

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Aaron Ling Johanson, Chair;
The Honorable Lisa Kitagawa, Vice Chair;
and Members of the House Committee on Consumer Protection & Commerce

From: Isaac W. Choy, Director
Department of Taxation

Date: February 9, 2021
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

Re: H.B. 1116, Relating to Tax Conformity

The Department of Taxation (Department) offers the following comments regarding H.B. 1116, for your consideration.

H.B. 1116 proposes to fully conform to the taxable income and deductible expenses provisions of the Consolidated Appropriations Act of 2021 (Public Law 116-260). The following is a list of tax provisions contained in Public Law 116-260 that this measure proposes to conform to and the Department's recommendation on conformity.

1. Exclude cancellation of indebtedness income from income for new Paycheck Protection Program (PPP) loans that were not covered by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Department Recommendation: Conform. The Department supports conforming to this provision because Hawaii conformed to the exclusion of cancellation of indebtedness income for the original PPP program in the CARES Act. *See* Act 13, Session laws of Hawaii (SLH) 2020.

2. Exclude Economic Injury Disaster Grants (EIDL Grants) from income.

Department Recommendation: Conform. The Department supports excluding EIDL Grants from income because these grants are akin to the PPP loans. EIDL Grants are available for a wider variety of uses, such as working capital, continuing health care benefits, etc.

3. Exclude loan payments made on certain small business loans from income.

Department Recommendation: Conform. The Department supports excluding these payments from income because these are payments directly to the lender for certain small business loans. These payments are akin to EIDL Grants in that the provided monthly payments are essentially grants to the affected businesses.

4. Exclude certain small business grants from taxable income.

Department Recommendation: Conform. The Department supports excluding these grants from income for the reasons provided for the loans and grants provided above. These grants are those provided under Section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-profits, and Venues Act, which are provided to businesses such as live music and entertainment venues and movie theatres.

5. Allow deductions for expenses paid with proceeds of forgiven PPP loans for which the forgiven amounts were excluded from income.

Department Recommendation: Do not conform. The Department does not support allowing these deductions because doing so will allow deductions for expenses paid with proceeds from forgiven loans that were not included in income. This will result in taxpayers receiving a double benefit, as taxpayers that have received funds that neither have to be repaid nor included in income, will be able to deduct expenses paid with those excluded proceeds. As a matter of pure tax policy, the Department believes that allowing such double benefits is inappropriate.

As an example, consider the treatment of Individual Retirement Accounts (IRAs). IRAs allow taxpayers to contribute to a retirement fund and deduct the contributions from current income. However, the amounts withdrawn from the IRA later in life are included in income. Similarly, contributions to a Roth IRA are not deductible from current income, but distributions are tax exempt. Applied to IRAs, this proposal would allow deductions for contributions into an IRA, and then exclude the amounts later distributed as benefits from income as well.

If Hawaii conformed to this provision, the Department estimates the general fund revenue loss as follows:

Expected Losses (\$ millions)

FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	TOTAL
81.4	86.1	68.9	17.2	-	-	253.5

6. Allow deductions for expenses paid with grant proceeds and other forgiven loan amounts that were excluded from income.

Department Recommendation: Do not conform. The Department does not support allowing these deductions for the same reasons stated above. As a matter of pure tax policy, the Department believes that allowing such double benefits is inappropriate.

7. Allow partnerships and S corporations to treat excluded forgiven loan proceeds and grant proceeds as tax exempt income.

Department Recommendation: Do not conform. The Department does not support allowing this treatment of excluded loan proceeds and grant income. Similar to the allowance of deductions above, allowing this treatment would provide partners and S corporation shareholders a double benefit as it would allow excluded forgiven loan proceeds and grants to increase the basis in their partnership interests and S corporation shares.

8. Exclude the second recovery rebates (\$600 stimulus checks) from income.

Department Recommendation: Conform. Hawaii conformed to the exclusion from income of the initial recovery rebates in the CARES Act. The Department believes that it is appropriate to similarly exclude the second recovery rebates from income. *See* Act 13, SLH 2020.

9. Exclude emergency financial aid grants received by students from income (does not apply to grants for which teaching, research, or services are required).

Department Recommendation: Conform. These are emergency grants to undergraduate or graduate students for unexpected expenses and unmet financial need as a result of the COVID-19 pandemic. The grants are provided under section 3504 of the CARES Act and the amount is limited to the amount of the Federal Pell Grant for the year.

10. Extend the increase the charitable deduction for food inventory to apply to contributions made through 2021.

Department Recommendation: Conform. Hawaii conformed to the increase to this deduction as provided in the CARES Act. *See* Act 13, SLH 2020. The Department supports conforming to the extension through 2021.

11. Adopt assorted disaster and retirement plan administration changes.

Department Recommendation: Conform. The Department supports conforming to the disaster tax changes, which relax various withdrawal and repayment requirements for qualified retirement plans. In addition, the Department supports conforming to retirement plan changes as they are administrative in nature and Hawaii tightly conforms to federal retirement plan rules.

Thank you for the opportunity to provide comments.



**Testimony to the House Committee on Consumer Protection & Commerce
Tuesday, February 9, 2021 at 2:00 P.M.
Via Videoconference**

RE: HB 1116, RELATING TO TAX CONFORMITY

Chair Johanson, Vice Chair Kitagawa, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports** HB 1116 requiring the State to conform to provisions of the Consolidated Appropriations Act of 2021 relating to taxable income and deductible expenses.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

On March 27, 2020, the federal government enacted the CARES Act in response to the COVID-19 pandemic which amended the Small Business Act to create the Paycheck Protection Program ("PPP"). The primary purpose of PPP is to provide businesses, through federally guaranteed loans, short-term relief to millions of America's businesses to ensure they can sustain operations and keep their workers employed as the economy recovers.

COVID-related Tax Relief Act of 2020, which was enacted as part of the Consolidated Appropriations Act of 2021, signed into law on Dec. 27, 2020 amended the CARES Act to specify that no deduction would be denied, no tax attribute would be reduced, and no basis increase would be denied by reason of the exclusion from gross income of the forgiveness of an eligible recipient's covered loan.

Recipients of PPP loans are employers who have shouldered the economic burden from the COVID-19 fallout and have done everything possible to keep as many employees as possible on their payrolls. Businesses can deduct payroll and other business expenses as usual, even if these expenses are paid for with PPP loans. To date, approximately 25,000 businesses¹ have successfully received PPP loans.

The tax conformity, proposed in HB 1116, would be consistent with other states in providing relief to businesses and the communities in permitting PPP loans as an eligible deduction in state tax returns.

Thank you for this opportunity to provide testimony in strong support.

¹ <https://www.sba.com/ppp-funded-companies/hawaii>

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Conformity to Federal tax code changes

BILL NUMBER: SB 1240; HB 1116

INTRODUCED BY: SB DELA CRUZ; HB by LUKE

EXECUTIVE SUMMARY: Requires the State to conform to those provisions of the Consolidated Appropriations Act of 2021 relating to relating to taxable income and deductible expenses.

SYNOPSIS: Provides that the State shall conform to those provisions of the Consolidated Appropriations Act of 2021, Public Law 116-260, relating to taxable income and deductible expenses. However, no sections of the HRS are specified.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This bill appears to be unnecessary because the objective set forth in this bill will be accomplished with enactment of TAX-01 (21) (SB 1195 / HB 1041) that normally passes every session.

Digested 2/4/2021



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Date: February 7, 2021

To: Rep. Aaron Ling johanson, Chair
Rep. Lisa Kitagawa, Vice Chair
Committee On Consumer Protection & Commerce

From: Victor Lim, Legislative Lead

Subj: HB 1116 Relating to Tax Conformity

The Hawaii Restaurant Association representing over 3,500 restaurants here strongly supports HB 1116 requiring the State to conform to provisions of the Consolidated Appropriations Act of 2021 relating to taxable income and deductible expenses.

Many restaurants were able to apply for PPP Loans with the Cares Act that provided us a life line during this pandemic and continue to sustain operations and keep our workers employed. There is no windfall here as restaurants continue to struggle in this economy today. Now that the funds are all used up, we need our state to do this conformity to align with the Federal treatment of these funds.

This tax conformity as proposed in HB 1116 is consistent with many other states in providing relief to small businesses and communities in permitting PPP loans as eligible deduction in state tax returns.

Thank you for this opportunity to share our plea.



TO: Committee on Consumer Protection & Commerce

FROM: Adrian Hong, President of Island Plastic Bags, Inc.

RE: HB 1116 Relating to Tax Conformity

POSITION: STRONGLY SUPPORT

Thank you for the opportunity to submit testimony in strong support of HB 1116. My name is Adrian Hong and I am the president of Island Plastic Bags Inc. (IPB), a second-generation, family business in Halawa Valley that manufactures plastic trash liners and food grade bags.

This bill is needed to avoid unintended tax consequences of the Payroll Protection Program (PPP) loans used to help businesses survive the pandemic. Federal legislators have indicated through legislation, that they never meant the debt forgiveness provided by the PPP loan program to be taxable or the related expenses to be non-deductible. This bill will bring us into tax conformity on the treatment of PPP loans on the federal and state level. This will help struggling small businesses by lowering their tax bills.

Should you have any questions or comments about my testimony you can contact me by email at ahong@islandplasticbags.com or by phone at 808-484-4046.

Sincerely,

Adrian K. Hong, CPA*

President

Island Plastic Bags, Inc.

www.islandplasticbags.com

Email: ahong@islandplasticbags.com | Phone: 808-484-4046 | Fax: 808-488-8505

*Not in public practice



1050 Bishop St. PMB 235 | Honolulu, HI 96813
P: 808-533-1292 | e: info@hawaiifood.com

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Toby Taniguchi, KTA Superstores, *Advisor*

TO:
Committee on Consumer Protection & Commerce
Rep. Aaron Ling Johanson, Chair
Rep. Lisa Kitagawa, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 9, 2021
TIME: 2pm
PLACE: Via Videoconference

RE: HB1116 Relating to Tax Conformity

Position: Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA is in support of this measure. Last year many businesses, including Hawaii businesses, took out Federally guaranteed loans through the Payroll Protection Program (PPP). The PPP was created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and as the name suggests, were intended to provide much needed relief to businesses as they work to stay in businesses through the ongoing economic crisis.

To make sure that businesses would not face an added tax burden as a result of participating in the PPP the CARES Act was amended late last year to specify that no deduction would be denied, no tax attribute would be reduced, and no basis increase would be denied by reason of the exclusion from gross income of the forgiveness of an eligible recipient's covered loan.

This measure would conform Hawaii state law with both the letter and the intent of the CARES Act and related tax relief act. It would also be consistent with measures taken by other states to permit PPP loans to be eligible for deduction in state tax returns. We encourage you to pass this measure and we thank you for the opportunity to testify.

LATE



HAWAI'I LODGING & TOURISM
ASSOCIATION

Testimony of
Mufi Hannemann
President & CEO
Hawai'i Lodging & Tourism Association

Committee on Consumer Protection & Commerce
House Bill 1116: Relating to Tax Conformity

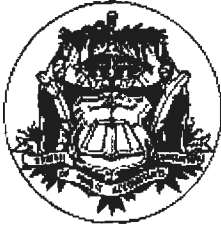
Chair Johanson and members of the Committee, mahalo for the opportunity to submit testimony on behalf of the Hawai'i Lodging & Tourism Association, the state's largest private sector visitor industry organization.

The Hawai'i Lodging & Tourism Association—nearly 700 members strong, representing more than 50,000 hotel rooms and nearly 40,000 lodging workers — strongly supports this measure which would protect employers that have withdrawn Payroll Protection Monies from having their forgiven loan amounts subjected to State taxes. Several other states across the nation have enacted legislation that would similarly shield employers from this possible tax burden and we feel Hawai'i should consider doing likewise.

Thousands of local employers have already utilized PPP funds to keep their businesses afloat and saddling them with a preventable tax burden would only aggravate the dire economic outlook for many businesses around the state.

For this reason, HLTA supports House Bill 1116.

Thank you for the opportunity to offer this testimony.



HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS

Organized August 7, 1943
P.O. BOX 61043
HONOLULU, HAWAII 96839



Committee on Consumer Protection & Commerce

Tuesday, February 9, 2021; 2:00 p.m.
Conference Room 329
State Capitol

Re: Strong Support for HB 1116 – Relating to Tax Conformity

Chair Aaron Ling Johanson, Vice Chair Lisa Kitagawa, and Committee members:

The Hawaii Association of Public Accountants (HAPA) is the only statewide public accounting organization with chapters on Oahu, Maui, Big Island, and Kauai. HAPA has approximately 550 members, consisting primarily of small to mid-sized CPA firm owners and employees. Hawaii consumers rely heavily upon our members to provide financial, tax, and consulting services for their businesses and personal affairs.

HAPA is in strong support of HB 1116 for the following reasons:

1. This bill conforms Hawaii tax treatment to the provisions of the Federal Consolidated Appropriations Act of 2021. There have been extensive Federal tax law changes in 2020 due to the pandemic. This Federal tax legislation was passed at the end of December 2020 and relates to tax treatment of 2020 income and deductions for forgiven Paycheck Protection Program (PPP) loans.

The 2020 tax season has already begun. Hawaii tax practitioners, now preparing 2020 returns, will assume that Hawaii has made or will make conforming state tax law changes to Federal tax laws in order to meet tax filing deadlines. If this conformity bill is not passed, many Hawaii businesses may find themselves in the situation of having to file amended returns at additional costs later in the year.

2. Based upon our review of the financial situations of our clients, most Hawaii small businesses have suffered incredible financial losses due to pandemic lockdowns, quarantines, and restrictions affecting the tourism and other industries. In particular, allowing state tax deductions related to forgiven PPP loans will provide needed additional financial help to Hawaii's struggling businesses. Moreover, for the State of Hawaii to deny the deductions specifically allowed by the Federal legislation will defeat the purpose of the Federal capital infusions and will drain the capital lifeblood of Hawaii small businesses.

3. Hawaii small businesses have had to modify operations, restrict customers or business operations to the point where it is impossible to make money. Many small businesses have lost their capital, closed down, incurred significant additional debt, and lost whatever remained of their owners' retirement savings. In order to keep from adding to the unemployment rolls, financial help is needed immediately to support Hawaii's small businesses. Adopting Hawaii tax conformity to the Federal tax laws will help to accomplish this.

The Payroll Protection Program (PPP) was intended to be a capital infusion to keep Hawaii's small businesses alive. It was not intended to be an indirect transfer of funds from the Federal government to State of Hawaii tax coffers.

Please do not hesitate to contact us with any questions or concerns. Thank you for considering the above.

Respectfully submitted,



Marilyn M. Niwao, M.S.P.H., J.D., CPA, CGMA

Legislative Committee Chairperson

Hawaii Association of Public Accountants

Telephone (808) 242-4600, ext. 224, niwao@mauicpa.com



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 329
TUESDAY, FEBRUARY 9, 2021 AT 2:00 P.M.**

To The Honorable Aaron Ling Johanson, Chair;
The Honorable Lisa Kitagawa, Vice Chair; and
Members of the Committee on Consumer Protection & Commerce,

SUPPORT HB1116 RELATING TO TAX CONFORMITY

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing share our support of HB1116.

Businesses relied on PPP loans to survive this pandemic and utilized the funding to bring their employees back to work. We support this bill that will conform Hawaii's tax laws to the federal laws and allow businesses to deduct their business expenses from their Hawaii taxes, even if they paid for them using PPP loans. This is another way to help businesses during this difficult time.

Mahalo for your consideration of our testimony and ask that you please pass this bill.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.