



1 chapter, to an eligible nonprofit scholarship-funding  
2 organization. The taxpayer making the contribution may not  
3 designate a specific child as the beneficiary of the  
4 contribution.

5 "Eligible nonprofit scholarship-funding organization" means  
6 a not-for-profit university located and chartered in the State  
7 that is accredited by the Western Association of Schools and  
8 Colleges or any affiliate of the Western Association of Schools  
9 and Colleges, or a charitable organization that:

- 10 (1) Is exempt from federal income tax pursuant to section  
11 501(c)(3) of the Internal Revenue Code;
- 12 (2) Is a Hawaii entity formed under chapters 414 or 425  
13 and whose principal office is located in the State;  
14 and
- 15 (3) Complies with sections -4 and -10.

16 "Owner or operator" means an owner, president, officer, or  
17 director of an eligible nonprofit scholarship-funding  
18 organization or a person with equivalent decisionmaking  
19 authority over an eligible nonprofit scholarship-funding  
20 organization.



1 "Service area" means the geographical area in which a child  
2 is required to attend school pursuant to section 302A-1143.

3 "Tax credit cap amount" means the maximum annual tax credit  
4 amount that the department may approve in a fiscal year.

5 § -2 Program; scholarship eligibility. (a) There is  
6 established the Hawaii tax credit scholarship program to benefit  
7 students with disabilities.

8 (b) Contingent upon available funds, a student is eligible  
9 for a Hawaii tax credit scholarship under this section if the  
10 student has a current individual educational plan developed by  
11 the department of education in accordance with the rules of the  
12 board of education for the Hawaii tax credit scholarship program  
13 or a 504 accommodation plan has been issued under section 504 of  
14 the Rehabilitation Act of 1973.

15 (c) A student is not eligible for a Hawaii tax credit  
16 scholarship:

17 (1) While the student is enrolled in a school operating  
18 for the purpose of providing educational services to  
19 youth in the Hawaii youth correctional facility;

20 (2) While the student is participating in home schooling;



- 1           (3) While the student is participating in a virtual
- 2           school, correspondence school, or distance learning
- 3           program that receives state funding pursuant to the
- 4           student's participation unless the participation is
- 5           limited to no more than two courses per school year;
- 6           or
- 7           (4) If the student has been issued a temporary 504
- 8           accommodation plan under section 504 of the
- 9           Rehabilitation Act of 1973 which is valid for six
- 10          months or less.

11           §   -3 Scholarship funding tax credits; limitations. (a)

12   The tax credit cap amount is \$                   for the 2016-2017

13   fiscal year.

14           (b) In the 2017-2018 fiscal year and each fiscal year

15   thereafter, the tax credit cap amount shall be the tax credit

16   cap amount in the prior fiscal year; provided that in any fiscal

17   year when the annual tax credit amount for the prior fiscal year

18   is equal to or greater than ninety per cent of the tax credit

19   cap amount applicable to that fiscal year, the tax credit cap

20   amount shall increase by twenty-five per cent. The department

21   of education and department of taxation shall publish on their



1 websites information identifying the tax credit cap amount when  
2 it is increased pursuant to this subsection.

3 (c) A taxpayer may submit an application to the department  
4 for a tax credit or credits under this chapter; provided that:

5 (1) The taxpayer shall specify in the application the  
6 applicable taxable year for a credit and the  
7 designated eligible nonprofit scholarship-funding  
8 organization;

9 (2) The department shall approve tax credits on a first-  
10 come, first-served basis; and

11 (3) Within ten days after approving an application, the  
12 department shall provide a copy of its approval letter  
13 to the eligible nonprofit scholarship-funding  
14 organization specified by the taxpayer in the  
15 application.

16 (d) If a tax credit approved under subsection (c) is not  
17 fully used within the specified fiscal year or against taxes due  
18 for the specified taxable year because of insufficient tax  
19 liability on the part of the taxpayer, the unused amount may be  
20 carried forward for a period not to exceed five years; provided  
21 that any taxpayer that seeks to carry forward an unused amount



1 of tax credit must submit an application to the department for  
2 approval of the carryforward tax credit in the year that the  
3 taxpayer intends to use the carryforward tax credit.

4 (e) A taxpayer may not convey, assign, or transfer an  
5 approved tax credit or a carryforward tax credit to another  
6 entity unless all of the assets of the taxpayer are conveyed,  
7 assigned, or transferred in the same transaction; provided that  
8 a tax credit may be conveyed, transferred, or assigned between  
9 members of an affiliated group of corporations if the taxpayer  
10 notifies the department of its intent to convey, transfer, or  
11 assign a tax credit to another member within an affiliated group  
12 of corporations and the department approves the amount.

13 (f) Within any state fiscal year, a taxpayer may rescind  
14 all or part of a tax credit approved under subsection (c). The  
15 amount rescinded shall become available for that state fiscal  
16 year to another eligible taxpayer as approved by the department  
17 if the taxpayer receives notice from the department that the  
18 rescindment has been accepted by the department. Any amount  
19 rescinded under this subsection shall become available to an  
20 eligible taxpayer on a first-come, first-served basis based on



1 tax credit applications received after the date the rescindment  
2 is accepted by the department.

3 (g) For purposes of calculating the underpayment of  
4 estimated corporate income taxes and tax installment payments  
5 for taxes on insurance premiums or assessments, the final amount  
6 due is the amount after credits earned for contributions to  
7 eligible nonprofit scholarship-funding organizations are  
8 deducted.

9 § -4 Obligations of eligible nonprofit scholarship-  
10 funding organizations. An eligible nonprofit scholarship-  
11 funding organization shall:

- 12 (1) Comply with the antidiscrimination provisions of title  
13 42 United States Code section 2000d;
- 14 (2) Require all owners and operators to, before employment  
15 or engagement to provide services, submit a full set  
16 of fingerprints for the purpose of obtaining federal  
17 and state criminal history record checks in accordance  
18 with section 846-2.7; provided that the cost of the  
19 criminal history record checks may be borne by the  
20 eligible nonprofit scholarship-funding organization or  
21 the owner or operator;



- 1           (3) Provide scholarships, from eligible contributions, to  
2           eligible students for:
- 3           (A) The cost of transportation to a Hawaii public  
4           school that is located outside the service area  
5           in which the student resides and any other fees  
6           required by the school; or
- 7           (B) Tuition and fees for a nonpublic special  
8           education school or program that is accredited  
9           pursuant to section 302A-443.5;
- 10          (4) Give first priority to eligible students who received  
11          a scholarship from an eligible nonprofit scholarship-  
12          funding organization or from the State during the  
13          previous school year and give priority to new  
14          applicants whose household income levels do not exceed  
15          one hundred eighty-five per cent of the federal  
16          poverty level or who are in foster care;
- 17          (5) Provide a scholarship to an eligible student on a  
18          first-come, first served basis unless the student  
19          qualifies for priority pursuant to paragraph (4);





- 1           (6) Not restrict or reserve scholarships for use at a  
2           particular school or provide scholarships to a child  
3           of an owner or operator;
- 4           (7) Allow a student in foster care to apply for a  
5           scholarship at any time;
- 6           (8) Be authorized to use up to three per cent of eligible  
7           contributions received during the fiscal year in which  
8           such contributions are collected for administrative  
9           expenses if the organization has operated under this  
10          section for at least three fiscal years and did not  
11          have any negative financial findings in its most  
12          recent audit under paragraph (14); provided that:
- 13           (A) Administrative expenses must be reasonable and  
14           necessary for the organization's management and  
15           distribution of eligible contributions under this  
16           chapter;
- 17           (B) No funds authorized under this paragraph shall be  
18           used for lobbying or political activity or  
19           expenses related to lobbying or political  
20           activity;



- 1 (C) Up to one-third of the funds authorized for
- 2 administrative expenses under this paragraph may
- 3 be used for expenses related to the recruitment
- 4 of contributions from taxpayers; and
- 5 (D) If an eligible nonprofit scholarship-funding
- 6 organization charges an application fee for a
- 7 scholarship, the application fee must be
- 8 immediately refunded to the person that paid the
- 9 fee if the student is not enrolled in a
- 10 participating school within twelve months;
- 11 (9) Expend for annual or partial-year scholarships an
- 12 amount equal to or greater than seventy-five per cent
- 13 of the net eligible contributions remaining after
- 14 administrative expenses during the fiscal year in
- 15 which such contributions are collected; provided that:
- 16 (A) No more than twenty-five per cent of such net
- 17 eligible contributions may be carried forward to
- 18 the following fiscal year;
- 19 (B) All amounts carried forward, for audit purposes,
- 20 must be specifically identified for particular
- 21 students by student name and the name of the



- 1 school to which the student is admitted subject  
2 to the requirements of title 20 United States  
3 Code section 1232g, and the applicable rules and  
4 regulations issued pursuant thereto;
- 5 (C) Any amounts carried forward shall be expended for  
6 annual or partial-year scholarships in the  
7 following fiscal year; and
- 8 (D) Net eligible contributions remaining on June 30  
9 of each year that are in excess of the twenty-  
10 five per cent that may be carried forward shall  
11 be returned to the state treasury for deposit in  
12 the general fund of the State;
- 13 (10) Document each scholarship student's eligibility for  
14 that academic year before granting a scholarship;
- 15 (11) Be prohibited from granting multiyear scholarships in  
16 one approval process;
- 17 (12) Maintain separate accounts for scholarship funds and  
18 operating funds;
- 19 (13) Be authorized, with prior approval from the department  
20 of education, to transfer funds to another eligible  
21 nonprofit scholarship-funding organization if



1 additional funds are required to meet scholarship  
2 demand at the receiving nonprofit scholarship-funding  
3 organization; provided that:

4 (A) A transfer is limited to the greater of \$500,000  
5 or twenty per cent of the total contributions  
6 received by the nonprofit scholarship-funding  
7 origination making the transfer;

8 (B) All transferred funds must be deposited by the  
9 receiving nonprofit scholarship-funding  
10 organization into its scholarship accounts; and

11 (C) All transferred amounts received by a nonprofit  
12 scholarship-funding organization must be  
13 separately disclosed in the annual financial and  
14 compliance audit;

15 (14) Provide to the auditor and department of education a  
16 report on the results of an annual financial audit of  
17 its accounts and records conducted by an independent  
18 certified public accountant in accordance with  
19 auditing standards generally accepted in the United  
20 States, government auditing standards, and rules  
21 promulgated by the auditor; provided that:



- 1 (A) Audit reports must be provided to the auditor and
- 2 department of education within one hundred eighty
- 3 days after completion of the eligible nonprofit
- 4 scholarship-funding organization's fiscal year;
- 5 (B) The auditor shall review all audit reports
- 6 submitted pursuant to this chapter and request
- 7 any significant items the auditor feels were
- 8 omitted;
- 9 (C) The items requested by the auditor must be
- 10 provided within forty-five days after the date of
- 11 the request; and
- 12 (D) The auditor shall notify the legislature if the
- 13 scholarship-funding organization does not comply
- 14 with the auditor's request;
- 15 (15) Maintain the surety bond or letter of credit required
- 16 by section -10; provided that:
- 17 (A) The amount of the surety bond or letter of credit
- 18 may be adjusted quarterly to equal the actual
- 19 amount of undisbursed funds based upon submission
- 20 by the organization of a statement from a



1 certified public accountant verifying the amount  
2 of undisbursed funds;

3 (B) The requirements of this paragraph shall be  
4 waived if the cost of acquiring a surety bond or  
5 letter of credit exceeds the average ten-year  
6 cost of acquiring a surety bond or letter of  
7 credit by two hundred per cent; and

8 (C) The requirements of this paragraph shall be  
9 waived for a not-for-profit university located  
10 and chartered in the State that is accredited by  
11 the Western Association of Schools and Colleges  
12 or any affiliate of the Western Association of  
13 Schools and Colleges; and

14 (16) Provide to the auditor any information or  
15 documentation requested in connection with an  
16 operational audit; provided that information and  
17 documentation provided to the department of education  
18 and the auditor relating to the identity of a taxpayer  
19 that provides an eligible contribution under this  
20 chapter shall remain confidential at all times in  
21 accordance with section 231-1.5.



1           §   -5 Parent and student responsibilities for program  
2 participation. (a) The parent or guardian of a student  
3 selected for participation in the program shall select a school  
4 for the student to attend that is either:

5           (1) A public school outside of the service area in which  
6               the student resides; or

7           (2) A nonpublic special education school or program that  
8               is accredited pursuant to section 302A-443.5.

9           (b) The parent or guardian shall inform the complex area  
10 supervisor of the child's service area when the parent or  
11 guardian withdraws the student to attend another public school  
12 or a nonpublic special education school or program that is  
13 accredited pursuant to section 302A-443.5.

14           (c) Any student participating in the scholarship program  
15 must remain in attendance throughout the school year unless  
16 excused by the school for illness or other good cause.

17           (d) The parent or guardian shall authorize the nonprofit  
18 scholarship-funding organization to access information needed  
19 for eligibility determination and verification.

20           §   -6 Department of education obligations. The  
21 department of education shall:



- 1           (1) Annually submit to the department, by March 15, a list  
2           of eligible nonprofit scholarship-funding  
3           organizations that meet the requirements of section  
4           -1;
- 5           (2) Annually verify the eligibility of nonprofit  
6           scholarship-funding organizations that meet the  
7           requirements of section -1;
- 8           (3) Annually verify the eligibility of expenditures as  
9           provided in section -4 using the audit required by  
10          section -4(14);
- 11          (4) Establish a toll-free hotline or website that provides  
12          parents with information on participation in the  
13          scholarship program;
- 14          (5) Establish a process by which individuals may notify  
15          the department of education of any violation by a  
16          parent, public school, complex area, or nonpublic  
17          special education school or program that is accredited  
18          pursuant to section 302A-443.5, of state laws relating  
19          to program participation;
- 20          (6) Notify eligible nonprofit scholarship-funding  
21          organizations of any of the organization's identified





1 students who are receiving tax credit scholarships  
2 from other eligible nonprofit scholarship-funding  
3 organizations; and

4 (7) Annually report to the legislature the department of  
5 education's actions with respect to implementing  
6 accountability in the scholarship program and any  
7 substantiated allegations or violations of law or  
8 rule.

9 § -7 Complex area obligations; parental options. (a)

10 Upon the request of any eligible nonprofit scholarship-funding  
11 organization, a complex area shall inform all households within  
12 the complex area that may be eligible to apply for a tax credit  
13 scholarship of the student's possible eligibility to apply for a  
14 tax credit scholarship; provided that the form of such notice  
15 shall be provided by the eligible nonprofit scholarship-funding  
16 organization and the complex area shall include the provided  
17 form in any normal correspondence with eligible households.

18 (b) By April 1 of each year and within ten days after an  
19 individual education plan meeting or a 504 accommodation plan is  
20 issued under section 504 of the Rehabilitation Act of 1973, a  
21 complex area shall notify the parent or guardian of the student



1 of all options available pursuant to this chapter and of the  
2 availability of the telephone hotline and website for additional  
3 information.

4 (c) If the parent or guardian does enroll the student in a  
5 public school that is not in the service area in which the  
6 student resides through the scholarship program the student may  
7 continue attending that public school chosen by the parent until  
8 the student graduates from high school regardless of whether the  
9 student continues in the scholarship program.

10 (d) The parent or guardian of a student may choose to  
11 enroll the student in and transport the student to a complex  
12 area that is outside of the student's service area; provided  
13 that the complex area has available space and a program with the  
14 services agreed to in the student's existing individual  
15 education plan or 504 accommodation plan. The complex area  
16 shall accept the student and the student shall count towards the  
17 school's per-pupil funding.

18 (e) For students who attend a nonpublic special education  
19 school or program that is accredited pursuant to section  
20 302A-443.5 and whose parent requests that the student take the  
21 statewide assessments, the complex area in which the student



1 attends the nonpublic special education school or program shall  
2 provide locations and times to take all statewide assessments.

3 § -8 Scholarship amount and payment. (a) The amount of  
4 scholarship provided to any student for any single school year  
5 by an eligible nonprofit scholarship funding organization from  
6 eligible contributions shall be for total costs authorized under  
7 section -4, not to exceed annual limits.

8 (b) Payment of the scholarship by the eligible nonprofit  
9 scholarship-funding organization shall be by individual warrant  
10 made payable to the student's parent for costs specified in  
11 section -4(3). If the parent or guardian chooses that the  
12 student attend a nonpublic special education school or program  
13 that is accredited pursuant to section 302A-443.5, the warrant  
14 must be delivered by the eligible nonprofit scholarship-funding  
15 organization to the school or program and the parent or guardian  
16 shall restrictively endorse the warrant to the school or  
17 program. An eligible nonprofit scholarship-funding organization  
18 shall ensure that the parent or guardian to whom the warrant is  
19 made restrictively endorsed the warrant to the nonpublic special  
20 education school or program for deposit into the account of the  
21 school or program.



1 (c) An eligible nonprofit scholarship-funding organization  
2 shall obtain verification from each school attended by  
3 scholarship recipients of the students' continued attendance at  
4 the school for each period covered by a scholarship payment.

5 (d) Payment of the scholarship shall be made by the  
6 eligible nonprofit scholarship-funding organization no less  
7 frequently than on a quarterly basis.

8 § -9 Administration; rules. (a) The department and the  
9 department of education shall develop a cooperative agreement to  
10 assist in the administration of this chapter.

11 (b) The department shall adopt rules necessary to  
12 administer the tax credit scholarship program, including rules  
13 establishing application forms, procedures governing the  
14 approval of tax credits and carryforward tax credits, and  
15 procedures to be followed by taxpayers when claiming approved  
16 tax credits on the taxpayer's returns.

17 (c) The board of education shall adopt rules to administer  
18 the responsibilities of the department of education under this  
19 chapter.

20 § -10 Nonprofit scholarship-funding organizations;  
21 application. (a) In order to participate in the scholarship



1 program created under this chapter, a charitable organization  
2 that seeks to be a nonprofit scholarship-funding organization  
3 must submit an application for initial approval or renewal to  
4 the department of education no later than September 1 of each  
5 year before the school year for which the organization intends  
6 to offer scholarships.

7 (b) An application for initial approval shall include:

- 8 (1) A copy of the organization's incorporation documents  
9 and registration;
- 10 (2) A copy of the organization's Internal Revenue Service  
11 determination letter as a section 501(c)(3) not-for-  
12 profit organization;
- 13 (3) A description of the organization's financial plan  
14 that demonstrates sufficient funds to operate  
15 throughout the school year;
- 16 (4) The organization's organizational chart;
- 17 (5) A description of the criteria and methodology that the  
18 organization will use to evaluate scholarship  
19 eligibility;
- 20 (6) A description of the application process, including  
21 deadlines and any associated fees;



- 1 (7) A description of the deadlines for attendance  
2 verification and scholarship payments;
- 3 (8) A copy of the organization's policies on conflict of  
4 interest and whistleblowers; and
- 5 (9) A copy of a surety bond or letter of credit in an  
6 amount equal to twenty-five per cent of the  
7 scholarship funds anticipated for each school year or  
8 \$100,000, whichever is greater, specifying that any  
9 claim against the bond or letter of credit may be made  
10 only by an eligible nonprofit scholarship-funding  
11 organization to provide scholarships to and on behalf  
12 of students who would have had scholarships funded but  
13 for the diversion of funds giving rise to the claim  
14 against the bond or letter of credit.
- 15 (c) In addition to the information required by subsection  
16 (b), an application for renewal shall include:
- 17 (1) A surety bond or letter of credit equal to the amount  
18 of undisbursed donations held by the organization  
19 based on the annual report submitted pursuant to  
20 section -4. The amount of the surety bond or  
21 letter of credit must be at least \$100,000, but not



- 1 more than \$25,000,000, specifying that any claim  
2 against the bond or letter of credit may be made only  
3 by an eligible nonprofit scholarship-funding  
4 organization to provide scholarships to and on behalf  
5 of students who would have had scholarships funded but  
6 for the diversion of funds giving rise to the claim  
7 against the bond or letter of credit;
- 8 (2) The organization's completed Internal Revenue Service  
9 Form 990 submitted no later than November 30 of the  
10 year before the school year that the organization  
11 intends to offer the scholarships, notwithstanding the  
12 September 1 application deadline;
- 13 (3) A copy of the required audit pursuant to section  
14 -4(14) to the department of education and auditor;  
15 and
- 16 (4) An annual report that includes:  
17 (A) The number of students who completed  
18 applications, by county and grade;  
19 (B) The number of students who were approved for  
20 scholarships, by county and grade;



1           (C) The amount of funds received, the amount of funds  
2           distributed in scholarships, and an accounting of  
3           remaining funds and the obligation of those  
4           funds; and

5           (D) A detailed accounting of how the organization  
6           spent the administrative funds allowable under  
7           section     -4.

8           (d) The department of education shall review the  
9           application and notify the organization in writing of any  
10          deficiencies within thirty days after receipt of the application  
11          and allow the organization thirty days to correct any  
12          deficiencies.

13          (e) Within thirty days after receipt of the finalized  
14          application, the department of education shall recommend  
15          approval or disapproval of the application to the board of  
16          education. The board of education shall consider the  
17          application and recommendation at the next scheduled meeting,  
18          adhering to appropriate meeting notice requirements. If the  
19          board of education disapproves the organization's application,  
20          it shall provide the organization with a written explanation of  
21          that determination.





1           (f) If the board of education disapproves the renewal of a  
2 nonprofit scholarship-funding organization, the organization  
3 must notify the affected eligible students and parents of the  
4 decision within fifteen days after disapproval. An eligible  
5 student affected by the disapproval of an organization's  
6 participation remains eligible under this chapter until the end  
7 of the school year in which the organization was disapproved.  
8 The student may apply and be accepted by another eligible  
9 nonprofit scholarship-funding organization for the upcoming  
10 school year.

11           (g) All remaining funds held by a nonprofit scholarship-  
12 funding organization that is disapproved for participation must  
13 revert to the department of education for redistribution to  
14 other eligible nonprofit scholarship-funding organizations.

15           (h) A nonprofit scholarship-funding organization is a  
16 renewing organization if it maintains continuous approval and  
17 participation in the program. An organization that chooses not  
18 to participate for one year or more or that is disapproved to  
19 participate for one year or more must submit an application for  
20 initial approval in order to participate in the program again.



1 (i) The board of education shall adopt rules providing  
2 guidelines for receiving, reviewing, and approving applications  
3 for new and renewing nonprofit scholarship-funding  
4 organizations.

5 (j) A not-for-profit university located and chartered in  
6 the State that is accredited by the Western Association of  
7 Schools and Colleges or any affiliate of the Western Association  
8 of Schools and Colleges shall be exempt from the initial or  
9 renewal application process but must file a registration notice  
10 with the department of education to be an eligible nonprofit  
11 scholarship-funding organization."

12 SECTION 2. Chapter 237, Hawaii Revised Statutes, is  
13 amended by adding a new section to be appropriately designated  
14 and to read as follows:

15 "§237- Credit for contributions to eligible nonprofit  
16 scholarship-funding organizations. (a) There is allowed a  
17 credit of one hundred per cent of an eligible contribution made  
18 to an eligible nonprofit scholarship-funding organization under  
19 chapter against any tax due for a taxable year under this  
20 chapter after the application of any other allowable credits by  
21 the taxpayer. The credit granted by this section shall be



1 reduced by the difference between the amount of federal  
2 corporate income tax taking into account the credit granted by  
3 this section and the amount of federal corporate income tax  
4 without application of the credit granted by this section.

5 (b) A taxpayer who files a Hawaii consolidated return  
6 pursuant to section 237-35 may be allowed the credit on a  
7 consolidated return basis; provided that the total credit taken  
8 by the taxpayer is subject to the limitation established under  
9 subsection (a).

10 (c) The provisions of chapter        apply to the credit  
11 authorized by this section."

12 SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) Criminal history record checks may be conducted by:

15 (1) The department of health or its designee on operators

16 of adult foster homes for individuals with

17 developmental disabilities or developmental

18 disabilities domiciliary homes and their employees, as

19 provided by section 321-15.2;

20 (2) The department of health or its designee on

21 prospective employees, persons seeking to serve as



- 1 providers, or subcontractors in positions that place  
2 them in direct contact with clients when providing  
3 non-witnessed direct mental health or health care  
4 services as provided by section 321-171.5;
- 5 (3) The department of health or its designee on all  
6 applicants for licensure or certification for,  
7 operators for, prospective employees, adult  
8 volunteers, and all adults, except adults in care, at  
9 health care facilities as defined in section 321-15.2;
- 10 (4) The department of education on employees, prospective  
11 employees, and teacher trainees in any public school  
12 in positions that necessitate close proximity to  
13 children as provided by section 302A-601.5;
- 14 (5) The counties on employees and prospective employees  
15 who may be in positions that place them in close  
16 proximity to children in recreation or child care  
17 programs and services;
- 18 (6) The county liquor commissions on applicants for liquor  
19 licenses as provided by section 281-53.5;
- 20 (7) The county liquor commissions on employees and  
21 prospective employees involved in liquor



1 administration, law enforcement, and liquor control  
2 investigations;

3 (8) The department of human services on operators and  
4 employees of child caring institutions, child placing  
5 organizations, and foster boarding homes as provided  
6 by section 346-17;

7 (9) The department of human services on prospective  
8 adoptive parents as established under section  
9 346-19.7;

10 (10) The department of human services on applicants to  
11 operate child care facilities, prospective employees  
12 of the applicant, and new employees of the provider  
13 after registration or licensure as provided by section  
14 346-154;

15 (11) The department of human services on persons exempt  
16 pursuant to section 346-152 to be eligible to provide  
17 child care and receive child care subsidies as  
18 provided by section 346-152.5;

19 (12) The department of health on operators and employees of  
20 home and community-based case management agencies and  
21 operators and other adults, except for adults in care,



- 1           residing in community care foster family homes as  
2           provided by section 321-15.2;
- 3       (13)   The department of human services on staff members of  
4           the Hawaii youth correctional facility as provided by  
5           section 352-5.5;
- 6       (14)   The department of human services on employees,  
7           prospective employees, and volunteers of contracted  
8           providers and subcontractors in positions that place  
9           them in close proximity to youth when providing  
10          services on behalf of the office or the Hawaii youth  
11          correctional facility as provided by section 352D-4.3;
- 12       (15)   The judiciary on employees and applicants at detention  
13          and shelter facilities as provided by section 571-34;
- 14       (16)   The department of public safety on employees and  
15          prospective employees who are directly involved with  
16          the treatment and care of persons committed to a  
17          correctional facility or who possess police powers  
18          including the power of arrest as provided by section  
19          353C-5;



- 1       (17) The board of private detectives and guards on  
2            applicants for private detective or private guard  
3            licensure as provided by section 463-9;
- 4       (18) Private schools and designated organizations on  
5            employees and prospective employees who may be in  
6            positions that necessitate close proximity to  
7            children; provided that private schools and designated  
8            organizations receive only indications of the states  
9            from which the national criminal history record  
10           information was provided pursuant to section 302C-1;
- 11       (19) The public library system on employees and prospective  
12            employees whose positions place them in close  
13            proximity to children as provided by section  
14            302A-601.5;
- 15       (20) The State or any of its branches, political  
16            subdivisions, or agencies on applicants and employees  
17            holding a position that has the same type of contact  
18            with children, vulnerable adults, or persons committed  
19            to a correctional facility as other public employees  
20            who hold positions that are authorized by law to



- 1 require criminal history record checks as a condition  
2 of employment as provided by section 78-2.7;
- 3 (21) The department of health on licensed adult day care  
4 center operators, employees, new employees,  
5 subcontracted service providers and their employees,  
6 and adult volunteers as provided by section 321-15.2;
- 7 (22) The department of human services on purchase of  
8 service contracted and subcontracted service providers  
9 and their employees serving clients of the adult  
10 protective and community services branch, as provided  
11 by section 346-97;
- 12 (23) The department of human services on foster grandparent  
13 program, senior companion program, and respite  
14 companion program participants as provided by section  
15 346-97;
- 16 (24) The department of human services on contracted and  
17 subcontracted service providers and their current and  
18 prospective employees that provide home and community-  
19 based services under section 1915(c) of the Social  
20 Security Act, title 42 United States Code section  
21 1396n(c), or under any other applicable section or





- 1 sections of the Social Security Act for the purposes  
2 of providing home and community-based services, as  
3 provided by section 346-97;
- 4 (25) The department of commerce and consumer affairs on  
5 proposed directors and executive officers of a bank,  
6 savings bank, savings and loan association, trust  
7 company, and depository financial services loan  
8 company as provided by section 412:3-201;
- 9 (26) The department of commerce and consumer affairs on  
10 proposed directors and executive officers of a  
11 nondepository financial services loan company as  
12 provided by section 412:3-301;
- 13 (27) The department of commerce and consumer affairs on the  
14 original chartering applicants and proposed executive  
15 officers of a credit union as provided by section  
16 412:10-103;
- 17 (28) The department of commerce and consumer affairs on:  
18 (A) Each principal of every non-corporate applicant  
19 for a money transmitter license; and  
20 (B) The executive officers, key shareholders, and  
21 managers in charge of a money transmitter's



- 1 activities of every corporate applicant for a  
2 money transmitter license,  
3 as provided by sections 489D-9 and 489D-15;
- 4 (29) The department of commerce and consumer affairs on  
5 applicants for licensure and persons licensed under  
6 title 24;
- 7 (30) The Hawaii health systems corporation on:
- 8 (A) Employees;
- 9 (B) Applicants seeking employment;
- 10 (C) Current or prospective members of the corporation  
11 board or regional system board; or
- 12 (D) Current or prospective volunteers, providers, or  
13 contractors,
- 14 in any of the corporation's health facilities as  
15 provided by section 323F-5.5;
- 16 (31) The department of commerce and consumer affairs on:
- 17 (A) An applicant for a mortgage loan originator  
18 license; and
- 19 (B) Each control person, executive officer, director,  
20 general partner, and manager of an applicant for  
21 a mortgage loan originator company license,



- 1 as provided by chapter 454F;
- 2 (32) The state public charter school commission or public  
3 charter schools on employees, teacher trainees,  
4 prospective employees, and prospective teacher  
5 trainees in any public charter school for any position  
6 that places them in close proximity to children, as  
7 provided in section 302D-33;
- 8 (33) The counties on prospective employees who work with  
9 children, vulnerable adults, or senior citizens in  
10 community-based programs;
- 11 (34) The counties on prospective employees for fire  
12 department positions which involve contact with  
13 children or vulnerable adults;
- 14 (35) The counties on prospective employees for emergency  
15 medical services positions which involve contact with  
16 children or vulnerable adults;
- 17 (36) The counties on prospective employees for emergency  
18 management positions and community volunteers whose  
19 responsibilities involve planning and executing  
20 homeland security measures including viewing,  
21 handling, and engaging in law enforcement or



- 1           classified meetings and assisting vulnerable citizens  
2           during emergencies or crises;
- 3       (37)   The State and counties on employees, prospective  
4           employees, volunteers, and contractors whose position  
5           responsibilities require unescorted access to secured  
6           areas and equipment related to a traffic management  
7           center;
- 8       (38)   The State and counties on employees and prospective  
9           employees whose positions involve the handling or use  
10          of firearms for other than law enforcement purposes;
- 11       (39)   The State and counties on current and prospective  
12          systems analysts and others involved in an agency's  
13          information technology operation whose position  
14          responsibilities provide them with access to  
15          proprietary, confidential, or sensitive information;
- 16       (40)   The department of commerce and consumer affairs on  
17          applicants for real estate appraiser licensure or  
18          certification as provided by chapter 466K;
- 19       (41)   The department of health or its designee on all  
20          license applicants, licensees, employees, contractors,  
21          and prospective employees of medical marijuana



# H.B. NO. 2652

1 dispensaries, and individuals permitted to enter and  
 2 remain in medical marijuana dispensary facilities as  
 3 provided under sections 329D-15(a)(4) and  
 4 329D-16(a)(3); [~~and~~]  
 5 (42) The department of education on the owner or operator  
 6 of an eligible nonprofit scholarship-funding  
 7 organization as defined in section -1; and  
 8 [~~(42)~~] (43) Any other organization, entity, or the State,  
 9 its branches, political subdivisions, or agencies as  
 10 may be authorized by state law."

11 SECTION 4. Statutory material to be repealed is bracketed  
 12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act, upon its approval, shall apply to  
 14 taxable years beginning after December 31, 2016.

15

INTRODUCED BY:   
 JAN 27 2016



# H.B. NO. 2652

**Report Title:**

Hawaii Tax Credit Scholarship Program; Students with Disabilities; Nonpublic Special Education School or Program

**Description:**

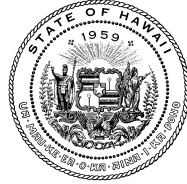
Establishes the Hawaii tax credit scholarship program to benefit students with disabilities by providing scholarships to cover transportation costs and any other educational fees associated with a student attending a public school that is not in the service area where the student resides or a nonpublic special education school or program. Establishes eligibility criteria for students to apply for the scholarship program, responsibilities of the department of taxation and department of education, and eligibility criteria for nonprofit scholarship-funding organizations. Applies to tax years beginning after 12/31/16.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



DAVID Y. IGE  
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

MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

JOSEPH K. KIM  
DEPUTY DIRECTOR

To: The Honorable Isaac Choy, Chair  
and Members of the House Committee on Higher Education

Date: February 9, 2016

Time: 2:00 P.M.

Place: Conference Room 309, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 2652, Relating to Education.

The Department of Taxation (Department) appreciates the intent of H.B. 2652, and offers the following comments for your consideration.

H.B. 2652 creates a nonrefundable general excise tax credit for contributions made to eligible nonprofit scholarship organizations. The credit is equal to 100 percent of eligible contributions and is applied against taxpayer's general excise tax liability. Eligible nonprofit scholarship organization is defined as a section 501(c)(3) charity that provides scholarships to special needs students in accordance with detailed obligations provided in the bill. The bill becomes effective for tax years beginning after December 31, 2016. The Department defers to other state agencies concerning the overall merits of this bill and provides the following comments on the tax aspects of the bill only.

The Department notes this bill creates a credit that is applied against the general excise tax. Typically, tax credits are applied against the income tax; this will be the only credit against general excise tax and will create confusion among taxpayers for several reasons.

First, this credit will be extremely complicated to comply with. The credit will only be available to businesses because it is applied against general excise tax. Individuals making eligible contributions will not enjoy the credit. There is no justification given for this disparity.

Second, this bill allows a double tax benefit for some taxpayers, but not for others. All businesses are subject to general excise tax and can claim the credit, but only corporations are subject to the reduction of the credit by the value of any federal income tax benefit generated. As drafted, the double benefit gained by partners in a partnership or S corporation would remain intact. This creates confusion over whether the intent is to maintain the double benefit for partnerships and S corporations or if the intent is that only corporations can claim the credit in the first place.

Third, the mechanism to reduce the double benefit to corporations is defective as drafted. The language refers to federal “credit” rather than deduction. If it is the intent of the bill to reduce the credit by the value of the federal deduction allowed, then the Department recommends the section be revised by replacing “credit” in both places it appears in the sentence with “charitable deduction generating the credit under this section.” This will clarify the reduction, but will not make it less difficult to execute.

Additionally, the mechanism to reduce the double benefit to corporations is complicated. It requires two calculations of federal income tax owed by a corporation, one ignoring the federal charitable deduction and one using the federal charitable deduction, all to determine the value of the state general excise tax credit. A less complicated approach may be to simply disallow the credit to the extent the deduction is taken.

Taxpayers and the Department will face all of the above difficulties when claiming and administering the credit. In addition, as this will be the only tax credit against general excise tax, it will require substantial revisions to the Department’s forms and computer system. For this reason the Department requests the bill become effective for tax years beginning after December 31, 2017.

Finally, this credit may also create an issue with Hawaii’s use tax. Use taxes are constitutionally required to be complementary to the state’s general consumption tax, in Hawaii’s case the general excise tax. This bill creates a benefit against general excise tax liability without a corresponding benefit in the use tax, this may make the use tax unconstitutional or at least require that the credit be offered against the use tax. The Department defers to the Department of the Attorney General as to the constitutionality of this measure.

Thank you for the opportunity to provide comments.



# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, GENERAL EXCISE, Hawaii Tax Credit Scholarship Program

BILL NUMBER: HB 2652; SB 3127 (Identical)

INTRODUCED BY: HB by JOHANSON; SB by KIM

EXECUTIVE SUMMARY: The apparent intent of this bill is to establish a scholarship program funded by net income tax credits. Technical amendments are necessary because the bill now addresses the general excise tax law and not the net income tax law. Rather than creating a whole new program with layers of new bureaucracy to run it, lawmakers should consider implementation of the ABLE program, a federal program which the State recently bought into via Act 206, SLH 2015, which offers similar incentives.

BRIEF SUMMARY: Adds a new chapter to the HRS to establish the Hawaii tax credit scholarship program to benefit students with disabilities by providing scholarships to cover transportation costs and any other educational fees associated with a student attending a public school that is not in the service area where the student resides or a nonpublic special education school or program. Establishes eligibility criteria for students to apply for the scholarship program, responsibilities of the department of taxation and department of education, and eligibility criteria for nonprofit scholarship-funding organizations.

Establishes a tax credit cap amount of \$\_\_\_\_\_ for the fiscal year ending June 30, 2017. In subsequent fiscal years, the cap amount shall increase by 25% if at least 90% of the current fiscal year's allocation was applied for. Taxpayers need to apply to the department of taxation for a credit allocation, which application will specify the designated eligible nonprofit scholarship-funding organization. The department is to approve the applications on a first-come, first-served basis.

Credit amounts are not refundable, but if not fully utilized by the taxpayer may be carried forward for a period not to exceed five years, but a taxpayer who wants to carry a credit forward needs to apply to the department for approval in the year in which the taxpayer intends to use the credit.

Credits that are approved or carried forward are not transferable except where all of the assets of the taxpayer are transferred (in a merger, for example), or where credits are transferred among members of an affiliated group of corporations.

Credits that are approved may be rescinded by the taxpayer, in which case they go back to the credit pool. The department can then allocate such credits to eligible taxpayer applications received after the date the rescission is accepted by the department.

Adds a new section to HRS chapter 237 to allow a credit of 100% of an eligible contribution made to an eligible nonprofit scholarship-funding organization. The credit is reduced by the

difference between the amount of federal corporate income tax with the credit and the amount of federal corporate income tax without the credit.

EFFECTIVE DATE: Applies to taxable years beginning after December 31, 2015.

STAFF COMMENTS: This bill seeks to establish an entirely new program to advance the educational opportunities of students with disabilities.

The bill author apparently wanted to establish an income tax credit, because there is reference in the new section to corporate income tax. The new section, however, should be in chapter 235 rather than chapter 237 if that is the case. The bill also discusses a "consolidated return," but the reference there should be to HRS section 235-92(2) rather than 237-35.

The bill as drafted also requires a reduction in the credit by the difference between the amount of federal corporate income tax with the credit versus without the credit. Because Hawaii income tax is generally deductible for federal income tax purposes under IRC section 164, the federal tax with the credit will be more than the federal tax without the credit; in other words, taking the Hawaii credit will produce a federal tax cost. It is possible that the bill proponents thought the benefit would go in the other direction and wanted to prevent a windfall; but the actual language will create a double detriment to the taxpayer (more federal tax, and reduction of the credit). It is also curious why this provision is limited to federal corporate tax, as the vast majority of businesses are not in C corporation form and thus the owners would pay tax at individual rates.

Finally, it seems that the benefits sought to be provided by the bill are somewhat similar to those touted under the recently enacted Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, Div. B, Pub. L. No. 113-295. According to a story in *U.S. News and World Report*:

Congress passed the Achieving a Better Life Experience Act on the final hour of the final day of Congress in December, creating a new type of tax-advantaged account called an ABLA account under IRC section 529A.

The hope is that ABLA accounts will help level the financial playing field for families raising kids with disabilities. The National Down Syndrome Society estimates that the accounts will benefit roughly 5.8 million individuals and families.

"As a country, we've basically said that we value saving for higher education using a 529 plan, but we don't value saving for the basic needs that are connected to a disability," says Sen. Bob Casey, D-Pa., who sponsored the Senate version of the bill. "We have this bizarre and really insulting situation where a child with a disability, his or her family couldn't save for his or her future [in a tax-advantaged account], but they could save for his or her brother or sister because they were going to university."

Like 529 college savings accounts, ABLA accounts allow families to set aside money (up to \$14,000 per person annually), and pay no taxes on that money's growth as long as it's used for qualified expenses. For a 529 college account, qualified educational expenses include college tuition, fees and textbooks.

The beneficiaries of an ABLE account may have more diverse needs, so those accounts allow for a broader list of qualified expenses, including special education services and tutoring, health care costs, assistive technology and housing. "[ABLE accounts] are tailored for different purposes because it covers the support, the housing, legal fees and even funeral and burial expenses," says Dave McKelvey, a tax and business consulting partner at New York accounting firm Friedman LLP.

Assets in both types of 529 accounts are generally protected in bankruptcy, as long as contributions were made at least two years before a bankruptcy (meaning relatives can't shield assets by transferring them to a 529 just before declaring bankruptcy). "If the parents declare bankruptcy, the money would still be there for the child," McKelvey says.

Similar to the college savings accounts they are modeled after, ABLE accounts will be offered by states – although the Department of the Treasury and IRS are also involved. Based on the strong bipartisan support the ABLE Act received, Casey predicts that states will start offering accounts later this year.

Susan Johnston Taylor, "How New ABLE Accounts Will Help Americans With Disabilities," U.S. News and World Report (Mar. 3, 2015) (accessible at <http://money.usnews.com/money/-personal-finance/articles/2015/03/03/how-new-able-accounts-will-help-americans-with-disabilities>).

Act 206, SLH 2015, created the Hawaii ABLE Savings Program. Act 52, SLH 2015, states that Hawaii's income tax law conforms to the federal provisions permitting a deduction for contributions to an ABLE account.

Before creating an entirely new program with layers of new bureaucracy, policymakers should give the program enacted just last year a chance to work.

Digested 2/8/2016

**ichiyama2-Brandon**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 08, 2016 8:03 AM  
**To:** HEDtestimony  
**Cc:** bp32@hawaii.edu  
**Subject:** \*Submitted testimony for HB2652 on Feb 9, 2016 14:00PM\*

**HB2652**

Submitted on: 2/8/2016

Testimony for HED on Feb 9, 2016 14:00PM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bret Polopolus-Meredith	Individual	Support	No

Comments:

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.

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**ichiyama2-Brandon**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 07, 2016 12:45 PM  
**To:** HEDtestimony  
**Cc:** aandrea99@aol.com  
**Subject:** Submitted testimony for HB2652 on Feb 9, 2016 14:00PM

**HB2652**

Submitted on: 2/7/2016

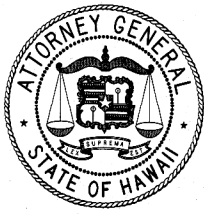
Testimony for HED on Feb 9, 2016 14:00PM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrea Quinn	Individual	Comments Only	No

Comments: Please add in a proviso to this legislation that nonpublic schools or nonprofit organizations religious in nature are not to be included as recipients to these scholarship programs. To do otherwise would violate the First Amendment's Establishment Clause against government-sponsored religion, possibly subjecting state taxpayers to footing the bill for costly litigation fees.

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.

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**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

**LATE**

**ON THE FOLLOWING MEASURE:**  
H.B. NO. 2652, RELATING TO EDUCATION.

**BEFORE THE:**  
HOUSE COMMITTEE ON HIGHER EDUCATION

**DATE:** Tuesday, February 9, 2016 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Cynthia Johiro, Deputy Attorney General

---

Chair Choy and Members of the Committee:

The Department of the Attorney General offers the following comments.

The purposes of this bill are to: (1) establish the Hawaii tax credit scholarship program to benefit students with disabilities by providing scholarships to cover transportation costs and any other education fees associated with a student attending a public school that is not in the service area where the student resides or a nonpublic special education school or program; and (2) establish eligibility criteria for students to apply for the scholarship program, responsibilities of the Department of Taxation and Department of Education, and eligibility criteria for nonprofit scholarship-funding organizations.

This bill may be challenged as being discriminatory under the Commerce Clause of the United States Constitution ("Commerce Clause") because although it provides for a general excise tax credit, it does not provide for a corresponding use tax credit. To avoid confusion and unnecessary litigation, we recommend that the bill be amended so it is not facially discriminatory under the Commerce Clause. The specific wording that creates the concern occurs on page 26, lines 15-21 through page 27, lines 1-4.

The United States Supreme Court has recognized that although the Commerce Clause is phrased merely as a grant of authority to Congress to "regulate Commerce . . . among the several States," article I, section 8, cl. 3, it is well established that the Commerce Clause also embodies a negative command forbidding the states to discriminate against interstate trade. Associated Industries v. Lohman, 511 U.S. 641, 646, 114 S. Ct. 1815, 1820 (1994). The Commerce Clause prohibits regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. Id. at 647, 114 S. Ct. at 1820, *citing* New Energy Co. of Ind. v. Limbach,

486 U.S. 269, 273-74, 108 S. Ct. 1803 (1988). The fundamental command of the Commerce Clause is that “a State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State.” *Id.*, *citing* Armco Inc. v. Hardesty, 467 U.S. 638, 642, 104 S. Ct. 2620, 2622 (1984).

The use tax under chapter 238, Hawaii Revised Statutes (HRS), provides for “an excise tax on the use in this State of tangible personal property which is imported . . . for use in this State.” Matter of Hawaiian Flour Mills, Inc., 76 Hawaii 1, 13, 868 P.2d 419, 431 (1994), *citing* HRS § 238-2. The general theory behind such a tax is “to make all tangible property used or consumed in the State subject to a uniform tax burden irrespective of whether it is acquired within the State, making it subject to the [general excise] tax, or from without the State, making it subject to a use tax at the same rate.” Hawaiian Flour Mills, Id., *citing* Halliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64, 66, 83 S. Ct. 1201, 1202, 10 L. Ed. 2d 202, 204 (1963). In the absence of a use tax that complements a general excise tax, sellers of goods, whose goods are acquired out-of-state, theoretically enjoy a competitive advantage over sellers of goods whose goods acquired in-state: not being subject to the general excise tax, out-of-state products would be less expensive than in-state products, the prices of which would presumably reflect some pass-on of the general excise tax. Hawaiian Flour Mills, Id. Thus,

[t]he [use] tax buttresses the general excise tax as it is designed to prevent the avoidance of excise taxes through direct purchases from the mainland. Its ultimate purpose is to remove the competitive advantage an out-of-state wholesaler or retailer would otherwise have over a seller subject to the payment of State excise taxes.

Hawaiian Flour Mills, Id., *citing* In re Habilitat, Inc., 65 Haw. 199, 209, 649 P.2d 1126, 1133-34 (1982).

It may be argued that the use tax exceeds the general excise tax under this bill because it provides for a general excise tax credit but no corresponding use tax credit. It may be argued that this is facially discriminatory under the Commerce Clause. In Associated Industries v. Lohman, 511 U.S. 641, 114 S. Ct. 1815 (1994), the Missouri use tax on imported goods, depending on the buyer’s location in the State, exceeded the local sales tax. *Id.* at 645, 114 S. Ct. 1815. One of the issues was whether such taxes violated the Commerce Clause. In Associated,

the United States Supreme Court held that a state's use tax that exceeds the local sales tax violates the Commerce Clause. Id. at 649, 114 S. Ct. at 1821. It stated:

Where a state imposes equivalent sales and use taxes, we have upheld the system under the Commerce Clause. . . . Where the use tax exceeds the sales tax, the discrepancy imposes a discriminatory burden on interstate commerce.

Id. at 648-49, 114 S. Ct. 1821. Hawaii has a general excise tax, not a sales tax. However, the same analysis applies.

To avoid confusion and unnecessary litigation, we recommend that the bill be amended so it is not facially discriminatory by expressly adding a corresponding use tax credit or by changing the proposed tax credit to be an income tax credit and not a general excise tax credit.

Thank you for the opportunity to provide comments.



