



**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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To: The Honorable Henry J.C. Aquino, Chair
and Members of the House Committee on Transportation

Date: Wednesday, February 13, 2019
Time: 10:00 A.M.
Place: Conference Room 423, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 1215, Relating to Taxation

The Department of Taxation (Department) offers the following comments regarding H.B. 1215 for the Committee's consideration.

H.B. 1215 establishes a new nonrefundable income tax credit for taxpayers who live within 10 miles of their place of employment, to offset expenses incurred for motor vehicle registration and inspection. A summary of key provisions are as follows:

- Adds a new section to chapter 235, Hawaii Revised Statutes (HRS), creating a motor vehicle registration and inspection tax credit;
- For partnerships, S corporations, estates, and trusts, allows the credit for qualified expenses incurred by the entity during the taxable year, with expenses determined at the entity level and distribution and share of credit determined by rule;
- Sets the amount of the credit as equal to qualified expenses of the qualified taxpayer, up to an unspecified cap;
- Authorizes the Director of Taxation (Director) to prepare forms, adopt rules, and to require taxpayers to furnish reasonable information to determine the validity of their claim for credit;
- Creates a carryforward where a credit that exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted;
- Defines "qualified expenses" as expenses incurred by a qualified taxpayer for motor vehicle registrations, pursuant to sections 249-31 and 286-51, HRS, and for motor vehicle inspections, pursuant to section 286-26, HRS;
- Defines "qualified taxpayer" as a resident of the State who resides within ten miles of the taxpayer's place of employment; and
- Applies to taxable years beginning after December 31, 2018.

First, the Department notes that although non-individual entities may register motor vehicles and be subject to the requirements of chapters 249 and 286, HRS, it is unclear in what situations a partnership, S-corporation, or trust might be deemed to have a specific place of "employment," or that it "resides" within ten miles of that place for purposes of this credit. If the intent is to limit the credit to individuals, the Department suggests specifying this and removing subsection (b) relating to entities.

Second, the Department notes that the result of this credit would be for the State to pay a part of the registration fees paid to the county. If this is the intent, the Department suggests lowering the vehicular taxes and making a direct appropriation to the highway special fund.

Third, if the credit is intended to offset the vehicular taxes for people who drive less, the Department suggests implementing a vehicular tax based on distance driven in a year rather than weight of the vehicle. Furthermore, the distance between a person's residence and place of employment is not the only or determinative factor in the total number of miles driven by that person.

Fourth, the Department defers to the Department of the Attorney General on constitutionality of this measure as the credit is only available to Hawaii residents.

Finally, the Department respectfully requests that the measure be amended to apply to taxable years beginning after December 31, 2019. This will allow the Department sufficient time to update its computer system and to prepare the necessary forms and instructions.

Thank you for the opportunity to provide comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 1215, RELATING TO TAXATION.

BEFORE THE:

HOUSE COMMITTEE ON TRANSPORTATION

DATE: Wednesday, February 13, 2019 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 423

TESTIFIER(S): Clare E. Connors, Attorney General, or
Kristie Cruz Chang Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of the Attorney General has the following comments on this bill, which proposes to provide an income tax credit for taxpayers who live within 10 miles of their place of employment to offset expenses incurred for motor vehicle registration and inspection.

This bill may be subject to challenge under the Equal Protection and/or Privileges and Immunities Clauses of the United States Constitution because the bill is facially discriminatory in that it restricts the tax credit only to Hawaii residents.

The Equal Protection Clause prohibits discrimination against a nonresident 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, 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

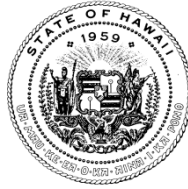
¹ The Privileges and Immunities Clause does not apply to corporations. Toomer v. Witsell, 334 U.S. 385 (1948).

Appeals Tribunal, 522 U.S. 287 (1998) (alimony deduction for residents only struck down as violating Privileges and Immunities Clause).

The bill defines a "qualified taxpayer" to mean "a resident of the State who resides within ten miles of the taxpayer's place of employment." (Page 3, line 5). The bill does not expressly state a legitimate government reason for allowing the tax credit only for residents of the State who reside fewer than ten miles from work.

Thus, the residency requirement in the bill could be challenged as violative of the Equal Protection and Privileges and Immunities Clauses because it expressly favors residents over nonresidents. The bill could also be challenged as discriminatory insofar as it treats taxpayers differently based on the distance they reside from work without any explanation why.

To insulate the bill from possible constitutional challenge, we recommend that the bill be amended to (1) allow all taxpayers to be eligible for the tax credit, not just residents; and (2) state a legitimate government purpose substantially related to the need to offer the tax credit only to those residing within ten miles of the place of employment.



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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HONOLULU, HAWAII 96813-5097

February 13, 2019
10:00 A.M.
State Capitol, Room 423

H.B. 1215
RELATING TO TAXATION.

House Committee Transportation

The Department of Transportation (DOT) **supports** this bill.

This bill establishes an income tax credit for taxpayers who live within 10 miles of their place of employment to offset qualified expenses incurred for motor vehicle registration and inspection.

The proposed income tax credit could potentially incentivize short distance commutes sufficiently to reduce the demand on the transportation system that could lead to reductions in congestion and lessening overall deterioration to the roadway infrastructure.

The bill is silent on the source of funding for the tax credits. We support this bill on the assumption that basis that the State Highway Special fund will not be negatively impacted by this measure.

We recommend that the definition of 'employment' be further defined as people in Hawaii may have part-time or multiple jobs.

Thank you for the opportunity to provide testimony.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Credit for Taxpayers Living Within 10 Miles of Work

BILL NUMBER: HB 1215

INTRODUCED BY: ELI, GATES, JOHANSON, LUKE, MORIKAWA, NISHIMOTO, TODD, WILDBERGER, Aquino, Ichiyama, Kitagawa, McKelvey

EXECUTIVE SUMMARY: Establishes an income tax credit for taxpayers who live within 10 miles of their place of employment to offset expenses incurred for motor vehicle registration and inspection.

SYNOPSIS: Adds a new section to chapter 235 to establish the motor vehicle registration and inspection tax credit.

EFFECTIVE DATE: This Act, upon its approval, shall apply to taxable years beginning after December 31, 2018. The credit is equal to 100% of the qualified expenses of the qualified taxpayer, up to \$_____.

Defines “qualified taxpayer” as a resident of the State who resides within ten miles of the taxpayer’s place of employment.

Defines “qualified expenses” as expenses incurred by a qualified taxpayer for motor vehicle registrations and motor vehicle inspections.

The tax credit is not refundable, but unused credits may be carried forward 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.

STAFF COMMENTS: This bill awards a tax credit for people who live within 10 miles of their working place. People already have lots of motivation to live close to work. (It’s called “traffic.”) If anything, those of us who are forced by land prices to live out in the ‘burbs need relief from the punishing fuel taxes that need to be paid to keep the ol’ jalopy chugging along.

Digested 2/11/2019

HB-1215

Submitted on: 2/12/2019 9:28:36 AM

Testimony for TRN on 2/13/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments: