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STATE OF HAWAII
DEPARTMENT OF TAXATION
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FREDERICK D. PABLO
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JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable David Y. Ige, Chair
and Members of the Senate Committee on Ways and Means

Date: Wednesday, April 2, 2014
Time: 9:20 A.M.
Place: Conference Room 211, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 2464, H.D. 1, Relating to Tax Credits

The Department of Taxation (Department) appreciates the intent of H.B. 2464, H.D. 1, to provide clarification and offers the following comments for your consideration.

H.B. 2464, H.D. 1, amends the Important Agricultural Land Qualified Agricultural Cost Tax Credit (IAL credit) to clarify that the maximum credit amounts are \$625,000, \$250,000, and \$125,000 in the first, second, and third years respectively. The language of the IAL credit as it exists today sets the maximum credit as 25% of \$625,000, 15% of \$250,000, and 10% of \$125,000 in the first, second, and third years respectively. The measure, if approved, would apply to taxable years beginning after July 1, 2008. H.D. 1 has a defective effective date of July 1, 2030.

The Department does not take a position on the increase in the credit amount, but notes that the intent of Act 233, Session Laws of Hawaii 2008, may have been to cap the credit in the manner that this measure proposes. While the Department would be able to administer an increase in the proposed credit amount, the Department is not able to issue updated tax forms earlier than January 2015.

The Department further notes that Section 2 of this measure provides for the retroactive application of these amendments. Any taxpayer who may have already claimed the credit will have to file an amended return in order to claim the increased credit amount provided under this measure, and may have to receive a recertification of qualified costs from the Department of Agriculture. The Department defers to the Department of Agriculture regarding the recertification.

Thank you for the opportunity to provide comments.



State of Hawaii
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TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

WEDNESDAY, APRIL 2, 2014, 9:20 A.M.
Room 211
HOUSE BILL NO. 2464, HOUSE DRAFT 1
RELATING TO TAX CREDITS

Chairperson Ige and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2464, House Draft 1. This bill seeks to clarify the amount of the Important Agricultural Lands (IAL) qualified agricultural cost tax credit and to allow taxpayers who have already filed their tax credit claims to claim the additional tax credits as authorized by this measure. The Department of Agriculture supports the intent of this measure but defers to the Department of Taxation for the appropriate wording.

This tax credit was enacted in 2008 as part of the incentives package designed to sustain and establish viable agricultural businesses on designated IAL lands. To date, over 101,000 acres have been designated IAL throughout the state.

This tax credit encompasses a broad range of costs that are related to agricultural activities on IAL such as the planning, construction, repair and maintenance for roadways, processing facilities, irrigation water infrastructure, and agricultural housing. It also captures costs for agricultural equipment, regulatory processing, feasibility studies, and regulatory processing and legal services related to obtaining or retaining sufficient irrigation.

Thank you for the opportunity to present our testimony.





**Testimony to the Senate Committee on Ways and Means
Wednesday, April 2, 2014 at 9:20 A.M.
Conference Room 211, State Capitol**

RE: HOUSE BILL 2464 HD1 RELATING TO TAX CREDITS

Chair Ige, Vice Chair Kidani, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **supports** HB 2464 HD1, which clarifies the amount of the important agricultural land qualified agricultural cost tax credit.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This bill is critical in supporting agriculture in Hawaii. The Important Agricultural Lands are a key component in helping keep high grade lands in agriculture. The Chamber supports changes effecting laws to the original intent. This bill clarifies provisions in the present IAL Qualified Agricultural Cost Tax Credit Law for IAL agricultural businesses. It provides important financial support for IAL related farming operations and will help Hawaii's agricultural businesses compete on a national and international level.

The Chamber supports HB 2464 HD1 as is and respectfully asks the committee to move the bill forward. Thank you for the opportunity to testify.



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April 2, 2014

HEARING BEFORE THE
COMMITTEE ON WAYS AND MEANS

TESTIMONY ON HB 2464HD1
RELATING TO TAX CREDITS
Room 211
9:20 AM

Aloha Chair Ige, Vice Chair Kldani and Members of the Committee:

I am Christopher Manfredi, President of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,832 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

HFBF is in strong support of HB2464 HD1 that clarifies the tax credits associated with the designation of Important Agricultural Lands (IAL).

HFBF was part of a multiyear process that, after nearly 30 years, developed the standards and criteria associated with IAL. It was an extensive process including a broad range of stakeholders. The IAL law was carefully crafted to be an incentive driven process; encouraging farmers to farm, keeping lands viable and incentivizing landowners to dedicate their lands to agricultural use. The IAL incentive process is important to the people of the state of Hawaii in terms of food security, environmental, social and economic sustainability and preservation of open vistas that help support tourism-a staple of the economy.

HB2464 represents an important clarification of tax credits that will further incentivize landowners by reducing some of the ambiguity surrounding the existing tax incentives. With more than 100,000 acres already designated as IAL, this is a solid investment for Hawaii's future.

We respectfully request your **STRONG support towards the passage of HB246 HD1, restoring the effective date to the passage of this measure.**

Thank you.



LAND USE RESEARCH
FOUNDATION OF HAWAII

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March 28, 2014

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Senate Committee on Ways and Means

Testimony in Support of HB 2464, HD1, Relating to Important Agricultural Land Qualified Agricultural Cost Tax Credit (Clarifies the Amount of the Tax Credit).

Wednesday, April 2, 2014, 9:20 a.m., in Conference Room 211

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

HB 2464, HD1. This bill proposes to clarify the amount of the Important Agricultural Land ("IAL") qualified agricultural cost tax credit.

LURF's Position. LURF supports HB 2464, HD1 because the clarification proposed by this bill furthers the underlying intent and objectives of the IAL laws (Hawaii Revised Statutes [HRS], Sections 205-41 to 52), which were enacted to fulfill the mandate in Article XI, Section 3, of the Hawaii State Constitution, "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." The IAL laws established a new paradigm which avoids requirements and mandates, and instead focuses on promoting agricultural viability by providing incentives for farmers and landowners to designate lands as IAL, and to build necessary infrastructure, including irrigation systems.

As noted in HRS Section 205-41, the intent of Act 183 (2005) was to develop agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use in Hawaii concurrently with the process of identifying important agricultural lands as required under the Act. Such incentives and programs are identified in HRS 205-41, and include tax credits and/or exemptions that promote investment in agricultural businesses or value-added agricultural development, specifically escalating tax credits based on the tax revenues generated by increased investment or agricultural activities conducted on IAL.

LURF therefore appreciates the effort made by HB 2464, HD1 to clarify the amount of the IAL qualified agricultural cost tax credit which supports agriculture and aid agriculture-related businesses. Passage of the long-awaited IAL legislation would be meaningless without proper implementation of these incentives. The effective establishment and continued maintenance of tax incentives for those engaged, or desirous of engaging, in agricultural activities are critically needed to support viable agricultural activity in this State.

Based on the above, LURF **supports HB 2464, HD1**, and respectfully urges your favorable consideration of this bill.

Thank you for the opportunity to present testimony in support of this measure.



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Harry A. Saunders
President

Testimony by Harry Saunders
President, Castle & Cooke Hawai'i
April 1, 2014

Before the Senate Committee on
Ways and Means

April 2, 2014
9:20 a.m.
Conference Room 211

Support for:
HB 2464 HD1
RELATING TO TAX CREDITS

Chair Ige, Vice Chair Kidani and Members of the Senate Committee on Ways and Means:

I am Harry Saunders, President of Castle & Cooke Hawai'i. We support HB 2464 HD1 that would clarify the tax credits for agri-businesses to provide the needed incentives to promote diversified agriculture on designated Important Agricultural Lands (IAL).

Castle & Cooke Hawai'i is the first O'ahu landowner to voluntarily designate land as IAL. Our purpose was to commit our qualified agricultural lands for long term agricultural uses and to continue our promotion of diversified agriculture.

We have a long history in the agriculture industry in Hawai'i and understand the myriad of challenges it faces. Though we have diversified our business strategies, we continue to support agriculture and understand that it needs support in various areas. Incentives provided as an integral part of the IAL statute were premised on the general acknowledgment that the viability of agriculture in Hawai'i is dependent upon the promotion of agriculture business and operations, and not merely an "important agricultural lands" designation. Consistent with this purpose, HB 2464 HD1 clarifies tax credits for diversified agricultural operations on IAL, and will enhance the viability of agriculture operations on IAL.

Mahalo for your consideration of our testimony. Should you have questions, please feel free to contact us:

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**HB 2464 HD1
RELATING TO TAX CREDITS**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

APRIL 2, 2014

Chair Ige and Members of the Senate Committee on Ways & Means:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and its agricultural company Hawaiian Commercial & Sugar Company on HB 2464 HD1, “A BILL FOR AN ACT RELATING TO TAX CREDITS.” We support the general intent of this bill.

After over twenty five years of debate, negotiation, and compromise, the IAL Law and process was finally enacted in July 2008. After years of pursuing a land-use approach to this constitutional mandate, the IAL Law that was successfully passed (Act 183 (2005) and Act 233 (2008)) was premised on the principle that the best way to preserve agricultural lands is to preserve agricultural businesses and agricultural viability. As such, the IAL Law not only provides the standards, criteria, and processes to identify and designate important agricultural lands to fulfill the intent and purpose of Article XI, Section 3 of the Hawaii State Constitution, it also provides for a package of incentives designated to support and encourage sustained, viable agricultural activity on IAL. With the enactment of this comprehensive package of IAL incentives, the long awaited IAL identification and designation process was finally started in July 2008.

The IAL Law authorizes the identification and designation of IAL in one of two ways --- by voluntary petition to the State Land Use Commission by the landowner or farmer; or subsequently by the Counties filing a petition to designate lands as IAL pursuant to a County identification and mapping process. The IAL Law further provides incentives to the farmer to sustain agricultural activities on IAL lands. In either case, the LUC determines whether the petitioned lands qualify for IAL designation pursuant to the standards, criteria, objectives, and policies set forth in the IAL Law.

Although the IAL identification and designation process is still in its early stages, over 100,000 acres of agricultural lands have already been designated as IAL from voluntary petitions by four entities: Parker Ranch, Castle & Cooke, Grove Farm, and Alexander & Baldwin. We understand that the County mapping and designation process is also progressing, with Kauai County readying its mapping request for submittal to the Planning Commission/County Council.

This bill clarifies provisions in the present IAL Qualified Agricultural Cost Tax Credit Law for IAL farmers. Due to a drafting oversight, we understand that the present maximum cap for the IAL Tax Credits may not reflect the legislative intent at the time of its passage. We understand that the amendments contained in this bill clarify the IAL Tax Credit Law such that it is consistent with its original legislative intent.

The present IAL Tax Credit Law is interpreted to allow each IAL farmer a one-time tax credit for qualified agricultural costs up to the maximum statutory cap. Once the IAL farmer files and receives the tax credit, that farmer is not allowed to claim any additional IAL Tax Credits. We support the provisions in Section 2 of this bill that ensures that all IAL farmers, including those that may have already filed their application

for the one-time tax credit under the lower limits of the present law, will be able to claim or reapply for the increased tax credit amounts as authorized by this bill. We concur that from an equity standpoint, IAL farmers farming on lands that were in the initial group of lands voluntarily designated as IAL should be eligible for the same amount of tax credits as those who farm on lands designated as IAL in the future.

Major infrastructure requirements such as irrigation systems, roads and utilities, and agricultural processing facilities play a critical role in the survival of many farmers, and this tax credit is intended to provide important financial support for IAL related farming operations and will help Hawaii's agricultural businesses compete on a national and international level. This tax credit serves as a stimulus to encourage IAL farmers to expand their operations or to enhance their operating efficiencies through the installation of new agricultural infrastructure, equipment, and other related improvements to service their farming operations. We believe that this bill will greatly enhance the viability and sustainability of present and future IAL based farming operations.

Thank you for the opportunity to testify.

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, Important agricultural land tax credit

BILL NUMBER: HB 2464, HD-1

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: “Clarifies” the allowable amount of the important agricultural land qualified agricultural cost tax credit. The measure makes the “clarification” retroactive to 2008, which would result in refund claims for multiple years based on the increased limits. This measure looks like a giveaway of tax dollars to this industry. If this bill passes, lawmakers should clarify how much money is to be shoved out the door (retroactive three years vs. retroactive to 2008).

BRIEF SUMMARY: Amends HRS section 235-110.93 to provide that the important agricultural land qualified agricultural cost tax credit shall be:

- (1) In the first year in which the credit is claimed, the **lesser** of the following:
 - (A) 25% of the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
 - (B) \$625,000;
- (2) In the second year in which the credit is claimed, the **lesser** of the following:
 - (A) 15% of the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
 - (B) \$250,000; and
- (3) In the third year in which the credit is claimed, the **lesser** of the following:
 - (A) 10% of the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
 - (B) \$125,000.

Allows taxpayers who have filed important agricultural land qualified agricultural cost tax credit claims prior to January 1, 2014 to be entitled to the additional tax credits authorized by this act.

EFFECTIVE DATE: Tax years beginning after July 1, 2030

STAFF COMMENTS: The legislature by Act 233, SLH 2008, enacted the important agricultural land qualified agricultural cost tax credit.

As enacted, the amount of the credit for the first year is based on 25% of the lesser of: (A) the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or (B) \$625,000 for the first year in which the credit is claimed. The proposed measure would provide that the credit is the lesser of: (A) 25% of the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or (B) \$625,000. Only the position of the 25% moved, but that means that the cap on the credit increases to \$625,000 under the proposed measure, as compared to \$156,250 (\$625,000 times 25%) under current law. Similar changes in the cap are proposed for the second and third year of credit.

Section 2 of the bill states that taxpayers who have filed claims for the credit for taxable years ending prior to 1/1/2014 “shall be entitled to claim the additional tax credits as authorized by this Act; provided that the cumulative amount of ... credits claimed by each taxpayer shall not exceed the maximum amount of tax credits allowed to each taxpayer in section 1.” This raises a few issues that need clarification:

First, is it intended that the bill allow claims for the credit to be retroactive to 2008? The bill is being pushed as a “clarification” of the act’s original intent, but it is still a part of the income tax, for which a three-year statute of limitations, HRS section 235-111, normally applies. Furthermore, HRS section 235-110.93(e) of the bill contains language familiar to most Hawaii refundable credits which requires that all claims for a tax credit, *including amended claims*, shall be filed on or before the end of the twelfth month after the close of the taxable year for which the credit is claimed (*i.e.*, when the qualified costs were incurred), and that failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit. The present language of section 2 of the bill indicates that amended claims past the one year deadline are permissible, but it is less clear whether taxpayers may go back earlier than the normal statute of limitations would allow.

Second, are there any qualifications or contingencies to this additional amount? The bill, as presently drafted, seems to indicate not. The taxpayer doesn’t even have to be taking care of important agricultural lands today; as now drafted, the bill awards the taxpayer extra money for costs that have been spent on those lands in the past. Retroactively.

That being the case, this bill looks like a pure giveaway of taxpayer money (because it’s based on costs incurred since 2008). It is being sold as a clarification of the act’s original intent. However, one would think that if this really were the original intent of the credit, this bill would have been introduced and passed several years ago, not five or six years after the fact.

Furthermore, there is no sunset date of the credit which has been available since 2008. It is questionable whether the credit is still necessary.

Digested 3/31/14