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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 06, 2013 5:01 PM
To: waltestimony
Cc: anne.e.lopez@hawaii.gov
Subject: Submitted testimony for HB1074 on Feb 8, 2013 08:30AM
Attachments: HB1074_ATG_2-8-13_WAL.pdf

HB1074

Submitted on: 2/6/2013

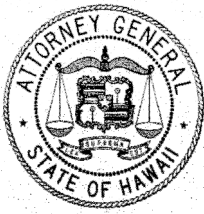
Testimony for WAL on Feb 8, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Anne	Department of Attorney General	Comments Only	Yes

Comments: Cynthia M. Johiro, Deputy Attorney General, will be present at the hearing on HB1074 to testify.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1074, RELATING TO TAXATION.

BEFORE THE:

HOUSE COMMITTEE ON WATER AND LAND

DATE: Friday, February 8, 2013

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Cynthia M. Johiro, Deputy Attorney General

Chair Evans and Members of the Committees:

The Department of the Attorney General offers the following written comments on this bill.

This bill, if enacted into law, could be challenged as violating the Equal Protection and/or Privileges and Immunities Clauses of the United States Constitution.

This bill creates a net income tax credit for resident individual and corporate taxpayers for rehabilitation or preservation of historic structures in the State.

A court may conclude that this bill is unconstitutional because it does not expressly articulate a legitimate government interest served by the legislation sufficient to withstand constitutional challenge based on the Equal Protection and/or Privileges and Immunities Clauses of the United States Constitution.

The Equal Protection Clause prohibits discrimination against a nonresident based solely on residency. See, e.g., Williams v. Vermont, 472 U.S. 14 (1985) (use tax credit for sales taxes paid on cars purchased in other states invalidated because it was only available to Vermont residents). The Hawaii Supreme Court has recognized that the Equal Protection Clause applies where a tax operates unequally on persons or property of the same class. In re Swann, 7 Haw. App. 390, 776 P.2d 395 (1989).

Similarly, under the Privileges and Immunities Clause, a state may not impose higher taxes on nonresident individuals than it imposes on its own citizens.¹ However, a discriminatory

¹ The Privileges and Immunities Clause does not apply to corporations. Toomer v. Witsell, 334 U.S. 385 (1948).

tax could be sustained if legitimate reasons for the tax exist and the discrimination bears a substantial relation to those reasons. Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287 (1998) (alimony deduction for residents only struck down as violating the Privileges and Immunities Clause).

The residency requirement in this bill arguably violates the Equal Protection and/or Privileges and Immunities Clauses because it expressly favors residents over nonresidents.²

The wording in the bill that creates this potential constitutional problem is the word “resident” that appears on page 1, lines 5 and 14.

To insulate this bill from possible constitutional challenge, we recommend either of two possible remedies: (1) that the bill be amended to provide that the exclusion is available to all taxpayers subject to chapter 235, Hawaii Revised Statutes -- deleting the word “resident” in the bill should remedy this possible constitutional problem; or (2) that within the preamble of the bill that a legitimate government purpose for the bill be articulated.

² We are aware that a few existing tax statutes have residency requirements. To date, these statutes have not been subject to constitutional challenge.

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SUBJECT: INCOME, Historic preservation tax credit

BILL NUMBER: SB 1322; HB 1074 (Identical)

INTRODUCED BY: SB by Chun Oakland and 2 Democrats; HB by Rhoads

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim a tax credit equal to the qualifying costs expended to rehabilitate or preserve historic structures in the state. The credit shall be _____% of the taxpayer's qualifying costs provided that a single claim for the credit shall not exceed \$_____.

To qualify for the income tax credit, the taxpayer shall: (1) qualify under criteria or rules adopted by the Hawaii historic places review board pursuant to chapter 91; and (2) be in compliance with all applicable federal, state, and county statutes, rules, and regulations.

Tax credits in excess of a taxpayer's income tax liability shall be refunded provided such amounts are in excess of \$1. Requires claims for the credit to be filed on or before the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with this provision shall constitute a waiver of the right to claim the credit. Also provides for recapture of the credit if the taxpayer no longer qualifies for the tax credit.

Requires the director of taxation to prepare the necessary forms to claim the credit and may require the taxpayer to provide proof of the claim for the credit. Also requires the director of taxation to report annually to the legislature on the number of taxpayers claiming the credit and the total cost of the credit to the state during the past year.

EFFECTIVE DATE: Tax years beginning after December 31, 2012

STAFF COMMENTS: This measure proposes an incentive in the form of an income tax credit to encourage taxpayers to rehabilitate historic properties in the state. Utilizing the tax system to accomplish social goals, such as this measure addresses, sets poor tax policy and cannot be justified. Note well, that the legislature is surrendering its oversight as to what will qualify for the tax credit to the Hawaii historic places review board, leaving the door wide open to whatever the board decides as guidelines to qualify as a historic structure. As a result, there is no way that lawmakers, at this point, can determine what kind of impact this measure will have on state revenues. This is the very issue with the plethora of targeted business tax credits adopted by the legislature in recent years.

To the extent that this measure would grant preferential tax treatment because of circumstances unrelated to the imposition of the tax, the burden of the tax would be shifted to other taxpayers on an inequitable basis. If this measure is enacted, it would result in a public subsidy of costs incurred for historic preservation by a private taxpayer.

At the county level where there are complete exemptions of such sites from the real property tax, a wealthy resident living in a multimillion dollar valued historic home pays absolutely no real property taxes but benefits from the multitude of city services. Inasmuch as a tax benefit is already extended at the county level, one must question why another tax incentive is necessary at the state level.

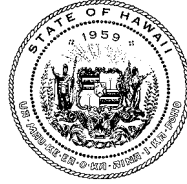
If it is the intent of the legislature is to encourage and assist such rehabilitation of historic sites, then an appropriation of public funds subject to legislative review would be more appropriate. Even a no-interest, low-interest loan revolving fund would be more appropriate as the needs of the taxpayer and the kinds of improvements to be financed would be subject to an informed review.

Finally, with all of the proposals this session to raise additional revenues, one must ask why lawmakers deem it so important to provide yet another hand out of those tax dollars. From that perspective, this proposal represents nothing more than a shift of the tax burden to other taxpayers who are not so blessed with a historic structure. Taxpayers should realize that such targeted tax credits that are not based on need for tax relief amount to nothing more than an expenditure of public dollars albeit out the back door where there is no oversight and no public awareness.

Digested 2/7/13

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Cindy Evans, Chair
and Members of the House Committee on Water & Land

Date: Friday, February 8, 2013
Time: 8:30 a.m.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 1074 Relating to Taxation

The Department appreciates the intent of H.B.1074 and provides the following information and comments for your consideration.

H.B. 1074 creates a refundable tax credit against net income tax for expenditures made to rehabilitate a historic structure. The credit applies to tax years beginning after December 31, 2012.

The bill mandates the Hawaii historic places review board to adopt rules for determining qualification for the tax credit. The bill contains a recapture provision that is very broad. The provision could lead to almost any recipient of the tax credit being subject to recapture. In order to clarify the operation of the recapture provisions, the Department recommends the following amendments:

Page 3, line 8, insert "Provisions for recapture of the credit; and"

Page 3, line 21, after "reason," insert "the taxpayer does not satisfy the recapture provisions referred to in (d)(1)(E) above, the tax credits shall be recaptured."

These amendments will clarify when recapture is required while retaining the per cent limits upon recapture imposed by the bill.

The bill imposes a reporting requirement and will require new forms and instructions. If approved, the bill is effective upon approval and applies to taxable years beginning after December 31, 2012. Due to the Department's technological challenges, the Department recommends that the measure's effective date be changed to taxable years beginning after December 31, 2013.

Thank you for the opportunity to provide comments.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
WATER AND LAND

Friday, February 8, 2013
8:30 a.m.
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 1074
RELATING TO TAXATION

House Bill 1074 proposes to create a historic preservation income tax credit for the purpose of promoting historic preservation. The historic preservation income tax credit would allow the owners of historic structures to claim a tax credit for rehabilitating their historic properties. The Hawaii Historic Places Review Board would set rules regarding criteria for qualifying structures, defining "qualifying costs, standards for rehabilitation, the minimum amount of rehabilitation required to qualify for the tax credit. **The Department of Land and Natural Resources (Department) supports this bill with the following recommendation.**

The Department believes that a tax credit would encourage the preservation of historic structures, and could be used to encourage the rehabilitation and re-development of small rural towns. It is unclear in the bill as drafted, whether the Legislature intends to include the rehabilitation of archaeological or cultural sites in the tax credit program. The Department recommends that they be included as this would encourage landowners to preserve their archaeological and cultural sites.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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LAND
STATE PARKS

