TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:
H.B. NO. 2197, RELATING TO TAXATION.

BEFORE THE:
HOUSE COMMITTEES ON HEALTH AND ON HUMAN SERVICES AND HOUSING

DATE: Wednesday, February 13, 2008 **TIME:** 8:00 AM
LOCATION: State Capitol Room 329
Deliver to: State Capitol, Room 436, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Mary Bahng Yokota, Deputy Attorney General

Chairs Green and Shimabukuro and Members of the Committees:

There appears to be an unintended legal ambiguity in this bill.

This bill provides an income tax credit to caregivers who care for qualified care recipients.

The bill provides a table of percentages to be used in the calculation of the tax credit. It, however, does not specify to what amount the percentages are to be applied. It is unclear whether the caregiver is entitled to claim a tax credit for a percentage of the maximum amount of the tax credit ($1,000.00), the cost of caring of the qualified care recipients, or something else.

We recommend that the means of calculating the tax credit be clearly expressed in the bill.

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
FAX NO: (808) 587-1560

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES & HOUSING

TESTIMONY REGARDING HB 2197 RELATING TO TAXATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATIN (OR DESIGNEE)
DATE: FEBRUARY 13, 2008
TIME: 8:00AM
ROOM: 329

This bill proposes a refundable tax credit to eligible taxpayers caring for qualified care recipients. The amount of the credit will vary depending on the taxpayer's adjusted gross income.

The Department of Taxation (Department) **provides comments** on this legislation; **however prefers the fiscal priority of the Administration measure HB 3195**, which provides substantial targeted tax relief to those persons who modify their homes for the safety and mobility of the elderly or disabled.

I. THE DEPARTMENT ACKNOWLEDGES THE IMPORTANCE OF CARE INCENTIVES FOR HAWAII TAXPAYERS.

The Department acknowledges that as Hawaii's residents age, more and more responsibility is falling upon the family to care and provide for the elderly. By 2020, the elderly and disabled population of Hawaii will constitute over one-fourth of the State's adult population. It is critical that policies are enacted to ease the burden on the aging and their families that must cope with the caregiving issue. It is the position of the Department that the policy of this bill is laudable.

However, given the fiscal picture within which the government must operate, the Department prefers the tax incentive provided by the Administration measure to provide a more generous refundable credit to assist both the elderly and disabled to modify their homes in order to enjoy their independence. HB 3195 provides for such relief and has been factored into the executive budget.

II. THE DEPARTMENT RAISES THE FOLLOWING TECHNICAL ISSUES.

The Department raises technical flaws for this Committee's consideration.

TECHNICAL MATTER – ADDITIONAL SUBSECTION REQUIRED – A new subsection should be inserted with the following subsections renumbered accordingly. The new subsection should read:

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

TECHNICAL MATTER – DEFINITION OF "QUALIFIED CARE RECIPIENT" – The definition could be construed to mean that the third requirement (certification by a physician or nurse) is only required when the taxpayer meets the second requirement (providing more than fifty percent of the financial support) but not when the taxpayer meets the first requirement (co-residing with the caregiver at least six months of the taxable year). Thus, the Department recommends that the first and second requirements be combined into a single requirement reading:

> (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

The Department also notes that the credit is only available if the care recipient is sixty years of age or older. No credit would be given for caring for a disabled child or disabled adult.

UNNECESARY SUBSECTION—Subsection (f) is unnecessary. The Department currently has broad authority to adopt rules and require substantiation.

ASSISTING THE OFFICE ON AGING—This bill requires in subsection (h) that the Department assist the Executive Office on Aging, by providing information on caregiver services to those who claim the tax credit. The Department has no objection to assisting taxpayers learn more about caregiver services. *Practically, however, the Department will be unable to provide taxpayer identities, addresses, or other contact information to the Executive Office on Aging because of strict taxpayer confidentiality laws.* To avoid any problems, the Department offers the suggestion that all mailing materials be provided by the Executive Office on Aging to the Department, and then the Department can mail these materials to taxpayers without breaching confidentiality standards. Should this committee deem this provision of the bill necessary, the Department respectfully requests that this bill be amended to provide for a $100,000 appropriation for the Department to cover the costs of processing and mailing such materials.

III. REVENUE IMPACT.

Annual revenue loss is $43.6 million for FY 2009.

LINDA LINGLE
GOVERNOR OF HAWAII

CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

NOEMI PENDLETON
DIRECTOR

Telephone
(808) 586-0100

Fax
(808) 586-0185

STATE OF HAWAII
EXECUTIVE OFFICE ON AGING
NO. 1 CAPITOL DISTRICT
250 SOUTH HOTEL STREET, SUITE 406
HONOLULU, HAWAII 96813-2831

Committee on Health
Committee on Human Services and Public Housing

HB 2197, RELATING TO TAXATION

Testimony of Noemi Pendleton
Director of Executive Office on Aging
Attached Agency to Department of Health

Wednesday, February 13, 2008

8:00 a.m.

Department's Position: The Executive Office on Aging defers to the Department of Taxation as this is a tax matter.

Fiscal Implication: EOA prefers the Administration's proposals to establish a home modification tax credit and increase the dependent care tax credit as alternative methods of providing family caregivers with financial assistance.

Purpose and Justification: The Executive Office on Aging (EOA)'s Family Caregivers Needs Assessment completed in 2007 revealed that caregivers need more affordable services and financial assistance. Family caregivers indicated an interest in some type of caregiver tax credit. The purpose of this measure is to provide a tax credit to caregivers who care for qualified care recipients.

Pursuant to Act 204, SLH 2007, the Executive Office on Aging had contracted with the University of Hawaii Public Policy Center to conduct a cost-benefit analysis of a caregiver tax credit as was proposed in S.B. No. 1199, S.D. 2 (2007). Dr. Dave Nixon, the author of this analysis, concluded that the likely cost of a caregiver tax credit is estimated at $37.4 million, and the likely consumer benefit is estimated at $38.2 million.

The revisions to Chapter 235, Hawaii Revised Statutes, states the requirements and process for family caregivers seeking a tax credit not to exceed $1,000. EOA cannot speak to the adequacy of Chapter 235 in anticipation of implementation questions or problems. The EOA defers this function to the Tax Department, which is more knowledgeable in this area.

EOA is not clear about the intent of Section 2, (h) on Page 4, lines 16 to 18: "The Department shall assist the executive office on aging in providing information on caregiver services to each taxpayer who claims the tax credit." EOA is asking for clarification on what it means to "provide information on caregiver services to each taxpayer who claims the tax credit" Does it mean information on caregiver services like community resources or does it mean information on how a family caregiver can qualify and claim a caregiver tax credit?

Also, EOA respectfully requests that on page 5, line 1 which describes "Qualified care recipient" should also include those with disabilities and special needs.

Providing some form of financial assistance will help families who are often burdened with out-of-pocket expenses of caring for a recipient who is disabled or elderly at home. While a caregiver tax credit is laudable, EOA recommends that the Legislature consider establishing a home modification tax credit and increasing the dependent care tax credit that the Administration is proposing.

Thank you for the opportunity to testify.

TAX FOUNDATION
OF HAWAII

126 Queen Street, Suite 304, Honolulu, Hawaii 96813-4415, Telephone 536-4587

FAX TRANSMISSION

Date: February 11, 2008 **Fax:** 586-6051

To: House of Representatives
(testimony)

From: Lowell L. Kalapa, President
Tax Foundation of Hawaii

Phone (voice): 536-4587
(fax): 536-4588

Total Pages(including this sheet): 4

RE: HB 2197 - Relating to Taxation (3 pages)

TO:	Rep. Josh Green, Chair House Health Committee Rep. Maile Shimabukuro, Chair House Human Services & Housing Committee
Date of Hearing:	Wednesday, February 13, 2008
Time of Hearing:	8:00 am
Copies:	5 copies

Thank you.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

5-7

SUBJECT: INCOME, Caregiver tax credit

BILL NUMBER: SB 2049; HB 2197 (Identical), HB 2113 (Similar)
1/24 HS 2/8 HU

INTRODUCED BY: SB by Ihara, Baker, Chun Oakland, Tokuda, and 5 Democrats; HB 2197 by Lee, Belatti, Ching, Har, Marumoto, Meyer, Mizuno, Rhoads, Sonson, Thielen, Ward, Waters; HB 2113 by Mizuno, Belatti, Marumoto, Meyer, Rhoads, Sonson, Thielen, Ward

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow eligible taxpayers to claim a caregiver tax credit that shall be deductible from a taxpayer's income tax liability. The credit shall be a based on the adjusted gross income of the caregiver according to the following:

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

HB 2113 provides that the tax credit shall not exceed $________.

A husband and wife filing separate returns for which a joint return could have been filed shall be entitled only to the credit to which they would have been entitled if they filed jointly. An eligible taxpayer may claim the credit for every year the taxpayer provides care to a care recipient; only one caregiver per household may claim a credit for any one care recipient cared for in a taxable year. Prohibits an eligible taxpayer from claiming multiple tax credits under this section regardless of the number of care recipients receiving care from the eligible taxpayer.

Defines "eligible taxpayer" for purposes of the measure. Defines "qualified care recipient" as a person who is 60 years of age or older, a citizen or resident alien of the United States, who: (1) has co-resided with the caregiver for at least six months of the tax year for which the credit is claimed; (2) has received more than 50% of the qualified care recipient's financial support during the tax year from a caregiver; and (3) is certified by a licensed physician or advanced practice registered nurse as requiring the specified care delineated. HB 2113 allows a "qualified care recipient" to be a relative.

Credits in excess of a taxpayer's income tax liability may be refunded to the taxpayer provided such amount is over $1. Claims for the credit, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year. The director of taxation may adopt rules pursuant to HRS chapter 91 and prepare the necessary forms to claim the credit and may require proof of the claim for the credit.

SB 2049/HB 2197; HB 2113 - Continued

Requires the department of taxation to report annually to the legislature on the number of taxpayers claiming the tax credit and the total cost of the credit to the state during the past year. Requires the department to assist the executive office on aging in providing information on caregiver services to each taxpayer who claims the credit. HB 2113 requires the executive office on aging to maintain records of the names of eligible taxpayers and the total amount of credit that the taxpayer is allowed to use for a taxable year, and verify no more than $10 million in credits in the aggregate for all taxpayers for each taxable year.

EFFECTIVE DATE: SB 2409/HB 2197 - Tax years beginning after December 31, 2007; HB 2113 - July 1, 2008; applicable to tax years beginning after December 31, 2007

STAFF COMMENTS: These measures propose to grant an income tax credit to caregivers for a person cared for during the taxable year that has lived in the caregiver's home for at least six months during the taxable year. The needs of the care recipient must meet criteria of disability outlined in the bill. While the measures propose that the credit is a percentage, depending on the caregiver's adjusted gross income, there is no credit amount that the percentage is to be applied to, i.e., for taxpayers with adjusted gross incomes of under $30,000 and eligible for a tax credit of 100%, what is the dollar amount of the credit? As drafted, the credit may not exceed $1,000 in the two identical bills and it may not exceed a blank amount in HB 2113, but in neither version of the bills does the language specify the credit shall be a specific dollar amount.

It should be noted that while the enactment of these measures would utilize the tax system to hand out a subsidy to encourage persons to provide such care for relatives, the use of the tax system as an in-lieu welfare agency is not efficient nor is it productive. The proposed tax credit amounts to nothing more than an appropriation of taxpayer dollars through the back door by way of the tax credit. It represents an uncontrolled cost to state government for a program over which lawmakers will have no opportunity to review and approve the level of these "back door" expenditures.

Since neither the department of human services nor the department of health would be responsible for providing intermediate care or skilled nursing services, such subsidies, if deemed appropriate, would be better administered through those departments as a state program with funds appropriated to it. As the program comes up for review, lawmakers can assess the effectiveness of the program and decide whether or not more money is needed to make the program work.

The credit, on the other hand, would be afforded without regard as to how effective it is in keeping the elderly out of intermediate care facilities. More importantly, from a dollars and sense point of view, lawmakers would have no control over the cost of the credit as the revenue losses will be dictated by the amount of response the credit elicits. From the human services and health department perspective, there would be no assurance of the quality of care being provided. How would taxpayers view this program if it were discovered that credit claimants were abusive and neglectful of their relatives yet still received the credit? These measures assume that because the care is being provided by a relative that the care should be rewarded with a tax subsidy of taxpayer dollars. More often than not, many of the cases of elder abuse are perpetrated by relatives. As recently as last year, the media covered the issue of elder abuse where it was revealed that more often than not, the perpetrators of that abuse are relatives of the elders. Obviously the sponsors have given little thought to the down side of this incentive.

Finally, it should be remembered that once enacted, a tax benefit is difficult to reduce or eliminate. Thus, while the credit proposed in these measures may be reviewed and statistically analyzed, it will more than likely become a permanent fixture of the tax system, if approved. Instead of spending hard-earned tax dollars on such "quick-fix" solutions, more thought should be devoted to this growing and complex issue of elder and assisted care. Efforts should be directed toward growing the supply of available care and the reform of the delivery system for such care.

Instead of handing out tax credits, the revenues foregone might be used to provide respite care so that caregivers can get some relief and therefore lessen the stress that comes with providing care to an elderly relative. Or could the funds foregone be put into a program that provides education on how to provide better care for the disabled person be it lifting the person from a seated position to standing or how to bathe the disabled relative. The support system for such care providers would provide far more assistance to the care giver in the skills needed to provide quality care while providing alternatives to alleviate the stress that is placed on the caregiver.

Note well that in order to qualify for the credit, the "qualified care recipient" must be 60 years of age or older. Thus, the credit would not be available to a person who is providing care to a disabled child or for that matter an injured veteran of Iraq or Afghanistan. Regardless, rewarding persons who are providing care over which there is no public oversight invites abuse and fraud and certainly brings into question the quality of care being paid for by all other taxpayers.

Digested 1/22/08

TO : HOUSE COMMIITTEE ON HEALTH
Rep. Josh Green, M.D., Chair
Rep. John Mizuno, Vice Chair

HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING
Rep. Maile S. L. Shimabukuro, Chair
Rep. Karl Rhoads, Vice Chair

FROM: Eldon L. Wegner, Ph.D.,
PABEA (Policy Advisory Board for Elder Affairs)

SUBJECT: **HB 2197 Relating to Taxation**

HEARING: 8 am Wednesday, February 13, 2008
Conference Room 329, Hawaii State Capitol

PURPOSE: This bill provides a tax credit to taxpayer caregivers who care for qualified recipients.

POSITION: **PABEA supports this bill to provide a refundable tax credit to eligible family caregivers as specified in the provisions of the bill.**

RATIONALE:

I am offering testimony on behalf of PABEA, the Policy Advisory Board for Elder Affairs, which is an appointed board tasked with advising the Executive Office on Aging (EOA). My testimony does not represent the views of the EOA but of the Board.

- We support legislation which would provide financial assistance to family caregivers. The statewide caregiver survey confirmed that a majority of family caregivers have low incomes and suffer from financial strain. In addition, they have difficulty affording needed services. A tax credit was one of the most frequent requested forms of assistance by the caregivers responding to the survey.

- The provisions of this bill reflect the consideration of issues raised by similar bills during the past several years . We support the general parameters of the tax credit contained in this bill, including:

- The tax credit is refundable. Many low-income tax payers do not pay state taxes or pay very low state taxes, but they should not be excluded from receiving the level of financial they qualify for based on the income criterion;

- $ Offering a sliding scale, so that the limited funds in the program can provide greater assistance to the lowest income categories of caregivers but that all family caregivers receive some support for their financial sacrifices in caregiving;

- $ Recipients need to be provided with information concerning available caregiver support, training opportunities, and other information which can affect the quality of care

Thank you for the opportunity to testify.

May Mizuno

From: manis [manis@lava.net]
Sent: Monday, February 11, 2008 1:39 PM
To: HLTtestimony
Subject: Testimony HB2197

Attachments: HB2197 TAX CR. CAREGIVERS

HB2197 TAX CR. CAREGIVERS (670...

Laura Manis Testifier
5 copies

COMMITTEE ON HEALTH
Rep. Josh Green, M.D., Chair
Rep. John Mizuno, Vice Chair
COMMITTEE ON HUMAN SERVICES & HOUSING
Rep. Maile S. L. Shimabukuro, Chair
Rep. Karl Rhoads, Vice Chair

Wednesday February 13, 2008 8 a.m. Conference Room 329 HB 2197 RELATING TO TAXATION. Provides a tax credit to taxpayer caregivers who care for qualified care recipients.

SUPPORT

Kokua Council whose mission includes advocating for the health of the elderly and those vulnerable populations who cannot advocate for themselves support this bill.

This bill fits Kokua Council[1]s principle to help the elderly to Age in Place. We are very cognizant that the elderly want to avoid institutionalization as long as possible.

According to a recent Joint Legislative Committee on Caregiving research project, 1 out of 4 employees report that they are caregivers and that this effects their employment, losing wages, hours, and eventually Social Security benefits. A tax credit will afford some relief.

The statewide caregiver survey also stated that a majority of family caregivers have low incomes and suffer from financial strain. In addition, they have difficulty affording needed services. A tax credit was one of the most frequent requested forms of assistance by the caregivers responding to the survey.

A refundable tax credit recognizes the fact that while many elderly caregivers are not subject to State taxes and so are not eligible for tax credits, they pay most of the costs of caregiving out of pocket at great expense to themselves and their families.

We also realize that making it possible for the elderly to avoid institutionalization relieves overcrowded hospitals and long term care facilities.

While the tax credit will take some money out of the general fund, in the long run the state will save money by not having the responsibility of paying for institutional long term care when they can not provide for themselves.

We ask that you will support this bill.
Laura G. Manis, Legislative Chair, Kokua Council tel. 597-8838

In Support

TESIMONY

To the Committee about Health, Representative Josh Green, M.D., Chair, Representative John Mizuno, Vice Chair, and Committee Members, for a Hearing on Wednesday, February 13, 2008, 8: 00 AM in Conference Room 329, at the State Capitol.

HB 2197 Relating to Taxation.

Description:
Provides a tax credit to taxpayer caregivers who care for qualified care recipients.

From Patricia Urieff, MSW, ACSW, LSW, employed with twenty-four years of experience providing social work services to children and families, including grandparents raising grandchildren.

From my personal experience, I know that it takes financial resources to provide care to one's elderly, ill, and dying parents. It was a very tough living through those nine years. The proposed tax credit would be a support and comfort to caregivers.

In my family that has European roots, I am the oldest child of my parents' three children and I am their only daughter. My parents were strong independent people for most of their lives. Then when my father in his 80s was diagnosed with cancer, for nine (9) years I used my sick leave to take him to medical appointments, be there for hospice home visits, to be with him at St. Francis Hospice until he died. During those nine years, I became more involved with care of my mother in her 80s. When my father died June 2001, I inherited full care of my mother, managed to get her to cooperate with me for assessment from Kaiser Gerontology and received her diagnosis of Alzheimer's disease and a brain tumor. Between 2001 and when she died August 2006, I had to give up my apartment, live in with my mom, take her to day care, maintain full time employment. My two brothers told me that I was doing a good job caring for our mother. My brothers telephoned Mom on special days. Her disease progressed; I used Respite Care, near the end an Adult Residential Care Home, and St. Francis Hospice when she had a brain hemorrhage. I felt (and still do) that my involvement with my parents was a big comfort to each of them in their declining years. During that time I didn't want to leave full time employment and loose my retirement benefits. Our situation would have qualified for a tax credit.

My generation of senior citizens is facing problems related to elders becoming frail and needing care. In the process we struggle to take good care of ourselves. In the future when we become frail and need to ask for help from our adult children, they will experience challenges related to handling their responsibilities and providing supportive care to frail and disabled elderly Hawaii Residents.

I think the next generation would be more interested in making the sacrifices related to giving supportive care if they knew their efforts may result in a helpful tax credit.

Please support this bill.

mizuno1-Edgar

From: Concerned Citizen [concerned.citizen27@yahoo.com]
Sent: Tuesday, February 12, 2008 12:21 AM
To: HLTtestimony
Subject: HB2197 WE NEED RESPITE CARE

Thank you for hearing this bill. I am a caregiver and I am glad the Legislature is trying to help people in my situation. I would, however, like to ask that instead of a tax credit please work on programs to provide respite care. Taking care of my father is something I do because I love my family and it is my obligation to my family, but it is no easy task. While a tax credit is some assistance, I cannot begin to explain the value of respite services to my own physical and psychological health.

WE NEED RESPITE CARE SERVICES