

SB 2513

Establishes an income tax credit for taxpayers who purchase bus passes or passes for a public transportation program.

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To: The Honorable J. Kalani English, Chair
and Members of the Senate Committee on Transportation and International
Affairs

Date: Tuesday, February 11, 2014
Time: 1:16 p.m.
Place: Conference Room 224, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2513 Relating to Public Transportation Incentives

The Department of Taxation (Department) appreciates the intent of S.B. 2513, but has concerns about the measure as being duplicative of tax benefits already offered for public transportation.

S.B. 2513 establishes an income tax credit for taxpayers who purchase bus passes or passes for a public transportation program, subject to an unspecified cap. The measure would take effect upon its approval and apply to taxable years beginning after December 31, 2014.

First, the Department notes that the State conforms to Internal Revenue Code (IRC) section 132(f), which provides for qualified transportation expenses as a fringe benefit. IRC section 132(f) allows an employee to use pre-tax dollars for the purchase of a public transit passes or vanpooling expenses.

Alternatively, employers may provide such benefits without such benefits becoming taxable income to the employee. For 2014, the monthly limit on the amount that may be excluded from an employee's income for transit passes and vanpooling expenses is \$130. Additionally, under IRC section 132(f), an employee may alternatively use pre-tax dollars to pay for vehicle parking expenses (or the employer may pay for such parking expenses without such benefit becoming taxable income to the employee) up to a maximum of \$250 monthly. It should be noted that these amounts are adjusted yearly for inflation.

The Department is concerned that this measure does not prevent employees from obtaining both the benefits under IRC section 132(f) and the benefits under this measure. Nothing in this measure prevents, for example, an employee from continuing to have parking paid for as a non-taxable fringe benefit and also obtaining a bus pass under this measure, which would be provided free of charge due to the tax credit.

Second, there is no requirement that the taxpayer actually use such bus pass, and there is no way in which the Department can prevent the taxpayer from simply giving away the pass to another person. Because there is essentially no cost to the taxpayer (the cost being covered by the tax credit), taxpayers could obtain such passes regardless of whether they intended to use it or not.

Third, the Department suggests that the Committee consider a federal and Hawaii adjusted gross income limitation (AGI) limitation, so that the taxpayers who qualify are the individuals that this measure is intended to benefit. As a general matter, AGI is not a good indicator of an individual's financial status. Without these limitations in place, the State's limited resources could end up going to taxpayers who are not in need of such assistance. It should be noted that the City and County of Honolulu offers a subsidy for both adult and youth bus passes for persons meeting certain income qualifications.

Fourth, the Department also suggests that the caps in subsection (b) be clarified. It should be noted that senior citizens (those 65 years of age or older) qualify for the City and County of Honolulu's Senior bus pass, which is an annual pass having a cost of \$30, or \$60 for a two year pass.

Finally, the Department suggests that the provision allowing employers to take the credit either be deleted or set at a significantly lower credit amount than the individual amount because employers can already deduct the amount paid for employee transportation as a deductible expense. This is true even though such amounts will not be taxable income to the employee since it is a non-taxable fringe benefit.

Thank you for the opportunity to provide **comments.**

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SUBJECT: INCOME, Public transportation incentives

BILL NUMBER: SB 2513; HB 2064 (Identical)

INTRODUCED BY: SB by Dela Cruz; HB by Har, Cabanilla, Choy, Cullen, Say, Tokioka, Yamane and 1 Democrat

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim an income tax credit equal to the amount spent by the taxpayer to purchase public transportation passes during the taxable year; provided that the total amount of any tax credit allowed under this section shall not exceed: (1) \$ ____ per individual taxpayer; or (2) \$ ____ per participating employee if the taxpayer purchases the public transportation passes for use by the taxpayer's employees.

Defines "public transportation passes" as: (1) monthly or annual bus passes; or (2) monthly or annual passes for a public transportation program operated or contracted by the state or a county.

Credits in excess of a taxpayer's income tax liability may be applied to subsequent income tax liability until exhausted. Requires all claims for the credit to 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.

EFFECTIVE DATE: Tax years beginning after December 31, 2014

STAFF COMMENTS: It appears that this measure is intended to provide an incentive in the form of an income tax credit to encourage taxpayers to utilize public transportation by purchasing bus passes. 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. This credit would be granted to anyone regardless of their income level and would amount to nothing more than a partial subsidy of state funds as there is no obvious undue burden of taxes.

While the measure would also allow an employer to claim a tax credit for state income tax purposes, it should be remembered that under section 132 of the Internal Revenue Code (IRC) which is operable for Hawaii income tax purposes this provision would allow multiple tax benefits. IRC section 132 would allow an employer to provide transit benefits tax free as a fringe benefit to its employees up to \$130 per month in 2014.

If it is the intent of the legislature to subsidize the use of public transportation, then a direct subsidy to the transportation providers should be considered in lieu of the proposed tax credit for individual taxpayers which may be cumbersome and unwieldy to claim by taxpayers and burdensome to administer and verify by the department of taxation.

Digested 2/10/14