

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, GENERAL EXCISE, Employer tax credit; hotel construction and remodeling tax exemption

BILL NUMBER: HB 2169

INTRODUCED BY: Brower, Aquino, Awana, Hanohano, Ichiyama, C. Lee, Luke, McKelvey, Mizuno, Saiki, Takayama, Tokioka, Yamashita and 1 Democrat

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to provide that each qualified employer shall be allowed a tax credit of 4.5% of the wages paid to each qualified employee during a tax year. The tax credit allowed under this section shall be available for the seven tax years following the end of the taxable year in which the certified facility was substantially completed as defined under HRS section 237- _____. The tax credit shall be applicable to tax years beginning after December 31, 2014.

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.

Defines "certified facility" as a hotel facility or resort facility that has been pre-certified by the department of business, economic development and tourism (DBEDT) under section 237- _____. Also defines "department," "qualified employee," "qualified employer" and "wages" for purposes of the measure.

Adds a new section to HRS chapter 237 to provide that gross income earned from the construction or renovation of the hotel or resort facility shall be exempt from the general excise tax. Defines "construction or renovation of a hotel facility or a resort facility" as the planning, design, construction, furniture and fixtures above routine maintenance, materials, and equipment related to new construction, alterations, remediation, or modifications of a hotel facility or resort facility in the state that is substantially completed by June 30, 2021; provided that: (1) the costs exceed \$50 million by June 30, 2021; and (2) the general contractor and any subcontractors of the construction or renovation are signatory parties to collective bargaining agreements with the appropriate construction trade unions covering construction work in the state. The general excise tax exemption shall be applicable to taxable periods beginning after June 30, 2014.

The exemption is conditioned on the pre-certification by DBEDT of the construction or renovation of a hotel facility or resort facility based upon an application that: (1) is submitted by the owner, developer, or general contractor of the hotel facility or resort facility at any time before or during construction or renovation of the hotel facility or resort facility; (2) describes, in sufficient detail, the construction or renovation of the hotel facility or resort facility; (3) estimates the costs of construction or renovation and

tax exemptions and credits to be claimed under this section and HRS section 235- ; and (4) includes all other information prescribed by the department.

Requires DBEDT to maintain records of the names of taxpayers claiming the exemption, the amount of the exemption claimed, and prepare an annual report of the records that shall be made public.

Defines “department,” “hotel facility,” “resort facility” and “substantially completed” for purposes of the measure.

EFFECTIVE DATE: July 1, 2014

STAFF COMMENTS: The legislature by Act 195, SLH 2000, enacted a hotel construction and renovation income tax credit of 4% for hotel renovations effective for tax years beginning after 12/31/98 but before 12/31/02. Act 10 of the Third Special Session of 2001 increased the hotel renovation tax credit to 10% for construction costs incurred before 7/1/03. Act 10 also provided that the credit shall revert back to 4% on 7/1/03 and sunset on 12/31/05.

The original income tax credit was promoted on the argument that the tax credit would be an incentive for hotels to refurbish their properties in order to remain competitive with other destinations around the world. The credit amount was set at 4% to seemingly offset the 4% general excise tax. When 9/11 hit, the momentum of the crisis fostered support for an increase in the credit to 10% to supposedly keep projects which were already in progress going. However, the governor objected and threatened to veto the sweetened credit. The legislature compromised and provided that the 10% credit would be nonrefundable.

Rather than an income tax credit based on construction costs, this measure proposes a general excise tax exemption for: (1) the gross income earned from the construction or renovation of a hotel facility or resort facility in the state that is completed by June 30, 2021; and (2) an income tax credit for the hiring of employees for the newly constructed or renovated hotel facility for a period of seven years after the completion of such construction or renovation.

It should be noted that no evaluation has been done to validate the effectiveness of previous income tax credits in spurring substantial renovations of hotel resort properties. While some may argue that this credit is necessary to make their upcoming renovations pencil out, one must ask whether or not it is the role of government to subsidize private investments. While the credit might be viewed as critical to a taxpayer’s project or to the continued renovation of the resort plant, one must ask how long must all other taxpayers suffer the heavy burden of taxation so that this subsidy can be extended to a few?

It would be a very different picture if those who are asking for the subsidy would be willing to forgo other public services or make recommendations on how government can rein in spending, but that is not the case. Now, more than ever, lawmakers need to recognize that they need to set priorities for what precious few dollars taxpayers can part with to run state and local government.

It should be remembered that exemptions from the general excise tax that are not predicated on providing tax relief tend to skew the economic landscape, shifting not only tax burdens but economic activity from one period to another. Such was the case for the general excise tax exemption for the

building of affordable housing in the early 1990's. The incentive was that the first 10,000 affordable housing units built before December 31, 1994 would be exempt from the state general excise tax. As a result, developers rushed in to build as many affordable housing units as they could before that deadline. Unfortunately, just as the deadline arrived, the Japanese bubble burst and the developers were left holding huge unsold inventories of housing as there were no buyers in the market for those units.

How the economic recovery will shake up is anyone's guess. Many of the hotel renovation projects which were shuttered are a by-product of not only tight capital markets but also a sluggish visitor market. Why renovate hotel rooms when the prospect for a pick-up in visitor count is dour?

Instead of subsidizing construction in order to get construction workers off the bench, government can assist in a number of other ways. Streamlining the permitting process, allowing certification of building plans by professional architects and engineers instead of approval by the building departments are but a few ways construction activity can be rejuvenated. For government subsidized housing, the approval process for bond financing and issuance of low-income housing tax credits could be enhanced rather than drawn through the lengthy approval process.

Thus, rather than tinkering with the economy, lawmakers should rein back the role of government, or in other words, get out of the way and let the market lead the way to recovery.

Digested 1/30/14

NEIL ABERCROMBIE
GOVERNOR

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LT. GOVERNOR



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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Tom Brower, Chair
and Members of the House Committee on Tourism

Date: Monday, February 3, 2014
Time: 9:30 A.M.
Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 2169, Relating to Tourism Stimulus Incentives

The Department of Taxation (Department) appreciates the intent of H.B. 2169 to support our State's tourism industry. However, the Department has concerns about this measure and has summarized them for the Committee's consideration.

H.B. 2169 creates a refundable income tax credit for wages paid to certain qualified employees, creates a general excise tax exemption for hotel and resort construction and renovation, and creates a seven-year general excise tax exemption for the operation of such constructed or renovated hotels or resorts.

First, in general, wages paid to employees are already deductible from the gross income of a business, lowering the total amount of income subject to tax. This tax credit would create an additional tax benefit where a tax benefit already exists.

Second, the Department notes that the process for certifying facilities eligible for purposes of qualifying taxpayers for this tax credit is administratively problematic for the Department and could lead to significant abuse with little recourse for the State, even if the abuse is relatively quickly. In particular, the Department is concerned that the certification requirements require little more than that employers provide to the Department of Business, Economic Development and Tourism a report of estimated costs of the project. However, the Department would be unable to verify whether a taxpayer actually expended those estimated costs until 2021, at which point the statute of limitations would have expired for several back

years and the Department would be unable to reclaim any tax credits or general excise tax exemptions claimed by taxpayers during those prior years.

Lastly, the Department notes that "department" is defined as the Department of Business, Economic Development and Tourism (DBEDT) in H.B. 2169. Because these provisions would be added to chapters 235 and 237, which generally fall under the authority of the Department of Taxation, the Department recommends that "department" be defined to mean the Department of Taxation, and that references to DBEDT be specifically referenced where appropriate. Section 235-17, relating to the motion picture, digital media and film production income tax credits, is an example of a statute set forth in this manner.

Thank you for the opportunity to provide comments.

**Testimony of
Gary M. Slovin / Mihoko E. Ito
on behalf of
Wyndham Vacation Ownership**

DATE: February 1, 2014

TO: Representative Tom Brower
Chair, Committee on Tourism
Submitted Via TOUTestimony@capitol.hawaii.gov

RE: **H.B. 2169 – Relating to Tourism Stimulus Incentives**
Hearing Date: Monday, February 3, 2014 at 9:30 a.m.
Conference Room: 312

Dear Chair Brower and Members of the Committee on Tourism,

We submit this testimony on behalf of Wyndham Vacation Ownership. Wyndham offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham Vacation Ownership has substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham brands.

Wyndham **supports H.B. 2169**, which provides an income tax credit for employers that hire certain individuals at new or renovated hotel and resort facilities for seven years after substantial completion of construction and renovation, and a general excise tax exemption for hotel and resort construction and renovation projects.

The visitor industry is a very significant part of Hawaii's economy, and creates and supports many jobs for the State. Hawaii's hotel and resort infrastructure is aging, and traditional financing has not spurred necessary renovations and new construction. Providing this tax incentive will not only create new jobs, but will help create and maintain facilities that attract tourists and keep Hawaii's principal industry competitive in the global market.

Gary M. Slovin
Mihoko E. Ito
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For the above reasons, we support this measure and respectfully request that the Committee pass it for further consideration.

Thank you for the opportunity to submit testimony on this measure.



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Neil Abercrombie
Governor

Mike McCartney
President and Chief Executive Officer

Testimony of
Mike McCartney
President and Chief Executive Officer
Hawai'i Tourism Authority
on
H.B. 2169
Relating to Tourism Stimulus Incentives.
H.B. 1594
Relating to Taxation
H.B. 2170
Relating to Taxation
H.B. 2171
Relating to Taxation

House Committee on Tourism
Monday, February 03, 2014
9:30 a.m.
Conference Room 312

The Hawai'i Tourism Authority (HTA) supports H.B. 2169, H.B. 1594, H.B. 2170, H.B. 2171, which propose tax credits for new and renovated hotel or resort projects.

The HTA is tasked with marketing and promoting Hawaii as a visitor destination, with the goal of increasing visitor spending. One of the keys to branding the Hawaii visitor industry product and increasing visitor spending is the improvement and enhancement of the tourism product, which includes the physical infrastructure. As such, the HTA supports the proposals in the listed bills, which provides the private sector with investment incentives to improve hotel facilities. How the incentives are to be implemented and the amount and duration of the incentives are a matter for the Legislature to determine.

Thank you for the opportunity to offer these comments.



HAWAI'I LODGING & TOURISM
A S S O C I A T I O N

Testimony of George Szigeti
President & CEO
HAWAI'I LODGING & TOURISM ASSOCIATION
Committee on Tourism
Hearing on February 3, 2014, 9:30 A.M.
HB 2169 Relating to Tourism Stimulus Initiatives

Good Morning Chair Brower, Vice Chair Cachola and Members of the Committee. My name is George Szigeti and I am the President and CEO of the Hawai'i Lodging & Tourism Association.

The Hawai'i Lodging & Tourism Association is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms that benefit from and strengthen Hawai'i's visitor industry. Our membership includes over 150 lodging properties, representing over 48,000 rooms, and approximately 470 other Allied members. The lodging industry alone employs over 38,000 workers across the state of Hawai'i and generated over \$5.7 billion in annual sales in 2012. As part of the broader visitor industry, we represent one of Hawai'i's largest industries and a critical sector of the economy.

On behalf of HLTA, permit me to offer this testimony regarding HB 2169 Relating to Tourism Stimulus Initiatives. HB 2169 provides a 4.5% income tax credit for wages paid to employees at new or renovated lodging properties and a general excise exemption for construction and renovation.

The Hawai'i Lodging & Tourism Association **supports** this measure because it provides an incentive to encourage investment that would stimulate the revitalization of the state's inventory of aging hotel properties. Investing in our infrastructure is critical to our ability to compete against other destinations. Additionally, hotel construction and renovation would have the added benefit of generating construction and hospitality jobs throughout the state.

Thank you for this opportunity to testify.



HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON TOURISM
Representative Tom Brower, Chair

2/3/2014
Rm. 312, 9:30 AM

HB 2169, HB 1594, HB 2170 & HB 2171
Relating to Tourism & Taxation

Chair Brower and Members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels Hawaii, in support of HB 2169, HB 1594 & HB 2170.

The promotion of construction activity alone is very important to any economy—it is a significant component of overall economic activity especially in a small island state such as Hawaii. Investment in physical assets in the visitor industry, however, reaps even more benefits than straight construction alone—it provides the means by which future economic activity will take place. The visitor industry cannot be competitive without an attractive, up-to-date physical plan in the form of hotels and recreational facilities.

Construction of hotels brings more revenues back into the economy, and taxes, because the hotel/tourist industry continues to bring in revenues beyond construction. Such projects result in higher hotel occupancies, visitor-days, and room rates. It is estimated that 30% of room rates goes back to employee salaries. Both the GET and TAT is paid by the industry thru the 11+ percent assessed each hotel.

However, even with the number of jobs, taxes etc. that a hotel project will provide, the bottom line is that it is very hard to get financing to either rebuild or to build a new hotel facility in the financial marketplace today. Tax credit such as these being proposed, will help a hotel project in getting financing to either rebuild or to build a new hotel.

Mahalo for allowing me to testify.



Maui Hotel & Lodging
ASSOCIATION

Testimony of
Lisa H. Paulson
Executive Director
Maui Hotel & Lodging Association
on
HB2169
Relating To Tourism Stimulus Incentives

COMMITTEE ON TOURISM
Monday, February 3, 2014, 9:30am
Room 312

Dear Chair Brower, Vice Chair Cachola and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 150 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 20,000 local residents. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA **supports** HB2169 which provides qualified employers an income tax credit of 4.5 per cent of wages paid to qualified employees for a period after completion of hotel and resort construction or renovation. Provides a general excise tax exemption for certain hotel and resort construction or renovation.

This Bill would stimulate the revitalization many of the state's aging hotel properties. Investing in our infrastructure is critical to our ability to compete against other sun destinations, especially now when we are seeing a slight softening of our future bookings. Hotel construction and renovation would have the added benefit of generating construction and hospitality jobs throughout the state. Furthermore, new properties would generate additional tax revenues to support the State and Counties.

We urge you to support House Bill 2169 as it would provide an important incentive for new investment in our visitor industry.

Thank you for the opportunity to testify.