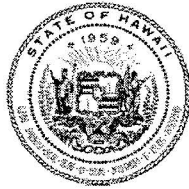


LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
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HOUSE COMMITTEE ON FINANCE

TESTIMONY REGARDING HB 2137 HD 1 RELATING TO HEALTH

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: FEBRUARY 26, 2008

TIME: 11:00AM

ROOM: 308

This bill provides a tax credit up to \$15,000 for the costs associated with the donation of an organ. The bill applies to taxable years beginning after December 31, 2007.

The House Committee on Health amended the bill by providing the Department with the authority to issue credits on a first-to-file basis.

The Department of Taxation **takes no position** on this legislation.

I. DEFINITION OF ORGAN.

The Department notes that the definition of "organ" is rather limited. The Department strongly urges the Committee to consider all possible organs that are commonly donated between living persons to assure that there is no organ inadvertently left off of this list. The Department also suggests that the definition be clarified to assure that the definition of "organ" does not include blood, plasma, or other commonly donated bodily fluids.

The Department questions the inclusion of lost wages as a qualifying "expense." Lost wages are not expenses and the taxpayer already does not have to pay tax on the lost wages. However, the Department suggests that medical expenses be added to the list since these costs may not be covered by insurance.

To the extent the taxpayer took a medical expense deduction for the expense, no deduction should be allowed under this section. However, the taxpayer should be entitled to deduct under this section the amount of the expenses that did not exceed the 7.5% of adjusted gross income floor of the medical expense deduction.

II. COMPLIANCE WITH ALL LAWS PROVISION

In order to qualify for the tax credit, taxpayer must be "in compliance with all applicable federal, state and country statutes, rules and regulations and has donated one or more of the taxpayer's human organs for the purpose of an organ transplant during the taxable year." [emphasis added]. As this currently reads, a parking violation would disqualify a taxpayer from receiving the credit. Without further clarification as to which laws are applicable, the Department finds such compliance with this requirement to be unenforceable. The Department therefore suggests that the requirements for compliance with all applicable laws found in section (b) be clarified.

III. UREVENUE ESTIMATE.

This bill is estimated to result in a revenue loss of \$15,000 for FY 2009.

**HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008
COMMITTEE ON FINANCE**

Tuesday, February 26, 2008
11:00 AM Room 308, State Capitol

Testimony in SUPPORT of HB2137, HD1

By

**Stephen A. Kula, Ph.D., NHA
Executive Director, Organ Donor Center of Hawaii**

My name is Steve Kula; I am the Executive Director of the Organ Donor Center of Hawaii and member of the Hawaii Coalition on Donation. I am here to give testimony in **SUPPORT of HB2137, HD1**. We believe that this Bill would provide needed assistance to the citizens of our state who wish to be living donors and help someone in need of an organ transplant.

For the past 20 years, Organ Donor Center of Hawaii has strived to provide transplantable organs from deceased donors to our local community. Despite our efforts, however, Hawaii's waitlist continues to grow and every year people die while waiting. It is clear that we need alternatives to the decreasing number of donation, and living donors is a viable source of organs for transplant. You can make this possible by passing HB2137, HD1. It will reduce a financial barrier and help offset expenses a living donor will incur in saving someone else's life.

Thank you for your consideration.

L E G I S L A T I V E

(1e)

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Credit for organ donation

BILL NUMBER: HB 2137, HD-1

FIN 2/26

INTRODUCED BY: House Committee on Health

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to establish a refundable tax credit for the expenses incurred relating to the donation of organs. The credit shall not exceed \$1,000 per taxpayer per year and \$15,000 for all taxpayers per year for unreimbursed travel expenses, lodging expenses, and lost wages. The taxpayer shall be entitled to one credit in a lifetime. Requires the donor to be a full-time resident of the state and have donated one or more organs to another human being, and shall not apply to organs sold for monetary or other consideration.

Defines "human organ" as all or part of a liver, pancreas, kidney, intestine, lung or bone marrow.

The director of taxation may adopt rules pursuant to HRS chapter 91, prepare the necessary forms to claim the credit, may require proof of the claim, and allocate the credit on a first-come, first-served basis.

The credit shall sunset on December 31, 2012 and be repealed on June 30, 2014.

EFFECTIVE DATE: July 1, 2008; applicable to tax years beginning after December 31, 2007

STAFF COMMENTS: This measure allows taxpayers to claim a credit for expenses incurred as a result of donating a human organ to another person.

It should be remembered that this measure would grant preferential tax treatment to a select group of taxpayers and it does so without the taxpayer's need for tax relief. Generally, preferential tax treatments are designed to alleviate an undue burden on those who are unable to carry that burden, largely the poor and low income. An example is the general excise tax food credit for purchases made by the poor. If this measure is enacted, it would merely result in a subsidy by the state to encourage taxpayers to donate their organs without regard to a taxpayer's need for tax relief.

In a sense this proposal is insulting in that it attempts to reward a person for having made a donation of a human organ in order to save a life, a humanitarian act that has been reduced to an income tax credit. It should be remembered that the word "donation" has its genesis in the Latin word "*donare*" which means to give or give freely without contingency and, as such, donations of human organs should be given without consideration for compensation.

If the intent is to cover some of the costs associated with the donation of a human organ, then just appropriate the money to a department that can then judge what are appropriate costs to reimburse the donor. Why complicate the tax forms and instructions for a handful of taxpayers?

Digested 2/25/08



February 25, 2008

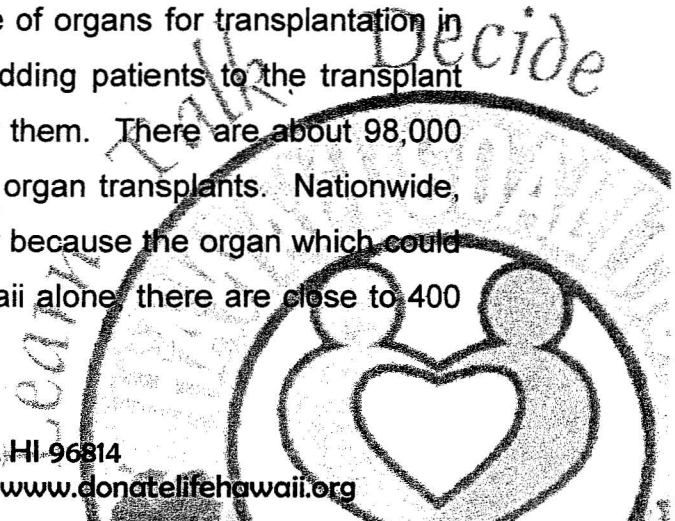
Representative Marcus Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair
Committee on Finance
Hawaii State Capitol
Conference Room 308
Honolulu, HI 96813

RE: H.B. No. 2137 – Relating to Health (Tax Credit; Organ Donation)

Dear Chairman Oshiro, Vice Chair Lee and members of the House Committee on Finance:

I am Glen Hayashida, CEO, National Kidney Foundation of Hawaii (NKFH) and member of the Hawaii Coalition on Donation. It is my privilege to support HB 2137. This bill is designed to help reduce a financial barrier for people who are considering giving a second chance at life to someone by becoming a living organ donor. This legislation would create a one-time \$1,000 state income tax credit for living donors who incur expenses because of travel, lodging and lost wages associated with organ donation. For this purpose, living donor is defined as anyone who donates a kidney, bone marrow, or part of a liver, lung, intestine, or pancreas.

It is well known that we have a serious shortage of organs for transplantation in the United States, including Hawaii. We are adding patients to the transplant waiting lists faster than organs can be found for them. There are about 98,000 people in America on the waiting list to receive organ transplants. Nationwide, over 5,000 of these individuals will die each year because the organ which could have saved their life was not available. In Hawaii alone, there are close to 400



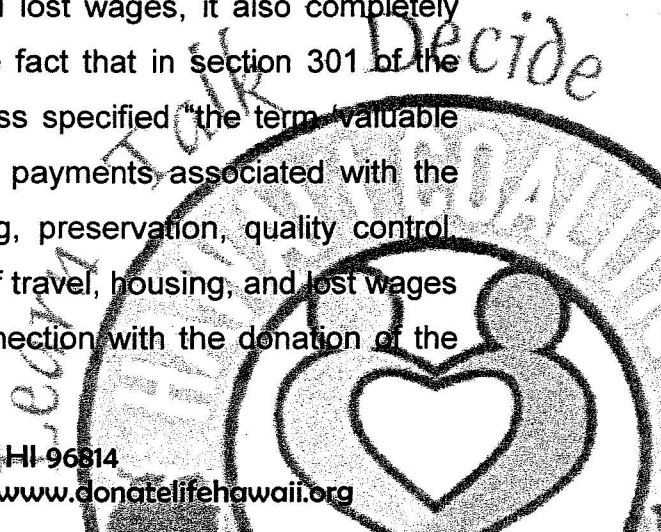


people on the waiting list today; as many as 16 people this year will die while on the transplant waitlist.

Since 2002, in Hawaii we have had a total of 104 living donors. This is an average of 17 living donors per year. Nationwide, the number of living organ donors exceeds the number of donations received from deceased individuals. While, this only happened once in Hawaii, in 2005, the percentage of living donors has increased significantly. This trend is predicted to continue, making the need for legislation providing partial relief of the costs of donating making more important than ever.

There is additional value to be had from living donations. The quality of transplant is often better when the organ comes from a living donor. Many times there are fewer infections, fewer complications, longer working-life of the organ, and generally better outcomes.

HB 2137 is modeled after similar laws (more commonly known as "Cody's Law") in Arkansas, Georgia, Iowa, Minnesota, New Mexico, New York, North Dakota, Oklahoma, Utah, and Wisconsin (where it originated). In Idaho, a version of the law was adopted in 2006 that allows a \$5,000 tax credit. Overall, Cody's Law provides financial assistance to living organ donors through a tax deduction or a tax credit to cover travel, lodging expenses and lost wages; it also completely conforms to federal law. This bill reiterates the fact that in section 301 of the National Organ Transplant Act of 1984, Congress specified "the term 'valuable consideration' does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the





organ.” HB 2137 uniquely provides a monetary helping-hand to those who choose to donate organs.

HB 2137 is a unique bill in several ways. It is the first of its kind to provide for reimbursement of expenses for organ donation in a way that conforms completely with federal law. This bill creates a \$1,000 state income tax credit for living donors. This is a way to facilitate the gift of those who bravely and generously choose to become living organ donors. It fully is within the limits of federal law which prohibit a person from acquiring, receiving, or otherwise transferring an organ for valuable consideration for use in human transplantation.

This bill is designed to help save lives. This bill is relevant; there is a genuine and increasing need for living organ donations. Most importantly, this legislation can save lives by lending a helping hand to those who selflessly choose to give the gift of life.

Thank you for your consideration



February 26, 2008

**Before
Honorable Marcus Oshiro, Chair
Honorable Marilyn Lee, Vice-Chair
House Committee on Finance**

Public Hearing - 11:00AM Tuesday, February 26, 2008 - Conference Room 308

RE: Testimony in strong support of HB 2137 - Relating to Health
Provides a tax credit for expenses related to an organ donation

**The Honorable Marcus Oshiro, Chair; Honorable Marilyn Lee, Vice-Chair
and members of the committee:**

My name is Tony L. Sagayadoro, Program Coordinator of the Minority Organ Tissue Transplant Education Program (MOTTEP) of the Organ Donor Center of Hawaii, founding member of the Hawaii Coalition on Donation, and a 2000 Kidney Transplant Recipient and I appreciate the opportunity to testify in support of the intention of HB 2137 which provide and allow a one time tax credit for expenses related to organ donation..

We fully support the passage of the intention of HB 2137 for the following reasons:

- recognize the financial burden, and offers an amount of relief to an individuals who gives so much of themselves by giving the *Gift of Life*
- remove one barrier for a potential living donor to consider
- encourage more people to serve as living donors
- helps increase the supply of the critically needed organs and bone marrow
- saves the lives of critically ill patients who needs organ transplant
- Other states have already passed similar legislation to address the critical shortage of organs for transplantation: Arkansas, signed into law, March, 2005; Georgia, signed into law, April, 2004; Idaho, signed into law, July, 2006; Iowa, signed into law, May, 2005; Minnessota, signed into law, July, 2005; New Mexico, signed into law, April 2005; North Dakota, signed into law, March, 2005; Utah, signed into law, March, 2005; other states like Oklahoma, Wisconsin; and other states who have pending legislation.

We urge that you give HB 2137 your favorable consideration.

Thank you.

Sincerely,

Tony L. Sagayadoro