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NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Angus L. K. McKelvey, Chair
and Members of the House Committee on Economic Revitalization and Business

The Honorable Karen L. Awana, Chair
and Members of the House Committee on International Affairs

Date: Thursday, February 16, 2012
Time: 11:15 a.m.
Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 2240 Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B.2240, but opposes the measure due to the broadness of the language and potential for substantial tax credit claims.

H.B. 2240 establishes a tax credit of 50% of the relocation costs for certain businesses that relocate their headquarters to Hawaii.

The Department would note that "relocation costs" include a wide array of qualifying costs, including land acquisition costs, building construction, equipment purchases, etc. This could lead to a very large amount of tax credit, such that the company's income tax liability will be reduced to zero for a substantial period of time for the relocating company. In addition, there are no restrictions over related party transactions.

The use of the term "including" in the definition of relocation costs also is problematic for the Department. Since the term relocation costs are not limited to the stated costs, it would appear that any costs could be justified as relocation cost, including personnel costs.

The Department also notes that since there is also no requirement that the company maintain a headquarters in this State for any period of time, a company could relocate here in one tax year, generate the credit, and then relocate to another state in another tax year; they could retain the tax credit since there are no recapture provisions provided in the measure.

Another provision which could lead to unintended consequences is the lack of specifics regarding the requirement that a qualifying company employ at least 75 employees in Hawaii. As written, there is no requirement that all employees are full-time employees. Also, since companies are allowed to count pre-existing Hawaii-based employees toward the minimum number of 75 employees required post-relocation, a pre-existing company that already has 75 employees in this State would not be precluded from qualifying for this substantial tax credit by simply designating Hawaii as its headquarters. There would be nominal benefit to the State for a substantial tax benefit like this.

Thank you for this opportunity to provide comments.