SB740

Creates tax credits for proposed projects to be located in areas that are location efficient. Establishes procedures for the Hawaii housing finance and development corporation to determine whether proposed projects meet certain requirements necessary to qualify for the tax credit. Requires the Hawaii housing finance and development corporation to report annually to the legislature. Applies to tax years beginning after December 31, 2012. Repeals on January 1, 2017.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
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 Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Economic Development, Government Operations and Housing

Date: Wednesday, February 13, 2013
Time: 3:15 p.m.
Place: Conference Room 016, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 740 Relating to Economic Development

The Department of Taxation (Department) appreciates the intent of S.B. 740 and offers the following comments for your consideration.

S.B. 740 creates a location efficiency tax credit as well as a tax credit for the hiring of new employees hired to work on projects for which the location efficiency tax credit is granted. To claim the location efficiency tax credit, taxpayers must submit a report to the Hawaii Housing Finance and Development Corporation (HHFDC), which then has discretion to grant the credit.

While the Department appreciates this measure's intent to increase urban and rural planning efficiency in the State, and appreciates that discretion for determining the merits of certifying such a credit is placed in the hands of a qualified agency such as HHFDC rather than the Department, the Department notes that this measure would still require a substantial amount of administration and enforcement by the Department. For instance, the responsibility to make forms and audit tax credit claims under Hawaii Revised Statutes Chapter 235 lies with the Department. With respect to auditing in particular, the Department does not currently have the staff or resources necessary to review and make a determination on the merits of a project's claim to meet this measure's standards of location efficiency.

Further, instances where a tax benefit is authorized by an agency other than the Department, while leaving ultimate authority to grant or deny the tax benefit to the Department's discretion, have proven problematic in the past. For instance, it is unclear how much deference the Department should grant to HHFDC's determination in the event it audits one of these tax credits. Additionally, in the event of such an audit, the Department would be unable to contact HHFDC about the taxpayer due to the confidentiality of tax return information, meaning both that the Department would neither be able to rely on HHFDC's subject matter expertise, nor discuss the specifics of the disagreement, over the merits of granting the credit.

Lastly, the Department notes that if this measure is adopted, the Department would need time to implement these changes to tax forms and instructions to accommodate the new tax credit. Thus, the Department recommends that the effective date of this measure be changed to taxable years beginning after December 31, 2013.

Thank you for the opportunity to provide comments.

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

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

February 13, 2013 at 3:15 p.m.
State Capitol, Room 016

In consideration of
S.B. 740
RELATING TO ECONOMIC DEVELOPMENT.

The HHFDC ***has strong concerns*** with S.B. 740. We defer to the Department of Taxation and Department of Budget and Finance as to the overall merits of this bill.

HHFDC, as the State's housing finance agency, does not have the necessary expertise to administer a tax credit program of this nature, since it is not directly related to affordable housing financing or development.

Thank you for the opportunity to testify.

SUBJECT: INCOME, Location efficiency tax credit

BILL NUMBER: SB 740; HB 554 (Identical)

INTRODUCED BY: SB by Dela Cruz and 3 Democrats; HB by Har, Cullen, Oshiro, Say, Tsuji, Ward and 2 Democrats

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a qualified taxpayer to claim a location efficiency tax credit which shall be deductible from the taxpayer's net income tax liability for the taxable year in which the credit is properly claimed. Requires a taxpayer to submit a location efficiency report to the Hawaii housing finance and development corporation (HHFDC) who may grant a tax credit to the taxpayer if in the corporation's discretion the taxpayer's location efficiency report demonstrates that the taxpayer seeks a tax credit for a project to be located in an area that satisfies this section's standards for affordable workforce housing or accessible and affordable mass transit.

Allows taxpayers who employ new employees for a project during the taxable year may receive a tax credit equal to 10% of the new employee's withheld taxes; provided that the tax credit may not exceed the taxpayer's annual state income tax liability for any taxable year and the tax credit shall be non-refundable.

Requires a taxpayer claiming a tax credit to annually report to the HHFDC the number of new employees employed by the taxpayer for the project and the amount of taxes withheld by the applicant in connection with the new employees. Requires the HHFDC to submit to the legislature a report on the tax credits allowed prior to the convening of each regular legislative session.

Defines "location efficiency" as a project that maximizes the use of existing investments in infrastructure, avoids or minimizes additional government expenditures for new infrastructure, and has nearby affordable workforce housing or accessible and affordable mass transit, or some combination of both. Defines "accessible and affordable mass transit" as access to transit stops with regular and frequent service within one mile from the project site and pedestrian access to transit stops. Also defines "affordable workforce housing," "corporation" and "new employee" 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 a "location efficiency" tax credit of 10% of a new employee's withheld income taxes provided the taxpayer submits a location efficiency report to the HHFDC and the HHFDC approves the request for the tax credit.

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 to promote relocation of projects near affordable housing and mass transit. While the credit proposed by this measure would rely on the approval of the HHFDC, it does not delineate any further qualification, approval or administration by the department of taxation who normally administers the tax credits. Further, it is questionable whether the tax credit is refundable or nonrefundable, whether it is permanent or temporary, and how the credit is to be claimed.

It is unclear how the credit would be administered or complied with as the employee is able to determine the amount 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 near housing and transit? 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.

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.

Digested 2/11/13

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Location efficiency tax credit

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