S.B. NO. 3111

JAN 22 2008

A BILL FOR AN ACT

RELATING TO TAXATION.

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

SECTION 1. The purpose of this Act, to be known as the "Ohana Tax Reduction Act," is to provide an additional personal exemption for any dependent age eighteen or younger for families with a federal adjusted gross income of $200,000 or less and to increase the tax relief provided by the child and dependent care credit provided by section 235-55.6, Hawaii Revised Statutes.

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 to 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 and absolute need for such services in Hawaii.

The legislature finds that families are faced with little alternative with regard to caring for dependents -- either work and pay for care; or not work, care for dependents, and verge on succumbing to poverty. The legislature further finds that the foregoing alternatives are unacceptable for Hawaii taxpayers.

The purpose of this Act is to provide meaningful financial relief to the ohana that care for children and dependents in Hawaii.

SECTION 2. 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, in addition to the other exemptions in this section, known as the "Ohana exemption." The additional exemption may be claimed for each qualified dependent, age eighteen and under, which the taxpayer may lawfully claim under the Internal Revenue Code. The taxpayer may ascertain the additional exemption by multiplying the number of qualified dependents age eighteen and under that may be lawfully claimed under the Internal Revenue Code by the 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 determination of the adjusted gross income limitation, a married couple filing a joint return will 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 by them shall claim only the additional exemptions to which they would have been entitled had a joint return been filed."

SECTION 3. 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) with respect to such individual), 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 4. 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 local 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."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2007; provided that section 2 relating to amendments made to section 235-54, Hawaii Revised Statutes, shall apply to taxable years beginning after December 31, 2008.

INTRODUCED BY: ______________________

BY REQUEST

Report Title:
Income Tax Relief; Ohana Tax Reduction Act

Description:
Provides an additional exemption for those with a dependent aged 18 and under with adjusted gross incomes of $200,000 or less. Modifies and increases the child and dependent care credit.

SB. NO. 3111

JUSTIFICATION SHEET

DEPARTMENT:	Taxation
TITLE:	A BILL FOR AN ACT RELATING TO TAXATION.
PURPOSE:	To provide an additional personal exemption for any dependent age eighteen and younger for households with $200,000 or less in federal adjusted gross income. In addition, to increase the amount of qualifying expenses eligible for the credit provided in section 235-55.6, Hawaii Revised Statutes (HRS), and to make other housekeeping amendments to conform to section 21 of the Internal Revenue Code (IRC).
MEANS:	Amend sections 235-54 and 235-55.6(a), (b), (c), and (e), HRS.
JUSTIFICATION:	Taxpayers with children, dependent elderly parents, and disabled dependents, face a significant additional financial burden in caring for these dependents. In addition to expenses incurred for the basic care of dependents, taxpayers with school-aged dependents often incur costs associated with the purchase of school supplies, after school programs, and other necessities not funded by the school systems. In light of the increased expenses attributable to caring for children, an additional income tax exemption is warranted to provide economic relief to taxpayers with such dependents. The additional exemption provided by this legislation is known as the "Ohana Exemption." Specifically, this legislation allows taxpayers with dependents age eighteen and younger to claim an additional exemption of $1,000 for households with income of $100,000 or less. In addition, this legislation allows taxpayers to claim an additional exemption of $500 for each dependent age eighteen and under for households with income of more than $100,000 and up to $200,000.

The cost of caring for children, disabled dependents, and dependent elderly parents is significant in Hawaii. To ease this burden, this Act increases the amount of qualifying expenses eligible for the credit provided in section 235-55.6, HRS, to $5,000 per dependent. This legislation also makes other housekeeping amendments to section 235-55.6, HRS, to maintain consistent conformity to section 21, IRC.

Impact on the public: All families with school-aged children, disabled dependents, and dependent elderly parents will benefit from these tax provisions and receive much needed economic relief from the rising costs of education-related and care-related expenses.

Impact on the department and other agencies: The department will be responsible for administering the tax exemptions.

GENERAL FUND:	$9,000,000 for FY 2009; $25,900,000 for FY 2010 and thereafter.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	TAX 100.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval, and shall apply to taxable years beginning after December 31, 2007; provided that the amendments to section 235-54, HRS, providing an additional exemption for dependents aged 18 and under, shall apply to taxable years beginning after December 31, 2008.