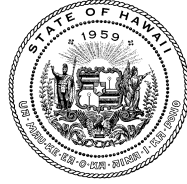


DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Mark M. Nakashima, Chair
and Members of the House Committee on Economic Development and Business

Date: Wednesday, February 8, 2017

Time: 9:00 A.M.

Place: Conference Room 309, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 0591, Relating to the Capital Infrastructure Tax Credit

The Department of Taxation (Department) appreciates the intent of the measure and provides the following comments for your consideration on H.B. 591.

H.B. 591 doubles the amount of credit per taxable year, redefines "capital infrastructure costs" to include structures, machinery, equipment, and capital assets, provides that costs which cannot be used in any tax year due to the credit cap may carry such costs over to the following years until exhausted, allows a qualified infrastructure tenant to create Special Purpose Entity (SPE), adds as an event of recapture any qualified infrastructure tenant who fails to relocate within 90 days after executing a lease with the Department of Transportation, and adds a taxpayer reporting requirement. The measure is effective upon approval, and applies to taxable years beginning after December 31, 2016.

First, the Department notes that H.B. 591 doubles the maximum amount of capital infrastructure tax credit from \$1.25 million per year to \$2.5 million per year. Currently, the credit is set at 50% of the capital infrastructure costs, up to a maximum of \$2.5 million of costs paid or incurred during the taxable year. This measure eliminates the reference to costs and simply sets the credit cap at \$2.5 million.

Second, this measure redefines "capital infrastructure costs" under section 235-17.5, Hawaii Revised Statutes (HRS) to include every capital asset purchased by the business, thereby vastly expanding the types of property eligible for the credit. This is very important because this measure allows a taxpayer to front load all costs in the years in early years, and still be able to claim the credit in subsequent years.

Third, the Department notes that a qualified infrastructure tenant already has the ability to create as many SPEs as it deems necessary for the purpose of raising capital, and it is not necessary to include such language specifically in this measure. This is especially important

because subsection (c)(2) is confusing as written. However, if it is determined that such language is appropriate, the Department suggests that subsection (c)(2) be rewritten to avoid any dispute over whether a SPE has a separate claim to the credit as follows:

(2) The qualified infrastructure tenant, together with all special purpose entities, shall not claim any credit in any one year that exceeds \$2,500,000;

Fourth, the Department notes that this measure imposes a reporting requirement to the Legislature, and appears to have an intent of notifying the Legislature of the number and costs of the credit during a legislative session. However, a qualified infrastructure tenant (along with its SPEs) could have a fiscal tax year, and therefore may not be submitting such information during session. For example, a taxpayer with a June 30 year end would not provide a report until September. In addition, no penalty is imposed for failure to report. The Department suggests the following revisions to subsection (i) if such reporting to the Legislature during session is of importance:

(i) Any taxpayer claiming a tax credit under this section shall, within ninety days of the end of the calendar year in which costs for which the credit is properly claimable, submit the following information to the legislature:

(1) The amount of the eligible costs for that year for which the tax credit may be claimed; and

(2) The qualified infrastructure tenant incurring the costs.

Failure to timely submit the information shall result in a reduction of the credit amount otherwise allowable under this section. The penalty shall be \$5,000 per month or fraction thereof that the failure continues, not to exceed \$25,000.

Finally, the Department is able to implement this measure by the current effective date because it is a modification of an existing credit that will only require form and instruction changes.

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, Increase Capital Infrastructure Tax Credit

BILL NUMBER: HB 591

INTRODUCED BY: NAKASHIMA, BROWER, JOHANSON, LUKE, NISHIMOTO, SAIKI, TAKUMI

EXECUTIVE SUMMARY: This measure substantially expands the definition of creditable costs to include machinery, equipment, and other personal property. The credit as originally enacted was awarded for costs of real property infrastructure, and that credit was justifiable because the State would ultimately own that infrastructure. The justification is much less apparent with tangible personal property because the tenant, rather than the State, will own it and will be able to remove it at will.

BRIEF SUMMARY: Amends HRS section 235-17.5 to allow structures, machinery, equipment or capital assets to be included as “capital infrastructure costs” which trigger the credit. Excludes from such costs “any amounts received in any form from the State.”

Provides that the credit maximum is \$2,500,000 per qualified infrastructure tenant per taxable year. Provides that if the capital infrastructure costs paid or incurred by a tenant results in a tax credit in excess of \$2,500,000, the excess capital infrastructure costs shall be applied to a subsequent tax year until exhausted for calculation of the credit.

Allows a qualified infrastructure tenant to form a special purpose entity to raise investor capital and claim the credit on behalf of the qualified infrastructure tenant. The credit limit of \$2.5 million applies to a qualified infrastructure tenant together with all special purpose entities.

Provides that the credit may be recaptured if the tenant fails to relocate within 90 days of the execution of a lease.

Requires any taxpayer claiming a tax credit within 90 days of the end of the taxable year in which the credit is claimed, shall submit the following information to the legislature: (1) the amount of the eligible costs for which the tax credit may be claimed; and (2) the qualified infrastructure tenant incurring the costs.

EFFECTIVE DATE: Upon approval, applies to tax years beginning after December 31, 2016.

STAFF COMMENTS: Act 200, SLH 2014, allows investors who make an investment in a qualified infrastructure tenant displaced by the Kapalama terminal modernization project to claim a capital infrastructure tax credit equal to 50% of the capital infrastructure costs, up to \$2.5 million in infrastructure *costs* per year.

As enacted, the credit was limited to improvements made to the real property infrastructure. We previously commented that the credit was justifiable to that extent because the state will own

those improvements under the terms of the revocable permits issued by the department of transportation. The present bill substantially expands the expenses eligible for the credit to machinery, equipment, and other capital items that will not become part of the real property infrastructure. Presumably, the tenant will own these items and will be able to remove them from the real property when the tenant's lease ends. There is much less justification for allowing these kinds of expenses to be creditable.

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 capital infrastructure tax credit adopted last year provides financial assistance to displaced tenants, and it is, of course, arguable that some financial assistance is justifiable given the circumstances. Now it appears obvious that the revenue hit is going to be more than \$20 million, although possibly spread over several years.

In any event, this credit amounts to nothing more than a subsidy of state funds. As with any subsidy, this one needs to be paid for. Either government needs to shrink, or the cost of government must be borne by all other taxpayers who do not qualify for the subsidy.

Digested 2/6/2017

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 1:24 PM
To: edbtestimony
Cc: chung@navatekltd.com
Subject: Submitted testimony for HB591 on Feb 8, 2017 09:00AM

HB591

Submitted on: 2/6/2017

Testimony for EDB on Feb 8, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
ann chung	pacific shipyards	Support	Yes

Comments: We strongly support HB591. The original bill, now Act 200, was passed in 2014 by the Legislature with the intent to help displaced waterfront tenants from the Kapalama Container Terminal site secure financing to move and build out. The purpose of these amendments to the bill is to clarify the definition of capital infrastructure costs based on discussions with DoTAX. Some tenants are being forced by the State to move out of Pier 41 and relocate to other State-owned lands that are essentially “bare lands” or empty piers that require full infrastructure build-out including sewers, electrical, parking, and other site improvements. These displaced tenants have had major disruptions and negative impacts to current operations due to the projected move and have spent millions of dollars on relocation planning and consultants. The proposed changes to the definition of capital infrastructure costs will enable tenants to enlist the credit as originally intended by the legislature. Supporting the displaced waterfront tenants of the Kapalama Container Terminal project supports the growth of commerce in the State and supports maritime jobs. This credit helps displaced tenants raise financing and IMPROVE STATE-OWNED LANDS upon which the state will also receive significant lease rents.

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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keohokalole2 - Anthony

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Sent: Monday, February 6, 2017 2:03 PM
To: edbtestimony
Cc: gary@navatekltd.com
Subject: *Submitted testimony for HB591 on Feb 8, 2017 09:00AM*

HB591

Submitted on: 2/6/2017

Testimony for EDB on Feb 8, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Gary Shimosono	Individual	Support	No

Comments:

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To: edbtestimony
Cc: klock@navatekltd.com
Subject: *Submitted testimony for HB591 on Feb 8, 2017 09:00AM*

HB591

Submitted on: 2/6/2017

Testimony for EDB on Feb 8, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Kacey Lock	Individual	Support	No

Comments:

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keohokalole2 - Anthony

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To: edbtestimony
Cc: eschiff5@gmail.com
Subject: Submitted testimony for HB591 on Feb 8, 2017 09:00AM

HB591

Submitted on: 2/6/2017

Testimony for EDB on Feb 8, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Schiff	Individual	Support	No

Comments: I strongly support HB591.

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To: edbtestimony
Cc: smatsuura@navatekltd.com
Subject: *Submitted testimony for HB591 on Feb 8, 2017 09:00AM*

HB591

Submitted on: 2/6/2017

Testimony for EDB on Feb 8, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Matsuura	Individual	Support	No

Comments:

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keohokalole2 - Anthony

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Sent: Monday, February 6, 2017 4:22 PM
To: edbtestimony
Cc: awhite@navatekltd.com
Subject: *Submitted testimony for HB591 on Feb 8, 2017 09:00AM*

HB591

Submitted on: 2/6/2017

Testimony for EDB on Feb 8, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Audra White	Individual	Support	No

Comments:

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Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Economic Development & Business
Wednesday, February 8, 2017 at 9:00 A.M.
Conference Room 309, State Capitol**

**RE: HOUSE BILL 591 RELATING TO THE CAPITAL INFRASTRUCTURE
TAX CREDIT**

Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 591, which includes structures, machinery, equipment, and capital assets in the definition of capital infrastructure costs for the Capital Infrastructure Tax Credit; sets cap on credit per taxable year per qualified infrastructure tenant; specifies that excess tax credits may be carried forward; recaptures credit if qualified infrastructure tenant fails to relocate within a certain period of time after executing a lease with the Department of Transportation; specifies taxpayer reporting requirements.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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.

The original bill was passed in 2014 with the intent to help displaced waterfront tenants from the Kapalama Container Terminal site secure financing to move and build out. Some tenants are being forced by the State to move out of Pier 41 and relocate to other State-owned lands that are essentially "bare lands" or empty piers that require full infrastructure build-out including sewers, electrical, parking, and other site improvements. These displaced tenants have had major disruptions and negative impacts to current operations due to the projected move and have spent millions of dollars on relocation planning and consultants. The proposed changes to the definition of capital infrastructure costs will enable tenants to enlist the credit as originally intended by the legislature.

This bill supports the growth of commerce in the State and supports maritime jobs. This credit helps displaced tenants raise financing and improve state-owned lands from which the State will also receive significant lease rents.

Thank you for the opportunity to testify.