SB2578

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SENATE COMMITTEE ON EDUCATION AND HOUSING
TESTIMONY REGARDING SB 2578
RELATING TO TAXATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 10, 2010
TIME: 1:20 PM
ROOM: 225

This measure establishes a refundable ohana residential housing income tax credit for qualified taxpayers who purchase a qualified principal residence on or after April 1, 2010, and before January 1, 2012. The credit is equal to 2% of the purchase price up to a maximum of $6,000 and is payable in two equal installments in the two taxable years following the purchase.

The Department of Taxation (Department) **opposes** this measure because it is **outside the budget priorities this legislative session**.

Notwithstanding the merit of this measure, the Department cannot support the tax impacts in this measure because these tax breaks are not factored into the budget. The Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either. Given the forecasted decrease in revenue projections, this measure would add to the budget shortfall.

The Department simply cannot support this tax incentive given the other competing priorities for general fund revenues.

In addition, the Department has the following specific comments on this measure:

1. The stated credit is two percent of the purchase price of the residence, excluding land acquisition costs and escrow closing costs, up to a maximum credit of $6,000. Since land costs are not generally separately stated in a sales agreement, the Department envisions that taxpayers will attempt to limit the portion of the purchase price allocable to the land so as to maximize the amount of credit. The Department anticipates time consuming audits and litigation over the fair value of the land in any sales contract subject to the credit.

2. The measure provides for income limitations based on adjusted gross income. Although it

appears that the intent was to use federal adjusted gross income for measuring income qualification, the measure does not specifically so provide and the default would thereby be Hawaii adjusted gross income. It should be noted that social security benefits and many pension payments are not subject to Hawaii income tax and is therefore excluded from Hawaii adjusted gross income. The end result would be that some taxpayers may be eligible for the credit if Hawaii adjusted gross income is used but would not be if federal adjusted gross income were used.

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February 9, 2010

The Honorable Norman Sakamoto, Chair
Senate Committee on Education and Housing
State Capitol, Room 225
Honolulu, Hawaii 96813

RE: S.B. 2578 Relating to Taxation

HEARING: Wednesday, February 10, 2019 at 1:20 p.m.

Aloha Chair Sakamoto, Vice Chair Kidani and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai‘i Association of REALTORS® ("HAR"), the voice of real estate in Hawai‘i, and its 8,800 members in Hawai‘i. HAR **supports** S.B. 2578 which establishes a refundable ‘ohana residential housing income tax credit of up to $6,000 for qualified taxpayers who purchase a qualified principal residence on or after April 1, 2010, and before January 1, 2012, that will be applied in two equal installments over the immediately following two taxable years.

In February 2009, President Obama signed into law the American Recovery and Reinvestment Act. This measure provided an $8,000 tax credit for first-time home buyers on the purchase of their principal residence on or after January 1, 2009 and before December 1, 2009. In November 2009, Congress extended the home buyer tax credit through April 2010, and expanded the tax credit of up to $6,500 for long time homeowners who purchase a new home.

With the federal tax credit set to expire in April 2010, HAR believes that S.B. 2578 will help stimulate the construction industry, to the extent it applies to all newly constructed principal residences completed after April 1, 2010.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

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Late Testimony by Harry Saunders
President, Castle & Cooke Hawai'i
February 10, 2010

Before the Senate Committee on

EDUCATION AND HOUSING

February 10, 2010
1:20 P.m.
Room 225

In Support of SB 2578

RELATING TO TAXATION

Chair Sakamoto, Vice Chair Kidani and Members of the Senate Education and Housing Committee.

I am Harry Saunders, President of Castle & Cooke Hawai'i. We support SB 2578 because it addresses one of the critical areas indentified by the Construction Industry Task Force.

As a member of the Construction Industry Task Force, established by Senate Concurrent Resolution No. 132, S.D. 1 (2009), we were directed to determine the direct contributions of the construction industry to the local economy as well as its impact on related industries, such as tourism and housing. We were also tasked with developing and proposing state actions that would promote overall economic growth, create jobs and accelerate construction and its associated positive impacts on the economy.

Based on its findings, the task force developed recommendations and proposed actions to address a number of issues, which was presented in a report to the 2010 Legislature. SB 2578 addresses the issue identified by the task force as follows:

Tax Incentives: To combat current economic conditions, the task force's Tax & Incentives committee, headed by Ray Kamikawa, a partner at Chun Kerr Dodd Beaman & Wong, made several recommendations to establish or increase tax credits to encourage continued development and increase resources available to developers, including:

- Creating a 10-percent refundable hotel/timeshare construction and remodeling tax credit, to encourage developers to continue with the planning and construction of millions of dollars worth of hotel and timeshare projects that are currently stalled or stopped;
- Monetizing the state low-income tax credit by permitting the exchange of unused tax credits for an interest-free loan from the Hawai'i Housing Finance Development Corporation; and
- Introducing a new construction income tax credit for qualified homebuyers equal to two percent of a home's purchase price or $6,000, whichever is lower. This will work to stimulate construction activity, particularly in the residential sector.

In response to the current economic climate, we ask for your consideration and support of SB 2578 as it will help to generate an immediate impact on our state's delicate economy by creating jobs to build homes for Hawai'i Families. SB 2578 will bring action and positive change to spur our economy. It is our understanding that the payroll generated by new jobs will more than offset the tax credit.

Mahalo for your consideration of our testimony. If you have questions, please feel free to contact us:

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SUBJECT: INCOME, Ohana residential housing income tax credit

BILL NUMBER: SB 2638; HB 2440 (Identical); SB 2578 (Similar)

INTRODUCED BY: SB 2638 by Hanbusa by request; HB 2440 by Say by request; SB 2578 by Sakamoto and 1 Democrat

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a qualified taxpayer to claim an ohana residential housing income tax credit equal to the lesser of: (1) 2% of the purchase price of the qualified principal residence; or (2) $6,000 provided that the tax credit shall be payable in two equal installments over two consecutive taxable years beginning with the taxable year in which the binding contract to purchase the qualified principal residence is signed. If more than one qualified taxpayer claims the tax credit, then the applicable tax credit shall be divided equally between each qualified taxpayer. Stipulates that for purposes of this measure a married couple is considered to be one qualified taxpayer. The tax credit shall be limited to qualified principal residences with a purchase price of $625,000 or less.

A "qualified taxpayer" is an individual that signs a binding contract to purchase a qualified principal residence on or after April 1, 2010, and before January 1, 2012; provided that the individual closes on the purchase of their newly constructed principal residence on or after April 1, 2010 and before March 1, 2012. Further provides that a qualified taxpayer shall be: (1) an individual with adjusted gross income of $75,000 or less; (2) a married couple with adjusted gross income of $150,000 or less; or (3) a grantor of any trust with adjusted gross income of $75,000 or less. A "qualified principal residence" is a principal residence that is a newly constructed principal residence, whether detached or attached, that: (1) received a certificate of completion on or after April 1, 2010; (2) is used by the taxpayer as the taxpayer's principal residence for the immediately following two years; and (3) is eligible for the homeowner's exemption. Defines "newly constructed principal residence" as a dwelling or residential unit that did not previously exist and that will result in a new structure that will be built from the ground up. A newly constructed principal residence includes a single-family home, duplex, condominium, manufactured home, or townhouse.

If a qualified taxpayer sells or no longer uses the qualified principal residence as the taxpayer's principal residence within 730 days after closing on the qualified principal residence, then the taxpayer shall be subject to recapture of the credit on a pro-rata, dollar-for-dollar basis.

Credits in excess of a taxpayer's income tax liability shall be refunded provided such amount is over $1. Requires all claims for a tax credit, including amended claims, 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 comply with the foregoing provision shall constitute a waiver of the right to claim the tax credit. Directs the director of taxation to prepare the necessary forms to claim a credit, may require the taxpayer to furnish information to validate a claim for credit, and adopt rules pursuant to HRS chapter 91.

Also defines "principal residence" and "purchase price" for purposes of the measure.

EFFECTIVE DATE: SB 2638/HB 2440 - Tax years beginning after December 31, 2009; SB 2578 - Tax years beginning after December 31, 2010

STAFF COMMENTS: These measures propose to establish a state income tax credit to encourage taxpayers to purchase a newly constructed principal residence of up to $625,000. Unlike the federal tax credit which allows the purchase of any type of new or existing residence, this proposed credit is applicable to only newly constructed residences and is not applicable to any land acquisition costs. No doubt this proposal is a sop to the construction industry many of whose workers are "on the bench."

It should be noted that tax credits generally are designed to reduce the tax burdens of certain groups by refunding a portion of taxes paid on purchases of essential items and services. As proposed by these measures, this credit amounts to nothing more than a depletion of state funds as there is no obvious undue burden of taxes. As such, the tax credit proposed by these measures violates the integrity of the tax system setting a precedent with bad tax policy. It should be remembered that giving tax breaks to one select group of taxpayers comes at the expense of all other taxpayers. As such, it is an insult to all other taxpayers that they are not deserving of such tax preferences.

While the adoption of these measures would appear to be politically motivated, adoption is unrealistic as there is no limit to the dollar amount of credits that may be paid out it is and it is questionable whether the state can afford to divert revenues needed for essential programs and services to assist taxpayers in acquiring a newly constructed residence.

Note well that this is a refundable credit, that is any credit amount in excess of the taxpayer's liability will be refunded to the taxpayer, a payment directly out of the general fund. At a time when the state is faced with the worst shortfall in its history, it makes little sense to adopt another "back door" expenditure of state general funds. While the federal government may be able to afford such a credit, it can do so only because it can print more money and run trillion dollar deficits. The state, unfortunately, must maintain a balanced budget. This measure merely contributes to a much larger shortfall.

Digested 2/9/10