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To: The Honorable Russell E. Ruderman, Chair
and Members of the Senate Committee on Human Services

Date: Monday, February 11, 2019
Time: 3:15 P.M.
Place: Conference Room 016, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 161, Relating to Taxation

The Department of Taxation (Department) provides the following comments regarding S.B. 161 for your consideration.

S.B. 161 creates a nonrefundable income tax credit for businesses that hire individuals with a disability. The bill requires certification of disability from a qualified physician, and is claimed against the taxpayer's net income tax liability for the year in which it is earned, with any excess carried forward until used. The measure is effective upon approval and applies to taxable years beginning after December 31, 2018.

First, the Department notes that the proposed credit is similar to an already existing credit at Hawaii Revised Statutes (HRS) section 235-55.91. That credit is equal to twenty per cent of wages paid to vocational rehabilitation referrals during the first year of employment. To qualify for this credit, the employer must hire a person with a physical or mental disability who was referred to the employer by the Department of Human Services Vocational Rehabilitation and Services for the Blind Division. The Department believes that it may be more effective and efficient to amend or expand the current vocational income tax incentive rather than creating an entirely new credit.

Second, the Department notes that the term "individual with a disability should be more clearly defined. As currently written, physicians will be unable to make consistent determinations of whether an individual would qualify for the credit. The Department also notes that the definition could be interpreted to cover situations where the impairment is readily treatable with medications, impairments which are only temporary in nature, and impairments from which one has fully recovered with no likelihood of relapse or reoccurrence.

Third, the Department notes that the wages allowed as the base of this credit are also allowed as a deduction as an expense to the employer. Thus, the employer would be provided a double tax benefit-claiming both an expense deduction and a tax credit for the same costs. In addition, a taxpayer could conceivably use the same expenditures to also claim the vocational rehabilitation credit. The Department suggests that the following provision should be added to the definition of “qualified wages”:

Qualified wages shall not include amounts for which another credit is claimed or a deduction is taken.

Fourth, the Department notes that “wages” is defined to include “the cash value of all remuneration paid in any medium other than cash and the cost-of living allowances and other payments”. This may lead to taxpayer confusion and compliance issues. The Department recommends that the credit be based solely on cash wages paid.

Fifth, the Department notes that the credit as currently written may be prone for abuse. While the measure attempts to prevent abuse by preventing the hiring of persons related to the taxpayer, it does not prevent the employers from hiring each other’s disabled employees to qualify for the credit.

Sixth, the Department notes that there is no continuing requirement that the person remain in the employ of the taxpayer. After six months, the taxpayer could simply terminate employment, yet retain all of the credit. The Department strongly believes that there should be a minimum amount of time for which the employee must be retained, beyond the period in which the credit is calculated.

Finally, the Department requests that this credit be made applicable to taxable years beginning after December 31, 2019 to allow the Department sufficient time to make the necessary form, instruction, and computer system changes.

Thank you for the opportunity to provide comments.

COUNTY COUNCIL

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February 7, 2019

TESTIMONY OF KIPUKAI KUALII
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
SB 161, RELATING TO TAXATION
Senate Committee on Human Services
Monday, February 11, 2019
3:15 p.m.
Conference Room 016

Dear Chair Ruderman and Members of the Committee:

Thank you for this opportunity to provide testimony in support of SB 161, Relating to Taxation, which is included in the 2019 Hawai'i State Association of Counties Legislative Package. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

SB 161 would provide a taxpayer who hires an individual with a disability a nonrefundable tax credit for the six-month period after the individual is initially hired by the taxpayer. SB 161 provides a tax incentive for employers to capitalize on the value and talent that persons with disabilities offer in the workplace, and creates awareness and opportunities surrounding workplace accessibility and productivity of workers with disabilities.

Thank you again for this opportunity to provide testimony in support of SB 161. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

KIPUKAI KUALII
Councilmember, Kaua'i County Council

AMK:lc


Hawai'i State Association of Counties (HSAC)

Counties of Kaua'i, Maui, Hawai'i and City & County of Honolulu
25 Aupuni Street, Hilo, Hawai'i 96720 (808) 961-8828 www.hawaiicounties.com



February 7, 2019

To: The Honorable Russell E. Ruderman, Chair
Senate Committee on Human Services

FROM: Valerie T. Poindexter
HSAC President 

SUBJECT: HEARING OF FEBRUARY 11, 2019; TESTIMONY IN SUPPORT OF SB161,
RELATING TO TAXATION

Thank you for the opportunity to testify on behalf of the Hawai'i State Association of Counties.

This bill provides to a taxpayer who hires an individual with a disability a nonrefundable tax credit for the 6-month period after the individual is initially hired by the taxpayer.

HSAC strongly supports and urges the enactment of SB161.

Mahalo for your time and consideration.



TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Credit for Hiring Individual with a Disability

BILL NUMBER: HB 179; SB 161

INTRODUCED BY: SB by KOUCHI by request; HB by SAIKI by request (Hawaii State Association of Counties Package)

EXECUTIVE SUMMARY: Provides a taxpayer who hires an individual with a disability a nonrefundable tax credit for the 6-month period after the individual is initially hired by the taxpayer. 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 employers to claim an income tax credit for the hiring of an individual with a disability equal to 50% of the qualified wages for the first six months after the individual is hired.

To be treated as an individual with a disability, the employer must receive certification from a qualified physician before the individual begins work. If the certification is incorrect because it is based on false information provided by the individual, the certification shall be revoked and wages paid by the employer after the employer receives notice of revocation shall not be treated as qualified wages.

Payments between related parties are excluded, as are wages paid by any former employer.

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. In no taxable year shall the total amount of tax credits claimed under this section exceed \$ _____ per taxpayer.

Defines "individual with a disability" as an individual having a physical or intellectual impairment that substantially limits one or more major life activities, having a record of that impairment, or being regarded as having that impairment; provided that the disabling impairment is certified by a qualified physician.

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.

Defines "wages" as wages, commissions, fees, salaries, bonuses, and every and all other kinds of remuneration for, or compensation attributable to, services performed by an employee for the employee's employer, including the cash value of all remuneration paid in any medium other than cash and the cost-of-living allowances and other payments included in gross income by section 235-7(b), but excluding income excluded from gross income by section 235-7 or other provisions of the Income Tax Law. For example, employer funded pensions don't count.

If the taxpayer is a successor employer referred to in section 3306(b)(1) of the IRC, the determination of the amount of the credit shall be made in the same manner as if the wages were paid by the predecessor employer (as defined in IRC section 3306(b)(1)).

EFFECTIVE DATE: This Act, upon its approval, shall apply to taxable years beginning after December 31, 2018.

STAFF COMMENTS: This measure is proposed as an incentive to entice employers to hire an individual who is physically or intellectually disabled, but the tax system is a poor means of achieving such social goals. Providing such credits against the state income tax merely reduces state revenues, and if the size of government does not go down, then the tax burden shifts to other taxpayers who are not able to claim the credit.

The measure is like the existing income tax credit for the hiring of vocational rehabilitation referrals. If it is the intent of the legislature to encourage the hiring of individuals with a disability, it would be preferable to amend HRS-235-55.91 to include these individuals rather than to adopt a new credit which may have loopholes and technical issues.

Digested 1/25/2019

SB-161

Submitted on: 2/6/2019 5:46:26 PM

Testimony for HMS on 2/11/2019 3:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	No

Comments: