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To: The Honorable Scott Y. Nishimoto, Chair
and Members of the House Committee on Judiciary

Date: Wednesday, March 14, 2018

Time: 2:00 P.M.

Place: Conference Room 325, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2851, S.D. 1, Relating to Statutory Revision: Amending or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purposes of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions

The Department of Taxation (Department) offers the following comments on S.B. 2851, S.D. 1, for the Committee's consideration.

S.B. 2851, S.D. 1, a statutory revision bill, amends or repeals various provisions of the Hawaii Revised Statutes (HRS) to correct errors, references, and obsolete law. The bill has a defective effective date of July 1, 2035.

First, the Department notes that the amendments to Section 10 of the bill may cause confusion. Section 10 of the bill amends HRS section 235-110.7, relating to the capital goods excise tax credit, by deleting rates that were in effect from 1988 until 2009, but does not amend the provision that the credit applies to property placed in service after December 31, 1987. Accordingly, there is a gap of time between January 1, 1988 and December 31, 2009 that is made apparent in the statute. To avoid ambiguity, the Department suggests the following amendments to HRS section 235-110.7(a):

(a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter a capital goods excise tax credit, which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the tax credit shall be ~~determined~~

~~by the application of the following rates against]~~
four per cent of the cost of the eligible depreciable
tangible personal property used by the taxpayer in a
trade or business and placed in service within Hawaii
after [December 31, 1987. For property placed in
service after December 31, 2009, the applicable rate
shall be four per cent.] December 31, 2009.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for eligible depreciable tangible personal property that is placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rules.

In the case of eligible depreciable tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), the amount of the tax credit allowed under this section shall not exceed the amount of use tax actually paid under chapter 238 relating to the tangible personal property.

If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of 1954, as amended, no tax credit shall be allowed for that portion of the cost of property for which the deduction was taken.

Additionally, the Department suggests adding language to the bill that specifies the Act does not affect rights that matured before its effective date.

Second, the Department notes that the amendments in Sections 12 and 13 may be substantive in nature and may have unintended consequences. Currently, HRS sections 241-1 and 241-2 reference section 5219 of the Revised Statutes of the United States. The proposed amendment removes said references. Additionally, with respect to the definition of "financial corporation" in HRS section 241-1, the bill replaces the reference to section 5219 with a reference to 12 U.S.C. section 5381. Because these amendments are attempting to address changes in federal law as opposed to technical errors, the Department suggests leaving HRS sections 241-1 and 241-2 unamended.

Thank you for the opportunity to provide comments.

Charlotte A. Carter-Yamauchi
Director

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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
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Written Testimony

SB2851, SD1

RELATING TO STATUTORY REVISION: AMENDING OR REPEALING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSES OF CORRECTING ERRORS AND REFERENCES, CLARIFYING LANGUAGE, AND DELETING OBSOLETE OR UNNECESSARY PROVISIONS.

Testimony by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Director

Presented to the House Committee on Judiciary

Wednesday, March 14, 2018, 2:00 p.m.
Conference Room 325

Chair Scott Y. Nishimoto and Members of the Committee:

Good afternoon Chair Nishimoto and members of the Committee, my name is Charlotte Carter-Yamauchi, and I am the Director of the Legislative Reference Bureau and the Revisor of Statutes. Thank you for providing the opportunity to submit written testimony on Senate Bill No. 2851, S.D. 1, Relating to Statutory Revision. Bills such as Senate Bill No. 2851, S.D. 1 have come to be known as the "statutory revision bill" and are prepared and submitted by the Legislative Reference Bureau pursuant to our statute revision functions, set forth in chapter 23G of the Hawaii Revised Statutes.

All amendments are intended to be technical in nature to correct errors, omissions, or obsolete law. They either contain no substantive change to the law, or if they do have substantive effect, they are intended to correct the types of errors noted in the memorandum attached to our testimony on Senate Bill 2851, before the Senate Committee on Judiciary. Also, please note that the bill was reviewed prior to introduction by the Office of the Attorney General, and we have revised the bill to address any concerns raised.

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The Bureau would be pleased to assist the Committee in preparing the committee report and making any changes to the revision bill that the Committee deems appropriate. Should the Committee have any follow-up questions, please contact Velma Kaneshige, Assistant Director for Revision of Statutes, by phone at (808) 587-0657 or by e-mail at kaneshige@capitol.hawaii.gov.

Attachment

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: INCOME, GENERAL EXCISE, FRANCHISE, Revisor's Bill

BILL NUMBER: SB 2851, SD-1

INTRODUCED BY: Senate Committee on Judiciary

EXECUTIVE SUMMARY: This is the revisor's bill that is submitted to correct errors and references, clarify language, and delete obsolete or unnecessary provisions.

SYNOPSIS: Among the provisions revised are tax provisions, including:

Section 235-7, HRS, relating to interest to purchase or carry tax-exempt bonds and similar items. The change proposed is stylistic only.

Section 235-110.9, HRS, relating to the capital goods excise tax credit. The bill streamlines the second and third paragraphs of subsection (a) to remove the language applicable to taxable years 2009 and prior.

Section 237-27, HRS, relating to exemption for certain petroleum refiners. The change proposed is stylistic only.

Sections 241-1 and 241-2, relating to the Franchise Tax Law. The law as originally enacted referenced section 5219 of the Revised Statutes of the United States, because that law imposed restrictions on the ability of States to tax banks and other financial institutions. That law was completely changed effective Jan. 1, 1972, by section 2 of Pub. L. No. 91-157, 83 Stat. 434 (1969), and now only provides that for tax purposes a national bank shall be treated the same as one organized and existing under the laws of the State or other jurisdiction within which its principal office is located. The references are changed so that they make more sense given the current language of the referenced provision.

EFFECTIVE DATE: July 1, 2035.

STAFF COMMENTS: This bill was submitted by the revisor of statutes pursuant to section 23G-20, HRS, for the purposes of correcting errors and references, clarifying language, and deleting obsolete or unnecessary provisions.

Digested 3/12/2018