

DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

RECEIVED
Date & Time
Feb 05, 2018, 10:05 am

**STATE OF HAWAII
DEPARTMENT OF TAXATION**

830 PUNCHBOWL STREET, ROOM 221

HONOLULU, HAWAII 96813

<http://tax.hawaii.gov/>

Phone: (808) 587-1540 / Fax: (808) 587-1560

Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Richard H.K. Onishi, Chair
and Members of the House Committee on Tourism

Date: Tuesday, February 6, 2018
Time: 8:30 A.M.
Place: Conference Room 429, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 1548, Relating to Taxation

The Department of Taxation (Department) offers the following comments regarding H.B. 1548 for the Committee's consideration.

H.B. 1548, a carryover measure from the 2017 Legislative Session, creates a refundable residential property owner income tax credit (property owner credit) to be funded from the allocation of the transient accommodations tax (TAT) revenues to the counties. The measure is effective upon approval and applies to taxable years beginning after December 31, 2017.

The residential property owner tax credit is equal to an unspecified amount multiplied by the number of the taxpayer's qualified exemptions. The counties are required to share information necessary for the Department to make its determination(s). The bill defines "qualified taxpayer" as a resident individual taxpayer who:

- Pays real property taxes to a county in the State for the taxpayer's residence during the taxable year;
- Is not claimed or is not eligible to be claimed as a dependent by another taxpayer; and
- Has been a resident of the State, as defined in Hawaii Revised Statutes (HRS) section 235-1, for at least 9 months regardless of whether the qualified resident was physically in the State for 9 months.

First, the Department notes that Act 1, First Special Session Laws of Hawaii 2017 (Act 1), amended HRS section 247D-6.5 (statutory authority for the distribution of TAT revenues). Thus, H.B. 1548 amends the old version of the law. Act 1 allocates \$103 million per year to the counties permanently.

Second, the Department notes the amendment to HRS section 237D-6.5(a)(4) may not accomplish the intended goal of funding the credit. This section allocates \$103 million to the counties with a mandatory withholding of the Counties' contribution for employee retirement. Even if the provision as proposed were added to the current version of HRS section 237D-6.5(a)(4), there would be no money to allocate for this new credit.

Third, the property owner credit is available to all property owners regardless of their income level. If the intent of this bill is to provide tax relief to low- and moderate-income property owners, the Department suggests including an income threshold to qualify for the credit.

Fourth, the residency requirement in section 235- (f)(3) of this measure may be unconstitutional. The Department suggests removing this requirement or changing the requirement to be physically present for 9 months. If the intent of this measure is to provide a credit for homeowners' primary residence, the Department suggests specifying this in paragraph (f)(1).

Finally, the Department respectfully request that the new tax credit be made applicable to taxable years beginning after December 31, 2018. The Department is in the process of implementing individual income tax into its new computer system and additional time will allow the Department to properly implement new tax features such as credits.

Thank you for the opportunity to provide comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

RECEIVED
Date & Time
Feb 05, 2018, 10:25 am

ON THE FOLLOWING MEASURE:
H.B.1548 RELATING TO TAXATION.

BEFORE THE:
HOUSE COMMITTEE ON TOURISM

DATE: Tuesday, February 6, 2018 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 429

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General or
Susan Won, Deputy Attorney General

Chair Onishi and Members of the Committee:

The Department of the Attorney General has the following comments on this bill, which proposes to retain an unspecified portion of the county allocation of transient accommodations tax revenues to fund an income tax credit for residential property owners in the State.

This bill might be subject to constitutional challenge because the bill is facially discriminatory in that it restricts the tax credit it creates to Hawaii residents.

A court may conclude that the tax credit is unconstitutional because the bill does not expressly articulate a legitimate government interest served by the legislation, sufficient to withstand constitutional challenge based on the Equal Protection or the Privileges and Immunities Clauses of the United States Constitution.

The Equal Protection Clause prohibits discrimination against a non-resident based solely on residency. See, e.g., Williams v. Vermont, 472 U.S. 14 (1985) (use tax credit for sales taxes paid on cars purchased in other states invalidated because it was only available to Vermont residents). The Hawaii Supreme Court has recognized that the Equal Protection Clause applies where a tax operates unequally on persons or property of the same class. In re Swann, 7 Haw. App. 390, 776 P.2d 395 (1989).

Similarly, under the Privileges and Immunities Clause, a state may not impose higher taxes on a nonresident individual than it imposes on its own citizens.¹ However,

¹ The Privileges and Immunities Clause does not apply to corporations.

a discriminatory tax could be sustained if legitimate reasons for the tax exist and the discrimination bears a substantial relation to those reasons. Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287 (1998).

The residency requirement in the bill arguably violates the Equal Protection and Privileges and Immunities Clauses because it expressly favors resident homeowners over nonresident homeowners.

To insulate the bill from possible constitutional challenge, we recommend that the bill be amended to delete the following: (1) the word “resident” on page 3, line 8, and, (2) the words “for the taxpayer’s residence” on page 3, lines 9-10, and (3) subsection (f)(3) on page 3, lines 14-17, in its entirety.

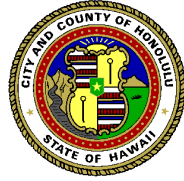
Thank you for the opportunity to provide comments.

Toomer v. Witsell, 334 U.S. 385 (1948).

RECEIVED
Date & Time
Feb 05, 2018, 1:07 pm

OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 300 • HONOLULU, HAWAII 96813
PHONE: (808) 768-4141 • FAX: (808) 768-4242 • INTERNET: www.honolulu.gov



KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

CITY AND COUNTY OF HONOLULU
BEFORE THE COMMITTEE ON
TOURISM
TUESDAY, FEBRUARY 6, 2018; 8:30 AM

TO: THE HONORABLE RICHARD H.K. ONISHI, CHAIR
THE HONORABLE BETH FUKUMOTO, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON TOURISM

FROM: KIRK CALDWELL, MAYOR
CITY AND COUNTY OF HONOLULU

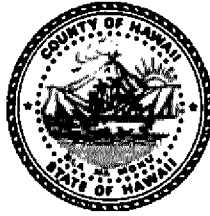
SUBJECT: OPPOSITION TO HB1548

The City and County of Honolulu respectfully opposes HB1548, which requires the counties to allocate a portion of their share of the transient accommodations tax (TAT) to be deposited into the State's general fund for the payment of residential real property tax credits.

The TAT was originally implemented to offset costs associated with the visitor industry. This measure goes against the TAT's original intent and would require the City to use its TAT funds to cover costs not associated with the visitor industry. The counties already do not receive an appropriate share of the TAT to cover the counties' costs associated with the many tourists who visit our islands.

Thank you for your consideration of this testimony in opposition.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 74-5044 Ane Keohokālole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

RECEIVED
Date & Time
Feb 05, 2018, 11:07 am

February 5, 2018

Representative Richard H.K. Onishi, Chair
Committee on Tourism
Hawai'i State Capitol, Room 429
Honolulu, HI 96813

Dear Chair Onishi and Committee Members:

Re: HB 1548 Relating to Taxation
Hearing Date: 02/06/18 – 8:30 am; Conference Room 429

Thank you for this opportunity to testify in opposition to HB 1548.

As I am sure you know, the counties already provide real property tax breaks for Hawai'i residents by creating a lower tax rate for owner occupants. If, in addition, the State wishes to provide an income tax credit for all residential property owners in the State who are qualified taxpayers, we respectfully suggest that it be funded from some source other than the Counties' portion of the TAT.

Respectfully submitted,

A handwritten signature in black ink that reads "Harry Kim".

Harry Kim
Mayor, County of Hawai'i

LATE

LEGISLATIVE TAX BILL SERVICE

RECEIVED
Date & Time
Feb 06, 2018, 7:39 am

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, TRANSIENT ACCOMMODATIONS, Residential Property Owner Tax Credit

BILL NUMBER: HB 1548

INTRODUCED BY: FUKUMOTO, BROWER, JOHANSON, C. LEE, LUKE, MATSUMOTO, SAIKI

EXECUTIVE SUMMARY: Provides a refundable credit to residential property owners, funded out of transient accommodations tax revenue that otherwise would go to the counties. However, a refundable credit reduces revenue and only creates an expense if a taxpayer is owed a refund, probably resulting in lots of money being parked in a special account and unavailable for general use.

SYNOPSIS: Adds a new section to chapter 235, HRS, granting a residential property owner tax credit to a “qualified taxpayer,” defined as a resident individual taxpayer who:

- (1) Pays real property taxes to a county of the State for the taxpayer's residence during the taxable year;
- (2) Is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes; and
- (3) Has been a resident of the State, as defined in section 235-1, for at least nine months regardless of whether the qualified resident was physically in the State for nine months.

The amount of the credit is \$_____ times the taxpayer’s qualified exemptions.

Amends section 237D-6.5. HRS, to provide that ___% of the “remaining balance” shall be deposited into a special account in the general fund to be used to pay the tax credits described above.

EFFECTIVE DATE: This Act shall take effect upon its approval. The credit applies to taxable years beginning after December 31, 2017.

STAFF COMMENTS: This measure attempts to redirect TAT moneys that otherwise would go to and be shared by the several counties, to real property tax relief.

The measure raises several questions, including:

- “Qualified exemptions” that determine the credit amount need to be defined. This can be accomplished by cross-referencing section 151, IRC, or section 151, IRC, as operative for Hawaii purposes.

- The “remaining balance” used in the amendment to section 237D-6.5(b)(4)(B), HRS, is ambiguous because there is no clearly identifiable event or transaction after which the fund balance is to be measured.
- Subsection (b) of the proposed new section in chapter 235 starts, “In the case of a partnership, S corporation, estate, or trust,” but subsection (f) restricts qualified taxpayers to individuals. Subsection (b) appears to be unnecessary.
- The subaccount into which TAT monies are being directed would fund tax refunds, but it is not clear what other purpose the money would be used for. In addition, it’s not clear that money would be needed for a substantial portion of the credit, because if the taxpayer either gets no tax refund or directs the refund to be credited against the subsequent year’s estimated tax, then no payout of public funds is required.

Digested 2/5/2018

HB-1548

Submitted on: 2/3/2018 3:21:30 PM

Testimony for TOU on 2/6/2018 8:30:00 AM

RECEIVED
Date & Time
Feb 05, 2018, 10:05 am

Submitted By	Organization	Testifier Position	Present at Hearing
Elen Stoops		Oppose	No

Comments: