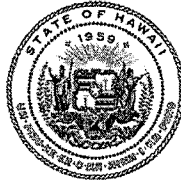


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DEPUTY DIRECTOR

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TAXATION

TESTIMONY REGARDING SB 2757 RELATING TO TAX CREDITS

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

DATE: FEBRUARY 7, 2008

TIME: 1:15PM

ROOM: 224

This Bill would provide a one-time nonrefundable tax credit to assist the victims of the Waialua brushfires on Oahu in 2007.

The Department of Taxation ("Department") takes **no position** on the measure and offers technical comments.

This bill provides for a non-refundable tax credit in an unstated percentage of the losses incurred by the taxpayer for repairs, insurance, rental, or other expenses or costs related to the damage caused to the taxpayer's real or personal property, up to an unstated dollar amount. The tax credit is similar to the tax granted to the victims of certain floods which occurred in 2004 and 2006.

I. TECHNICAL PROBLEMS.

The Department has concerns over certain language contained in the credit, which is for "losses incurred by the taxpayer for repairs, insurance, rental, or other expenses or costs related to the damage caused to the taxpayer's real or personal property". The use of the word "losses" suggests that a taxpayer need not expend money in order to qualify for the credit. For example, if a building were damaged by the fire, but the taxpayer has not restored the building, the taxpayer has incurred a loss, but which is not normally deductible for tax purposes. Including losses for which the taxpayer has not expended monies to repair or replace increases the likelihood that the taxpayer will inflate the value of the losses in order to obtain a higher credit.

In addition, the inclusion of costs "related to the damage" would appear to include in the measure of the credit damages that are not a direct result of the Waialua brushfire. For example, if a family heirloom was lost in the fire, the measure of the credit arguably includes the emotional distress caused by the loss.

The Department suggests that section 1(b) be rewritten as follows:

b) The amount of the nonrefundable tax credit shall be

per cent of the amount expended by the taxpayer for repairs, insurance, rental, or other expenses or costs directly related to the damage caused to the taxpayer's real or personal property by the brushfires in Waialua, Oahu in 2007, provided that:

(1) The expenses or costs are not reimbursable by insurance proceeds or disaster relief payments from government agencies or non-profit organizations; and

(2) The tax credit shall not exceed \$ per taxpayer.

The measure also requires that in order to qualify for the credit, the taxpayer must be in compliance with all applicable federal, state, and county statutes, rules, and regulations. The Department has no ability to determine whether the taxpayer is in compliance with the myriad of applicable federal, state, and county statutes, rules, and regulations. The Department requests that this provision be stricken.

Finally, the Department suggests that boundaries and locations of the Waialua brushfire that are to benefit from this credit be placed in the statute rather than determined by the Department.

II. REVENUE ESTIMATE.

The revenue loss as a result of this legislation cannot be determined, as no credit amounts have been provided.

STATE OF HAWAII
DEPARTMENT OF DEFENSE

TESTIMONY ON SENATE BILL 2757
A BILL RELATING TO TAX CREDITS

PRESENTATION TO THE
COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION

BY

MAJOR GENERAL ROBERT G. F. LEE
DIRECTOR OF CIVIL DEFENSE

February 7, 2008

Chair Fukunaga and Committee Members:

I am Major General Bob Lee, Director of Civil Defense, State Department of Defense. I am providing written testimony on Senate Bill 2757.

A bill to provide a one time nonrefundable tax credit to Oahu residents who were affected by the 2007 Waialua wild fire disaster should be favorably considered. In addition to the homes and businesses that were affected, several farm lots were also impacted by the wild fire.

We defer to the Department of Taxation for further comment and recommendations.

Thank you for the opportunity to provide written testimony on this measure.

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

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SUBJECT: MISCELLANEOUS, Relief for Waialua brushfire victims

BILL NUMBER: SB 2757

INTRODUCED BY: Bunda, Inouye, 3 Democrats and 1 Republican

BRIEF SUMMARY: Allows taxpayers to claim a one-time tax credit of ___% of the losses incurred by the taxpayer for repairs, insurance, rental, or other expenses or costs related to the damage caused to the taxpayer's real or personal property by brush fires in Waialua, Oahu in 2007 provided: (1) the expenses or costs are not reimbursable by insurance proceeds or disaster relief payments; (2) the tax credit shall not exceed \$___ per taxpayer; and (3) no refund or payment of the credit shall be made for amounts under \$1.

Credits in excess of a taxpayer's income tax liability may be applied to subsequent income tax liability until exhausted. Delineates provisions for the distribution and share of the credit in the case of a partnership, S corporation, estate, trust or association of apartment owners. Disallows the credit if a deduction is taken pursuant to section 179 of the IRC (with respect to election to expense certain depreciable businesses assets). The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income tax purposes shall be reduced by the amount of the credit allowed and claimed, otherwise the taxpayer shall treat the amount of the credit as a taxable income item for the taxable year in which it is properly recognized under the accounting method used to compute taxable income.

Claims for the credit, including any amended claims, must be filed on or before the end of 12/31/08. The director of taxation: (1) shall determine the applicability of this act with respect to the boundaries and locations of the brush fires in Waialua in 2007; (2) shall prepare the forms necessary to claim the credit; (3) may require proof of the claim for the credit; and (4) may adopt rules pursuant to HRS chapter 91.

EFFECTIVE DATE: Tax years beginning after December 31, 2007

STAFF COMMENTS: This measure would grant a one-time tax credit to victims of the brush fires that occurred in Waialua, Oahu in 2007. If the intent is to compensate such victims for some of their unreimbursed expenses due to the casualty, consideration should be given to appropriating the funds and administering the aid based on the need for reimbursement and allow each and every occurrence to be judged on its merits and the need for assistance. Given that the intent of this proposal is to provide financial assistance payments to such victims, using the tax system in this manner is a poor and inefficient means of accomplishing that goal.

When the legislature approved such tax relief for victims of the 2004 floods in Manoa and the floods of 2006, that action set a precedent that will now come back to haunt them with each disaster. If they could do it for Manoa flood victims, why can't they do it for Waialua fire victims or for that matter the victims of the 2006 earthquake off the Big Island? Such actions are irresponsible and impugn the integrity of the tax system.

Digested 2/06/08