a taxpayer filing as head of household or as a surviving spouse; or

(3) $10,000 for taxpayers filing a joint return.

(c) To qualify for the income tax credit:

(1) All qualified costs must be incurred in Hawaii and be subject to chapter 237;

(2) The residence for which qualified costs are incurred must be located in Hawaii; and

(3) At least one elderly person or person with a disability must physically reside in the renovated residence for which a credit is claimed under this section.

(d) The tax basis of the renovated residence for which a credit is claimed under this section shall be reduced by an amount equal to the credit allowable and claimed, otherwise the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which the residence is disposed.

(e) The credit allowed under this section shall be claimed against the net income tax, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. If the tax credit under this section exceeds the taxpayer's net income tax liability, any excess of the tax credit shall be refunded to the taxpayer; provided that no refund or payment on account of the tax credit allowed by this section shall be made for any amounts less than $1.

(f) Every claim, including amended claims, for the tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the tax credit may be claimed. Failure to meet the filing requirements of this subsection shall constitute a waiver of the right to claim the tax credit.

(g) If a taxpayer claims the cost of accessibility features as a tax deduction or for claiming another tax credit under this chapter or as a tax credit or tax deduction for federal income tax purposes, then no tax credit shall be claimed under this section.

(h) As used in this section:

"Accessibility features" means:

(1) A no-step entrance allowing access into the residence;

(2) Lifts or lift mechanisms that assist a person with vertical movement for entry into or access within a residence;

(3) Expanding the width of doorways, hallways, or entryways to provide at least a thirty-two inch clearance for purposes of entry into or access within a residence;

(4) Reinforcements in bathroom walls and installation of grab bars around the toilet, tub, and shower;

(5) Light switches and outlets placed in wheelchair-accessible locations; and

(6) Other universal design features or accessibility or adaptability features prescribed in building codes of any county that are approved by the director of taxation.

"Disability" means a physical or mental impairment that substantially limits one or more of an individual's major life activities.

"Elderly person" means an individual who has attained the age of sixty-five before the close of the taxable year in which a tax credit is claimed under this section.

"Qualified costs" means the following direct costs incurred by the taxpayer to renovate a residence to provide handicapped accessibility or aging in place:

(1) Plans, designs, construction, alteration, or modification of a residence determined to be necessary improvements for medical purposes by a medical doctor licensed to practice in the State. The director of taxation may require verification by a person's

medical doctor in order to ascertain the validity of any such costs;

(2) Ramps for gaining entry into or access within a residence;

(3) Lifts or lift mechanisms that assist a person with vertical movement for gaining entry into or access within a residence;

(4) Expanding the width of doorways, hallways, or entryways for purposes of gaining entry into or access within a residence;

(5) Grab bars or other devices used to stabilize a person within a residence in areas including, but not limited to, bathrooms, hallways, and sitting areas; and

(6) Any other costs that the director of taxation deems appropriate and approves.

"Residence" means the taxpayer's "principal residence" within the meaning of section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code.

(i) The director of taxation may adopt rules under chapter 91 and prepare any forms necessary to carry out this section."

PART II

SECTION 3. During the 2007 interim, the joint legislative committee on family caregiving received information and data related to the family caregivers needs assessment conducted by the executive office on aging. The needs assessment indicated that caregivers need more affordable services and financial assistance.

Specifically, the needs assessment confirms that the household income levels of caregivers tend to be low, with approximately 15.1 per cent in the $25,000 to $29,000 income range, and 13.2 per cent falling into the $30,000 to $34,999 income range. In general, more than fifty-three per cent of caregivers report earning less than $35,000 annually.

As family caregivers are carrying the financial burdens of caregiving, it is not surprising that the needs assessment also shows that family caregivers are interested in some type of caregiver tax credit.

The purpose of this part is to create a caregiver tax credit for eligible taxpayers who care for qualified care recipients, and to require the executive office on aging to submit a report to the legislature evaluating the tax credit program after three years.

SECTION 4. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235-   Caregiver tax credit.** (a) There shall be allowed a caregiver tax credit to each eligible taxpayer subject to the tax imposed by this chapter who is not claimed and is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, and who files an individual net income tax return for a taxable year.

(b) The caregiver tax credit shall not exceed $ based on the following schedule and shall not exceed $ for any taxable year; provided that a husband and wife filing separate tax returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed:

TAX CREDIT SCHEDULE

Adjusted Gross Income	Tax Credit Percentage
Under $30,000	100%
$30,000 to under $50,000	70%
$50,000 to under $75,000	40%

$75,000 and over	10%

(c) An eligible taxpayer may claim the tax credit for every taxable year or part thereof that the eligible taxpayer provides care to a care recipient. Only one caregiver per household may claim a tax credit for any care recipient cared for in a taxable year. An eligible taxpayer shall not claim multiple tax credits under this section in a taxable year, regardless of the number of care recipients receiving care from the eligible taxpayer.

(d) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. For the purpose of this tax credit, "net income tax" liability means net income tax liability reduced by all other credits allowed to the taxpayer under this chapter.

(e) If the tax credit claimed by the taxpayer under this section exceeds the amount of income tax payments due from the taxpayer, the excess of credit over payments due shall be refunded to the taxpayer; provided that the tax credit properly claimed by a taxpayer who has no income tax liability shall be paid to the taxpayer; and provided that no refunds or payments on account of the tax credit allowed by this section shall be made for amounts less than $1.

(f) Every claim, including amended claims, for the tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the tax credit may be claimed. Failure to meet the filing requirements of this subsection shall constitute a waiver of the right to claim the tax credit.

(g) The department shall report to the legislature annually, no later than twenty days prior to the convening of each regular session, on the number of taxpayers claiming the tax credit and the total cost of the tax credit to the State during the past year.

(h) The department shall assist the executive office on aging in providing information on caregiver services to each taxpayer who claims the tax credit, provided that the executive office on aging shall provide to the department the proper informational materials to be disseminated regarding its caregiver services, including information about support groups, referral services, training, conferences, community education notices, and a caregiver newsletter.

(i) As used in this section:

"Eligible taxpayer" means a caregiver who cares for a qualified care recipient.

"Qualified care recipient" means a person who is eighteen years of age or older, a citizen or resident alien of the United States, and who:

(1) Has co-resided with the caregiver at least six months of the taxable year for which the credit is claimed or has received more than fifty per cent of the qualified care recipient's financial support during the taxable year from the caregiver; and

(2) Is certified by a physician licensed under chapter 453 or 460, or an advanced practice registered nurse licensed under chapter 457, that the individual has a disability, is elderly, or otherwise requires special assistance, and requires one of the following:

(A) Substantial supervision to protect the qualified care recipient from threat to health or safety due to cognitive impairment; or

(B) Substantial assistance to perform at least two of the following activities of daily living:

(i) Bathing;

(ii) Eating;

(iii) Using the toilet;

(iv) Dressing; or

(v) Transferring, such as from bed to wheelchair."

SECTION 5. The executive office on aging, with the assistance of the department of taxation, shall submit a report to the legislature, that evaluates over a three year period the caregiver tax credit described in this part, no later than twenty days prior to the convening of the regular session of 2011.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2008-2009 to enable the department of taxation to process and mail the executive office on aging caregiver program materials to taxpayers pursuant to section 4 of this part.

The sum appropriated shall be expended by the department of taxation for the purposes of this part.

PART III

SECTION 7. Taxpayers with children in Hawaii face a daunting challenge due to Hawaii's high cost of living. From birth, children require items necessary to ensure their safety and growth, both physically and mentally. From playpens and safety rails for young children to backpacks, pencils, and paper for school-aged children, parents are faced with providing these necessities for their children. Providing an additional exemption per child would help Hawaii's struggling families to cope with these expenses.

In addition, Hawaii's high cost of living has forced a growing number of families and dependent providers to enter the workforce in order to make ends meet. The cost of childcare and elder-dependent care has skyrocketed because of the high demand for such services in Hawaii.

The legislature finds that in many cases families must either work and pay for care services, or care for dependents themselves rather than working. Many of these families are on the verge of succumbing to poverty.

The purpose of this part is to provide financial relief to families that provide care for children and dependents in Hawaii by providing an additional personal income tax exemption for any dependent age eighteen or younger for qualified families and by increasing the tax relief provided by the child and dependent care income tax credit.

SECTION 8. Section 235-54, Hawaii Revised Statutes, is amended to read as follows:

"**§235-54 Exemptions.** (a) In computing the taxable income of any individual, there shall be deducted, in lieu of the personal exemptions allowed by the Internal Revenue Code, personal exemptions computed as follows: Ascertain the number of exemptions which the individual can lawfully claim under the Internal Revenue Code, add an additional exemption for the taxpayer or the taxpayer's spouse who is sixty-five years of age or older within the taxable year, and multiply that number by $1,040, for taxable years beginning after December 31, 1984. A nonresident shall prorate the personal exemptions on account of income from sources outside the State as provided in section 235-5. In the case of an individual with respect to whom an exemption under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the personal exemption amount applicable to such individual under this subsection for such individual's taxable year shall be zero.

(b) In computing the taxable income of an estate or trust there shall be allowed, in lieu of the deductions allowed under subsection (a), the following:

(1) An estate shall be allowed a deduction of $400.

(2) A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $200.

(3) All other trusts shall be allowed a deduction of $80.

(c) A blind person, a deaf person, and any person totally disabled, in lieu of the personal exemptions allowed by the Internal Revenue Code, shall be allowed, and there shall be deducted in computing the taxable income of a blind person, a deaf person, or a totally disabled person, instead of the exemptions provided by subsection (a), the amount of $7,000.

(d) For taxable years beginning after December 31, 2008, an individual taxpayer may claim an additional exemption known as the "ohana exemption". This additional exemption may be claimed for each qualified dependent, age eighteen and under, who the taxpayer may lawfully claim under the Internal Revenue Code. The exemption is calculated by multiplying the number of qualified dependents age eighteen and under that may be lawfully claimed under the Internal Revenue Code by the appropriate exemption amount for the respective federal adjusted gross income below:

Federal adjusted gross income	Ohana exemption amount
$100,000 and under	$1,000

$100,001 up to $200,000	$500
Over $200,000	$0

For purposes of this subsection, including the determination of an adjusted gross income limitation, a married couple filing a joint return shall be treated as one taxpayer. A husband and wife filing separate returns for a taxable year for which a joint return could have been filed shall claim only the exemptions to which they would have been entitled had a joint return been filed."

SECTION 9. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) Allowance of credit.

(1) In general. For each resident taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, who maintains a household [~~which includes as a member one or more qualifying individuals (as defined in subsection (b)(1)),~~] for which there are one or more qualifying individuals (as defined in subsection

(b)(1)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year. If the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of the credit over payments due shall be refunded to the resident taxpayer; provided that tax credit properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual; and provided further that no refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than $1.

(2) Applicable percentage defined. For purposes of paragraph (1), the term "applicable percentage" means twenty-five per cent reduced (but not below fifteen per cent) by one percentage point of each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $22,000.

(b) Definitions of qualifying individual and employment-related expenses. For purposes of this section:

(1) Qualifying individual. The term "qualifying individual" means:

(A) A dependent of the taxpayer who is under the age of thirteen and with respect to whom the taxpayer is entitled to a deduction under section 235-54(a),

(B) A dependent of the taxpayer who is physically or mentally incapable of caring for oneself[~~, or~~] and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

(C) The spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for oneself[~~.~~] and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.

(2) Employment-related expenses.

(A) In general. The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are one or more qualifying individuals with respect to the taxpayer:

(i) Expenses for household services, and

(ii) Expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.

(B) Exception. Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of:

(i) A qualifying individual described in paragraph (1)(A), or

(ii) A qualifying individual (not described in paragraph (1)(A)) who regularly spends at least eight hours each day in the taxpayer's household.

(C) Dependent care centers. Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if:

(i) Such center complies with all applicable laws, rules, and regulations of this State, if the center is located within the jurisdiction of this State; or

(ii) Such center complies with all applicable laws, rules, and regulations of the jurisdiction in which the center is located, if the center is located outside the State; and

(iii) The requirements of subparagraph (B) are met.

(D) Dependent care center defined. For purposes of this paragraph, the term "dependent care center" means any facility which:

(i) Provides care for more than six individuals (other than individuals who reside at the facility), and

(ii) Receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar limit on amount creditable. The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed[~~:~~

~~(1) $2,400 if there is one qualifying individual with respect to the taxpayer for such taxable year, or~~

~~(2) $4,800 if there are two or more qualifying individuals with respect to the taxpayer for such taxable year.~~] $5,000 for each qualifying individual with respect to the taxpayer for such taxable year.

The amount [~~determined under paragraph (1) or (2) (whichever is applicable)~~] of the employment-related expenses shall be reduced by the aggregate amount excludable from gross income under section 129 (with respect to dependent care assistance programs) of the Internal Revenue Code for the taxable year."

SECTION 10. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Special rules. For purposes of this section:

(1) [~~Maintaining household. An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for the period is furnished by the individual (or, if the individual is married during the period, is furnished by the individual and the individual's spouse).~~] Place of abode. An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of the law.

(2) Married couples must file joint return. If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(3) Marital status. An individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart. If:

(A) An individual who is married and who files a separate return:

(i) Maintains as the individual's home a household that constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) Furnishes over half of the cost of maintaining the household during the taxable year, and

(B) During the last six months of the taxable year the individual's spouse is not a member of the household,

the individual shall not be considered as married.

(5) Special dependency test in case of divorced parents, etc. If:

(A) Paragraph (2) or (4) of section 152(e) of the Internal Revenue Code of 1986, as amended, applies to any child with respect to any calendar year, and

(B) The child is under age thirteen or is physically or mentally incompetent of caring for the child's self,

in the case of any taxable year beginning in the calendar year, the child shall be treated as a qualifying individual described in subsection (b)(1)(A) or (B) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1) of the Internal Revenue Code of 1986, as amended), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) Payments to related individuals. No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual:

(A) With respect to whom, for the taxable year, a deduction under section 151(c) of the Internal Revenue Code of 1986, as amended (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or the taxpayer's spouse, or

(B) Who is a child of the taxpayer (within the meaning of section 151(c)(3) of the Internal Revenue Code of 1986, as amended) who has not attained the age of nineteen at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

(7) Student. The term "student" means an individual who, during each of five calendar months during the taxable year, is a full-time student at an educational organization.

(8) Educational organization. The term "educational organization" means a school operated by the department of education under chapter 302A, an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended, or a university, college, or community college.

(9) Identifying information required with respect to service provider. No credit shall be allowed under subsection (a) for any amount paid to any person unless:

(A) The name, address, taxpayer identification number, and general excise tax license number of the person are included on the return claiming the credit,

(B) If the person is located outside the State, the name, address, and taxpayer identification number, if any, of the person and a statement indicating that the service provider is located outside the State and that the general excise tax license and, if applicable, the taxpayer identification numbers are not required, or

(C) If the person is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name and address of the person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required."

PART IV

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2050.

Report Title:
Tax Credits; Caregiving; Home Modification; Disabled; Exemptions

Description:
Provides tax credits for modifications to accommodate persons with disabilities, to facilitate aging-in-place, for caregivers, and provides an additional exemption to low-income families for dependents under the age of eighteen. (SD2)