

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

**LATE**

SUBJECT: INCOME, Establish Small Craft Beer Producer Credit

BILL NUMBER: HB 2656, HD-2, SD-1

INTRODUCED BY: Senate Committee on Economic Development, Tourism, and Technology

EXECUTIVE SUMMARY: Establishes a tax credit for 20% of qualified expenses by a small craft beer producer. The adoption of this credit would provide tax relief to taxpayers regardless of their need for tax relief. It also would shift the burden of paying for government to the rest of us.

SYNOPSIS: Adds a new section to HRS chapter 235 to allow a credit of 20% of qualified expenses by a small craft beer producer, with a per-taxpayer limit of \$50,000 per year.

DBEDT is tasked with receiving expense reports of small craft beer producers and certifying the tax credit amount for each taxpayer for each taxable year, similar to the process now employed for the movie production credit in section 235-17, HRS.

Qualified expenses are defined as expenses incurred by a qualified taxpayer to manufacture beer. Qualified expenses shall be calculated in accordance with the uniform capitalization rules of section 263A of the Internal Revenue Code of 1986, as amended, and the federal rules and regulations adopted pursuant thereto.

A qualified taxpayer is defined as a person that: (1) Has a valid class 18 small craft producer pub license as described in section 281-31(r); and (2) Complies with any manufacturing limitations established in section 281-31(r)(1).

A qualified producer is defined as a corporation producing 100% of its beer products in the State.

Tax credits that exceed the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

Requires the director of taxation to prepare any forms necessary to claim a credit, may require a taxpayer to furnish reasonable information to validate a claim for the credit, and adopt rules pursuant to HRS chapter 91. Requires claims for the credit, including any amended claims, to be filed on or before the end of the twelfth month following the taxable year for which the credit is claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the tax credit.

EFFECTIVE DATE: July 1, 2012; applies to taxable years beginning after December 31, 2018, and ending on December 31, 2023.

STAFF COMMENTS: This measure is proposed as an incentive to a fledgling small craft beer industry in Hawaii.

Utilizing tax credits to drive economic policy in this manner is of a questionable benefit relative to the cost for all taxpayers. A direct appropriation of grant funding to producers would be more accountable and transparent. At least we would know the amount of the appropriation, while the fiscal impact of the credit would be a great big question mark.

Furthermore, the additional credit would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive in amount compared to the benefit expected to accrue because of the creditable activity.

We have some technical comments, as follows:

1. There are now two different defined terms used to describe the credit recipient, namely “qualified producer” and “qualified taxpayer.” Only one of the two terms and definitions should be used. We suggest that the “qualified taxpayer” definition may be sufficient.
  - a. Limitation of the credit to corporations would have the effect of disqualifying LLCs, partnerships, S corporations maybe, and similar entities without any good reason.
  - b. Limitation of the credit to those producing 100% of beer products within Hawaii may run afoul of federal Commerce Clause limitations.
2. Reference in the qualified expense definition to the IRC section 263A UNICAP rules is confusing.
  - a. If the intent is to award credit for the cost of equipment or other tangible property, the capital goods excise tax credit in section 235-110.7 already provides relief.
  - b. If the intent is to allow only expenses that are capitalized into cost of sales (as opposed to office equipment and overhead) that needs to be stated.

Digested 3/28/2018



**LATE**

March 29, 2018

To: The Honorable Chair Dela Cruz, Vice Chair Keith-Agaran and Members of the Senate Committee on Ways and Means

From: Kona Brewing Company  
Mary Rait; Director, Regulatory Compliance and Government Relations

RE: HB2656 HD2 SD1; Relating to Small Craft Beer Producer Tax Credit  
**In Opposition**  
March 29, 2018; Conference Room 211

Kona Brewing Co. appreciates the opportunity to provide testimony on a bill that intended to advance the craft brewing industry. Kona Brewing Co. **opposes** HB2656 HD2 SD1 in its current form and would only support it if amendments are made.

Kona Brewing Co. runs our flagship brewery out of Kailua-Kona, Hawaii and currently produces more than 12,000 barrels of beer per year on island. The company was started by a father and son team in 1994 who had a dream to create fresh, local island brews made with spirit, passion, and quality. Starting this spring, Kona Brewing Co. will be expanding our pub and brewery operations in Hawaii to include a new state-of-the-art, 30,000 square-foot facility to support the anticipated demand for beer sold in Hawaii. In addition to creating more local jobs, this expansion will increase our annual on-island production capacity from 12,000 to 100,000+ barrels of malt beverages.

HB2656 HD2 SD1 proposes to amend HRS §235 and appropriate funds to establish a tax credit for small craft beer producers to encourage and expand the growth of local breweries. Kona Brewery recognizes the importance of supporting the local beer industry in Hawaii and therefore are in support of the intent of this bill. However, Kona does not support this bill with the continued inclusion of the "Qualified Producer" language.

Following the suggestion from the testimony of the Hawaii Attorney General's office, a "Qualified Producer", as proposed in **Section 2, Page 6, line 6**, is now defined as "a corporation producing one hundred per cent of its beer products in the State." Kona Brewing Co. agrees with the Hawaii AG's office that this bill is subject to a legal challenge under the Commerce Clause because it has "both the purpose and effect of discriminating in favor of local products." *Bacchus Imports Ltd. v. Dias*, 468 U.S. 263, 273 (1984). However, we do not believe the removal of the word 'domestic' completely alleviates the Commerce Clause issue because this bill continues to discriminate against business operations, like ours, who's business model includes production both inside and outside of Hawaii. As also noted in the Hawaii Attorney General's testimony, "Discrimination against interstate commerce in favor of local business or investment is per se invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511

U.S. 383, 392, 114 S. Ct. 1677, 1683, 128 L. Ed. 2d 399 (1994), citing *Maine v. Taylor*, 477 U.S. 131, 106 S. Ct. 2440, 91 L. Ed. 2d 110 (1986).

The proposed definition of “Qualified Producer” contrasts with the bill’s intent to expand growth in Hawaii. Therefore, Kona Brewing Co. advocates that the “Qualified Producer” language be eliminated and that tax credits to producers apply to all product manufactured in Hawaii, regardless of business conducted outside of the state. This will achieve the overall goal of the bill to encourage job growth and reinvestment in our communities.

Kona Brewing Co. is firmly and proudly invested in the future of Hawaii, and therefore feels passionate about promoting the growth of the craft beer industry, advocating for environmental responsibility, community wellness and sustainability. Mahalo for the opportunity to provide testimony on HB2656 HD2 SD1.

Sincerely,

Mary Rait  
Kona Brewing Company



**LATE**

Regarding Bill Number: **HB2656 HD2 SD1**

Measure Title: **Relating to Small Craft Beer Producer Tax Credit**

**Position: Oppose**

Aloha Chair Dela Cruz and the Members of the Senate Committee on WAM,

My name is Richard Collins and I live in Kula, Hawaii and I'm the Chairperson for the Hawai'i Alcohol Policy Alliance, a group of concerned citizens for responsible alcohol policy in Hawai'i.

Mahalo for the opportunity to submit testimony as I am unable to be there in-person at this time. I strongly **oppose** this bill for a number of reasons.

**Providing alcohol tax credits to beer producers will increase underage drinking rates for Hawai'i's youth.**

The National Institutes of Health and the peer-reviewed journal, Preventive Medicine, show direct correlation to alcohol availability and underage drinking rates<sup>1</sup>. The more alcohol is available in a community, the more underage youth access and consume alcohol, the more alcohol-related problems occur within the community. The bottom line is that tax credits for beer produces means **increased underage drinking and alcohol-related harms for our youth.**

**Increased alcohol availability is associated with higher levels of disease burden, violent crimes, child abuse, and homicides.**

According to the World Health Organization, alcohol is the leading risk factor for disease burden in the Western Pacific and the United States<sup>2</sup>. A tax credit for beer producers will increase alcohol production and increase drinking rates for the general population. When the general public consumes more alcohol, there are more alcohol-related harms. A number of studies have linked greater alcohol availability with higher rates of violent crimes<sup>3</sup>, child maltreatment and physical abuse<sup>4</sup>, and homicides<sup>5</sup>. It's clear that approving this tax credit would increase alcohol-related harms in our community and ignore the prevention science that warns against this irresponsible policy.

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<sup>1</sup> National Institutes of Health, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3707296/#>

<sup>2</sup> World Health Organization (2011) Global status report on alcohol and health. [http://www.who.int/substance\\_abuse/publications/global\\_alcohol\\_report/en/](http://www.who.int/substance_abuse/publications/global_alcohol_report/en/)

<sup>3</sup> Gorman DM (2001) Spatial dynamics of alcohol availability, neighborhood structure and violent crime. Journal of Studies on Alcohol 62: 628.

<sup>4</sup> Freisthler B, Needell B, Gruenewald PJ (2005) Is the physical availability of alcohol and illicit drugs related to neighborhood rates of child maltreatment? Child abuse & neglect 29: 1049-1060.

<sup>5</sup> Scribner R (1999) Alcohol availability and homicide in New Orleans: conceptual considerations for small area analysis of the effect of alcohol outlet density. Journal of studies on alcohol 60: 310.



I implore you to **oppose HB2656 HD2 SD1** for the benefit of the people of Hawai'i. To concede your vote to the wishes of the commercial interests will only be to the detriment of your constituents. You do not want to be responsible for a bill that would see more underage drinking and associated harms, more violence in our communities, and more deaths related to alcohol in our state.

Mahalo for your time and attention to this urgent matter.

Sincerely,

  
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Chair, Hawai'i Alcohol Policy Alliance

From: [Katie Folio](#)  
To: [WAM Testimony](#)  
Subject: Testimony in opposition of HB2656  
Date: Thursday, March 29, 2018 8:42:13 AM



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Regarding Bill Number: **HB2656 HD2 SD1**  
Measure Title: **Relating to Small Craft Beer Producer Tax Credit**  
Position: **Oppose**

Aloha Chair Dela Cruz and the Members of the Senate Committee on WAM,

My name is Katie Folio and I live in Kula on Maui, Hawaii.  
Mahalo for the opportunity to submit testimony as I am unable to be there in-person at this time. I strongly **oppose** this bill for a number of reasons.

**Providing alcohol tax credits to beer producers will increase underage drinking rates for Hawai'i's youth.**

The National Institutes of Health and the peer-reviewed journal, Preventive Medicine, show direct correlation to alcohol availability and underage drinking rates. The more alcohol is available in a community, the more underage youth access and consume alcohol, the more alcohol-related problems occur within the community. The bottom line is that tax credits for beer produces means **increased underage drinking and alcohol-related harms for our youth.**

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Mahalo for your time and attention to this urgent matter.

Sincerely,

Katie Folio

Member, Hawai'i Alcohol Policy Alliance



Regarding Bill Number: **HB2656 HD2 SD1**  
Measure Title: **Relating to Small Craft Beer Producer Tax Credit**

**LATE**

Position: **Oppose**

Aloha Chair Dela Cruz and the Members of the Senate Committee on WAM,

My name is Ashlee Chapman and I live in Kihei, Hawaii. Mahalo for the opportunity to submit testimony as I am unable to be there in-person at this time. I strongly **oppose** this bill for a number of reasons.

**Providing alcohol tax credits to beer producers will increase underage drinking rates for Hawai'i's youth.**

The National Institutes of Health and the peer-reviewed journal, Preventive Medicine, show direct correlation to alcohol availability and underage drinking rates<sup>1</sup>. The more alcohol is available in a community, the more underage youth access and consume alcohol, the more alcohol-related problems occur within the community. The bottom line is that tax credits for beer produces means **increased underage drinking and alcohol-related harms for our youth.**

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I implore you to **oppose HB2656 HD2 SD1** for the benefit of the people of Hawai'i. To concede your vote to the wishes of the commercial interests will only be to the detriment of your constituents. You do not want to be responsible for a bill that would see more underage drinking and associated harms, more violence in our communities, and more deaths related to alcohol in our state. Mahalo for your time and attention to this urgent matter.

Sincerely,

Ashlee Chapman

Member, Hawai'i Alcohol Policy Alliance

<sup>1</sup> National Institutes of Health, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3707296/#>

<sup>2</sup> World Health Organization (2011) Global status report on alcohol and health. [http://www.who.int/substance\\_abuse/publications/global\\_alcohol\\_report/en/](http://www.who.int/substance_abuse/publications/global_alcohol_report/en/)

<sup>3</sup> Gorman DM (2001) Spatial dynamics of alcohol availability, neighborhood structure and violent crime. Journal of Studies on Alcohol 62: 628.

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<sup>5</sup> Scribner R (1999) Alcohol availability and homicide in New Orleans: conceptual considerations for small area analysis of the effect of alcohol outlet density. Journal of studies on alcohol 60: 310.