

NEIL ABERCROMBIE
GOVERNOR



KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON FINANCE

February 22, 2013 at 1:30 p.m.
State Capitol, Room 308

In consideration of
H.B. 553
RELATING TO ECONOMIC DEVELOPMENT.

HHFDC ***has strong concerns*** with H.B. 553. The tax credit program proposed in this bill is not related to affordable housing financing or development, and is therefore beyond the scope of HHFDC's mission.

We defer to the Department of Taxation and Department of Budget and Finance as to the overall merits of this bill.

Thank you for the opportunity to testify.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Friday, February 22, 2013
Time: 1: 30 P.M.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B.553, Relating to Economic Development

The Department of Taxation (Department) appreciates the intent of H.B. 553 and provides the following information and comments for your consideration.

H.B. 553 creates a tax credit administered by the Department and by the Hawaii Housing Finance and Development Corporation (HHFDC). The tax credit would be given to businesses based on an agreement entered into with HHFDC and would be in an amount equal to the amount of taxes withheld by the business for new employees employed by the taxpayer for the taxable year.

The Department defers to HHFDC regarding the merits of this bill, but notes that there are many ways in which the tax credit in H.B. 553 is inconsistent with the way that credits are generally administered. This bill requires the Department to collect all materials necessary to administer this credit, but the credit would be administered by the HHFDC. However, authority to determine compliance with the requirements of the credit is apparently reserved to the HHFDC; however, income tax returns are required and filed pursuant to Chapter 235, Hawaii Revised Statutes.

The amount of the credit is based on the "amount withheld by the taxpayer pursuant to section 235-61 for new employees," and notes that the amount withheld for different employees may differ significantly based on each employee's individual tax filing circumstances, which makes the impact of this credit difficult to estimate and will most likely lead to planning on the part of recipients of the credit to maximize the benefit derived. The definition of "new employees" provided in subsection (b) of the new section created by the bill, as written, could be read to apply only to persons who have never been employed in the State before.

In subsection (i) of the new section created by this bill, taxpayers are allowed a hearing by HHFDC before the Department is notified of potential noncompliance. The Department has numerous statutory requirements regarding the timing of its assessment procedures, and the addition of an HHFDC hearing to the process would make it difficult for the Department to

pursue remedies against noncompliant taxpayers in a timely fashion. The Department also has numerous requirements regarding confidentiality of taxpayer information, which would result in the Department being unable to share essentially any taxpayer-specific tax returns and tax return information with HHFDC, making it difficult for the two agencies to jointly administer the credit, particularly in cases of noncompliance. The Department additionally notes that rulemaking authority regarding this credit is reserved to HHFDC, and requests that a provision be added to allow rulemaking authority by the Department as well.

The Department also notes that there is a substantial difference between the requirements for a business with one hundred employees or more and the requirements for a business with fewer than one hundred employees. This may lead to restructuring of businesses by taxpayers to take maximum advantage of this credit.

Finally, the Department notes that the bill contemplates noncompliance by taxpayers claiming the proposed tax credit, but does not include a provision by which the State could recapture the tax credit paid to noncompliant taxpayers. The Department suggests inclusion of a provision allowing for recapture of the tax credit in the event a taxpayer is not in compliance.

Since this is a new credit that will require new forms, instructions, and system programming the Department would not be able to implement this bill prior to taxable years beginning after December 31, 2014.

The Department is not able to estimate the impact this tax credit would have on revenues, as there is at present no data on how many businesses or what types of businesses would qualify for the credit.

Thank you for the opportunity to provide comments.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Growing economy tax credit

BILL NUMBER: SB 215; HB 553 (Identical)

INTRODUCED BY: SB by Dela Cruz, Chun Oakland, Kidani and 1 Democrat; HB by Har, Cullen, Fale, Hashem, Ichiyama, Ito, Oshiro, Say, Takayama, Tsuji and Yamashita

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a qualified taxpayer to claim a tax credit for a proposed project which shall be deductible from the taxpayer's net income tax liability for the taxable year in which the credit is properly claimed. To qualify for the credit a proposed project shall: (1) be located in or planned to be located in Hawaii; and (2) be an expansion of an existing operation or establishment of a new location - relocation of existing operations within Hawaii shall be eligible if the applicant demonstrates that its current location is inadequate; (3) involve an investment of at least \$5 million in capital improvements to be placed in service and employment of at least 25 new full-time employees within the state - if the applicant has fewer than 100 employees, the proposed project shall involve an investment of at least \$1 million in capital improvements to be placed in service and employment of at least five new full-time employees within the state; and (4) upon completion, engage in exporting its goods or services.

The annual tax credit shall be equal to the amount of taxes withheld by the taxpayer pursuant to HRS section 235-61 for new employees employed by the taxpayer for the applicable tax year. If the tax credit exceeds the taxpayer's net income tax liability, the excess of credit over liability may be used as a tax credit against the taxpayer's net income tax liability in subsequent years until exhausted. No tax credit earned in any taxable year shall be carried over to more than five subsequent taxable years.

Requires an applicant proposing a project to obtain a tax credit under this section by applying to the department of taxation on forms furnished by the department. The application shall: (1) state the applicant's intent to make a specified level of investment and to hire a specified number of full-time employees at a designated location in Hawaii; (2) demonstrate that if not for the tax credit, the proposed project would not occur in Hawaii; (3) provide a cost differential showing projected costs for the applicant's proposed project in Hawaii compared to the costs in the applicant's other location options outside Hawaii. After receipt and review of the application the department shall submit the application and accompanying materials, if any, to the Hawaii housing finance and development corporation (HHFDC) which may in its discretion accept the application and enter into an agreement with the applicant. Delineates criteria that shall be included with the application to HHFDC. Upon HHFDC's receipt and verification of the information and its determination that the taxpayer is in compliance with all of the requirements of the agreement, the corporation shall issue to the taxpayer a certificate of verification for the applicable tax year. The taxpayer shall then submit a copy of the certification of verification to the department of taxation.

Defines "applicant" as a taxpayer that is operating a business located within the state or that the taxpayer plans to locate within the state and that the applicant is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, assembling, warehousing, or exporting products, conducting

research and development, or agricultural processing, but excludes retail, retail food, health, or professional services. Also defines “agreement,” “corporation,” “full-time employee,” “new employee,” and “noncompliance date” for purposes of the measure.

Repeals this act on January 1, 2017.

EFFECTIVE DATE: Tax years beginning after December 31, 2012

STAFF COMMENTS: It appears that this measure proposes an incentive in the form of an income tax credit equal to the amount of new employees’ withheld income taxes for the applicable tax year; provided the taxpayer submits a qualifying project to be located in the state.

It should be noted that the tax credit proposed in this measure does not have any bearing on the taxpayer’s tax burden and would merely use the tax system as a financial incentive. While the credit proposed by this measure would rely on the approval of the HHFDC, it is questionable whether HHFDC is qualified to approve such tax credits which should be a duty of the department of taxation that normally administers the tax credits.

In addition, while the tax credit is the amount of income taxes withheld from new employees, it is unclear how the credit would be administered or complied with as the employees are able to change the amount of taxes withheld even though liability at the close of the tax year could substantially deviate from the withheld amount. To that point, one must ask what does the amount withheld from a worker’s paycheck have to do with the employer’s ability or inability to locate their business in the state? From a pragmatic viewpoint, this proposal would be difficult to administer and enforce and, therefore, is untenable.

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. The proposed tax credit amounts to nothing more than a partial subsidy of state funds to the qualified taxpayer as there is no obvious undue burden of taxes that is to be addressed. Now more than ever, lawmakers need to focus on how to improve the state’s business climate, from facilitating the start up of new businesses to encouraging entrepreneurs by providing counseling and guidance, assisting in the development of business and marketing plans to streamlining the permitting process and coordinating the approval process for licensing and review. One example of how difficult a state agency has made it for businesses is the recent imposition of a charge for the review of a building’s provision of handicapped parking. One would think that it would be a simple process of reviewing plans that were drawn up by a professional, either an architect or engineer, whose plans should have adhered to regulations and, therefore, would need a simple and cursory review requiring relatively little time and effort. However, a recent report indicates that the department of health office, which oversees disability parking, is charging \$5,000 for that review, a charge that nearly all who are involved believe is extraneous and exorbitant. And lawmakers wonder why people do not want to do business in Hawaii.

Finally, it should be remembered that unless lawmakers reduce spending by an amount equal to the loss of revenues this bill represents, all other taxpayers will have to pick up the tab for this tax incentive. So instead of throwing out credits hoping a gullible business will go for the bait, a concerted effort needs to be made to improve the prospects of supporting and enhancing the business climate.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 4:50 PM
To: FINTestimony
Cc: tabraham08@gmail.com
Subject: Submitted testimony for HB553 on Feb 22, 2013 13:30PM

HB553

Submitted on: 2/20/2013

Testimony for FIN on Feb 22, 2013 13:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments: I support urgent passage of the bill to create more jobs and stimulate the Hawaii economy.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov