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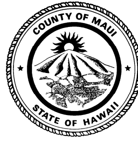


Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 16, 2021

TO: Honorable Mark M. Nakashima, Chair
House Committee on Judiciary and Hawaiian Affairs

FROM: Alice L. Lee
Council Chair

DATE: February 17, 2021

SUBJECT: **OPPOSITION TO HB 1314 HD1, RELATING TO TAXATION**

Thank you for the opportunity to testify in **OPPOSITION** to this important measure. This measure would repeal the allocation of Transient Accommodations Tax revenue to the counties.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I **OPPOSE** this measure for the following reasons:

1. The bill repeals the allocation of TAT revenue to the counties. The TAT is a vital source of county funding.

2. The counties directly support the very visitor services—such as county beaches and other parks, public safety, streets and highways, and tourism marketing—that generate TAT.

2. With the economy down and all levels of government struggling to maintain vital services, now is not the time to arbitrarily and callously take funds away from the counties.

For the foregoing reasons, I **OPPOSE** this measure.

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 Mark M. Nakashima, Chair;
The Honorable Scot Z. Matayoshi, Vice Chair;
and Members of the House Committee on Judiciary & Hawaiian Affairs

From: Isaac W. Choy, Director
Department of Taxation

Date: February 17, 2021
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

Re: H.B. 1314, H.D. 1, Relating to Taxation

The Department of Taxation (Department) and offers the following comments regarding H.B. 1314, H.D. 1, for your consideration.

H.B. 1314, H.D. 1, repeals the allocation to the counties of transient accommodations tax (TAT) revenue and authorizes each county to levy a county surcharge on TAT if the county satisfies certain real property tax requirements. H.B. 1314, H.D. 1, creates a residential property owner tax credit and a residential circuit breaker tax credit. Finally, the bill gradually repeals the individual and corporate income taxes. The bill has a defective effective date of July 1, 2050.

The income tax credits are each equal to an unspecified percentage of the real property tax owed and paid. The residential property owner credit can be claimed by any resident that pays county real property taxes on their principal residence. The bill defines principal residence as a residence occupied for no less than 270 days during the calendar year. The circuit breaker tax credit is similar, but is limited to taxpayers 65 years old or older with total earned income of less than $20,000. Earned income is not defined in this measure.

First, the Department notes that the bill provides income tax credits to taxpayers statewide and for the statewide repeal of the income tax, but does not require any statewide action on the TAT surcharge or real property increase. Thus, even if not all counties adopt a TAT surcharge or increase their property tax, the revenue losses from the income tax credit and repeal would apply statewide. This means that residents of a county that refuses to increase the real property tax or impose a TAT surcharge would still receive the tax credits and would benefit from the eventual repeal of the income tax.

Furthermore, the repeal of the income tax reduces state revenues, but the TAT surcharge and real property tax increase only supplement county revenues. The bill states that income tax revenue will be replaced by real property revenues, but includes no obvious mechanism for the sharing of county real property tax revenues with the state.

Second, the Department notes that the bill's preamble links the low real property tax rates to the proliferation of non-resident purchase of Hawaii real property. This relationship, if true, is critically important to this bill's efficacy, meaning that demand for Hawaii real estate will lessen if real property tax rates increase drastically. Therefore, it is not certain that increasing the real property tax on non-residents will result in increased tax revenue.

Third, the bill purports to reduce residents' overall tax burden and place more of the tax burden on non-residents. The Department cautions that in pursing this goal, the measure may be making the state's finances even more dependent on tourism, consumption, and the whims of non-residents.

As was dramatically demonstrated in 2020, tourism can disappear quickly. Fortunately, the household incomes of the state's residents were stable due to generous unemployment benefits. This stable income level led to stable individual income tax revenue, providing much needed funding as revenue from GET and, particularly, TAT, fell dramatically. This proposal would remove the relatively stable source of revenue, the individual income tax, and increase reliance on the tourism-dependent and volatile TAT.

Over-reliance on non-resident investment in real property is similarly risky. The real property tax may be more stable than the TAT, but it is susceptible to capital flight just as the TAT is susceptible to tourist flight. An economic downturn will lower the appetite for real estate investment, lowering the temperature on the real estate market among non-resident investors. As a matter of tax policy, the Department believes that it is in the State's best interest to diversify its sources tax revenue.

Finally, the H.B. 1314, H.D. 1, authorizes the counties to adopt a county surcharge on TAT at any time after they meet certain real property tax requirements. The bill requires the Department to collect the surcharge beginning the year following the adoption. If a county were to adopt a surcharge late in the year, the Department would have little time to prepare.

The Department requires approximately six months to make form changes, develop and test technical configurations, and educate taxpayers. The Department requests the deadline for adopting a TAT surcharge be set at least six months prior to the Department's requirement to begin collecting the surcharge.

Thank you for the opportunity to provide comments.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

February 16, 2021

Representative Mark Nakashima, Chair
Representative Scott Matayoshi, Vice Chair
House Committee on Judiciary and Hawaiian Affairs
Hawaii State Legislature

Opposition to HB1314 HD1

Dear Representative Nakashima, Representative Matayoshi and Members of the House Committee on Judiciary and Hawaiian Affairs,

Thank you for the opportunity to provide our testimony on HB1314 HD1.

While we understand that the State Legislature is looking to address substantial budget shortfalls, the Kohala Coast Resort Association (KCRA) seriously **opposes** removing the TAT allocation provided to the counties. We are also **opposed** to allowing the counties to create their own separate TAT, as this will create a "pile-on" effect, where both county and state governments become even more reliant on the visitor industry.

Since the cap in the amount of TAT provided to the counties was instituted in 2012, we have seen the number of direct air seats to Hawaii Island more than double. We therefore believe that the counties should receive a larger portion of the TAT currently collected by the state to be able to adequately address that growth. However, during the last ten years an ever-greater percentage of TAT has remained in the state's general fund. In 2009, the amount of TAT left after earmarks to HTA, the counties, the convention center, and others was $7.8 million. This equated to 3.7% of all state TAT collections. In 2019, with caps placed on HTA, the counties, and the convention center, and additional specialty earmarks created for Turtle Bay, the Honolulu Rail project, and others, the amount that remained in the state general fund was nearly $376,950,000 or **59.1%** of all TAT allocations!

This legislation clearly shows that there needs to be greater cooperation between state and county lawmakers. We heartily agree with Speaker Saiki's comments during his address a few weeks ago, where he shared that we must break down government silos to chart a new course. We have learned too well during the last year, the perils that ensue when government becomes too dependent on one industry to support our services and infrastructure. Unfortunately, this proposed legislation shows otherwise. Economists speculate that Hawaii's visitor industry will not recover until 2024. Now is not the time for us to shoulder any additional tax burden as it could further hamper our recovery.

KCRA is a collection of master-planned resorts and hotels, situated north of the Kona International Airport which represents more than 3,500 hotel and timeshare accommodations and an equal number of resort residential units. This is approximately 35 percent of the visitor accommodations available on the Island of Hawai`i. KCRA member properties annually pay more than $25 million in TAT, $25 million in GET and $11 million in county property taxes. KCRA members employ more than 5,000 Hawaii Island residents.

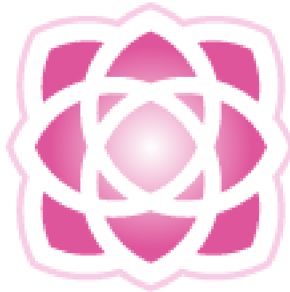
Sincerely,

Stephanie P. Donoho

Stephanie Donoho, Administrative Director

PO Box 6991, Kamuela, HI 96743 * (808) 747-5762 * kohalacoastresortassn@gmail.com * www.kohalacoastresorts.com

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

HEARING BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
WEDNESDAY, FEBRUARY 17, 2021 AT 2:00 P.M.

To The Honorable Mark M. Nakashima, Chair;
The Honorable Scot Z. Matayoshi, Vice Chair; and
Members of the Committee on Judiciary & Hawaiian Affairs,

OPPOSE HB1314 HD1 RELATING TO TAXATION

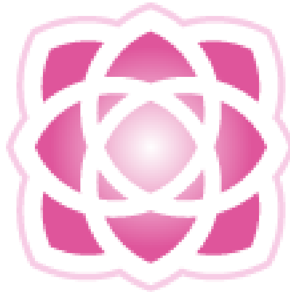
Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment.

We strongly oppose this bill and understand our county does as well. We have detailed the Maui Chamber of Commerce's reasons for opposing the bill below.

While we appreciate the state is looking to run more like a business, we don't appreciate that the state is looking to charge the counties 5% to process handling the accounting should the county choose to establish the TAT surcharge. We are also concerned that the state is requiring the counties to increase their real property tax (RPT) to certain levels to achieve this benefit if they want or need it. Given that each county determines their own RPT rate schedule, we don't know what the impact will be for other counties, but the proposed rate schedule compared to Maui County's current RPT rates leaves us with the following concerns:

- We do not know what the exemption for homeowners would be and therefore, do not know what the hit to residents will be;
- The proposed RPT increases for 2022 will impact commercialized residential;
- Over time the proposed RPT increases will impact all business categories without a provision for a tax credit and we see none in this bill;
- Hotels & Resorts, Timeshares, and Short-Term Rentals will be hit by both the RPT and TAT increase down the road, both of which get passed on to visitors and increase the cost of coming to Hawaii, potentially challenging our market positioning in domestic and international markets; and
- This schedule is projected out too far since our recovery is expected to be slow and there are many uncertainties. How are businesses supposed to plan for this?

95 Mahalani Street, Suite 22A, Wailuku, Hawaii 96793 808-244-0081 info@MauiChamber.com MauiChamber.com



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

We are **DEEPLY CONCERNED** that the residential RPT credit cannot be applied to a property exceeding $1,000,000. While that number might have been reasonable 5 years ago, we have seen median home prices escalate over the last several years and it is way too low given recent sales. Back in August of 2019, the median home price in Maui was $837,500 and as of January 2021, the median home price in Maui was $980,000 (reported as of 2/9/21), which was considerably higher than Oahu's median home price of $890,000 for the same period. There are significant differences between counties, and this is not the time for the state to be dictating county RPT rates as our markets are clearly very different right now and into the foreseeable future. We have the same concern with the circuit breaker tax credit limit of $1,000,000 as many of our seniors have owned their properties for many years, with many being generational properties whose value in today's market exceeds $1,000,000 and, in some cases, could exceed several million dollars.

Further, if this bill passes it will automatically take away the county's share of TAT on December 31, 2021, which could occur before counties decide if they want to take the TAT surcharge and increase their RPT rates.

Lastly, while we appreciate the help to repeal the state income tax for residents and corporate income taxes for businesses gradually over 2022, 2025, 2028 and 2031 (a schedule that corresponds with the projected RPT increases by the counties), this is a complicated issue that requires further studies to assess the degree to which the repealed taxes will offset increases and the ultimate impacts on residents and businesses.

All counties should be in agreement before considering such a measure and the impacts on residents and businesses statewide should be well understood and presented to the public.

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

Sincerely,

Pamela Tumpap

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.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, REAL PROPERTY, INCOME, County Surcharge on TAT

BILL NUMBER: HB 1314, HD1

INTRODUCED BY: House Committee on Economic Development

EXECUTIVE SUMMARY: Authorizes each county to levy a county surcharge on transient accommodations tax if the county satisfies certain real property tax requirements. Repeals the allocation of transient accommodations tax revenue to the counties and makes conforming amendments. Establishes a residential property owner tax credit and a residential circuit breaker tax credit. Beginning with taxable years after 12/31/2021, gradually implements new individual income tax and corporation income tax brackets and rates in three-year intervals. Effective 7/1/2050.

SYNOPSIS: Adds a new section to chapter 46, HRS, to authorize counties to adopt a surcharge on TAT, if it meets the following conditions:

- Raise the property tax rates to no less than $5 per $1000 of assessed valuation in 2022; $7.50 in 2025; $10 in 2028; and $15 in 2031.
- Increase the home exemption for property tax to at least $_____.
- Lower the minimum age needed for the home exemption to _____.

Adds a new section to chapter 237D, HRS, regarding administration of the county surcharge on TAT.

Adds a new section to chapter 248, HRS, to provide for a “skim” of 5% of the gross collections of TAT surcharge that will be retained as State general fund realizations.

Amends section 87A-42, HRS, to delete the language mandating sequestration of the county’s share of TAT moneys if the county has not made its required contributions toward Other Post-Employment Benefits for public workers such as pensions (ERS) and health benefits (EUTF).

Amends section 237D-6.5, HRS, to delete the current provision earmarking $103 million annually to the counties.

Adds a new section to chapter 235, HRS, to allow a refundable income tax credit of ___% of the real property tax paid by a qualified taxpayer on no more than the first $1 million of valuation. That section defines “qualified taxpayer” as a resident who pays real property taxes to a county of the State for a residential property that is used as the taxpayer’s principal residence during the taxable year.

Adds a new section to chapter 235, HRS, to establish a refundable residential circuit breaker tax credit equal to ___% of the real property tax owed and paid by a qualified taxpayer. This section

defines a "qualified taxpayer" as a resident who (1) Is sixty-five years of age or older; (2) Is not a dependent of another taxpayer; (3) Has a total earned income that is less than $20,000; and (4) Owns and occupies a residential property that is used as a principal residence and the assessed value of the residential property does not exceed $1,000,000.

Amends section 235-51, HRS, to phase out the individual income tax by 2030.

Amends section 235-71, HRS, to phase out the corporate income tax by 2030.

EFFECTIVE DATE: 7/1/2050.

STAFF COMMENTS: This bill represents an effort to phase out the individual and corporate income taxes by changing the focus to real property and transient accommodations taxes. There are still several blanks in the bill so it is not possible to prejudge the revenue impact, but in the trying times we are now in, we expect that the proponents of this bill are eyeing a net tax increase.

A tax increase of any magnitude in Hawaii's fragile economy will, no doubt, have a negative impact as costs soar due to higher taxes. As costs and overhead increase, employers must find ways to stay in business by either increasing prices to their customers or cut back on costs. This may take the form of reducing inventory, shortening business hours, reducing employee hours, or even laying off workers. A tax increase of any magnitude would send many companies, especially smaller ones, out of business taking with them the jobs the community so desperately needs at this time.

We observe that the two major taxes collected by the Department of Taxation are now the general excise tax and the individual income tax. According to the DOTAX's annual report for FY2020, the GET brought in $3.44 billion; the individual income tax brought in $2.36 billion; and all other taxes combined brought in $1.65 billion. To replace the individual and corporate income taxes, the state would have to impose a whopping amount of tax just to stay even. Thus, there will be highly significant economic consequences accomplished by this bill – and most of them will need to come out of something other than the TAT, which is producing barely a trickle of income as the result of COVID-19 decimation of the hospitality industry.

Digested 2/8/2021

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

OFFICE OF THE MAYOR
DEREK S.K. KAWAKAMI, MAYOR
MICHAEL A. DAHILIG, MANAGING DIRECTOR

Testimony of Derek S.K. Kawakami
Mayor, County of Kauaʻi

Before the
House Committee on Judiciary & Hawaiian Affairs
February 17, 2021; 2:00 p.m.
Conference Room 325

In consideration of
House Bill 1314 HD 1
Relating to Taxation

Honorable Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The County of Kauaʻi respectfully submits testimony with **strong concerns** regarding HB 1314 HD1 which authorizes each county to levy a county surcharge on transient accommodations tax if the county satisfies certain real property tax requirements; repeals the allocation of transient accommodations tax revenue to the counties and makes conforming amendments; establishes a residential property owner tax credit and a residential circuit breaker tax credit.

This measure complicates both tax systems and is unnecessary. The transient accommodations tax should remain separate and not linked with real property assessment.

Thank you for your consideration and your continued support of the island of Kauaʻi.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

February 17, 2021. 2:00 p.m.

To: Chair Mark M. Nakashima, Vice Chair Scot Z. Matayoshi, and members of the House Committee on Judiciary & Hawaiian Affairs

From: Beth Giesting, Director, Hawaiʻi Budget & Policy Center

Re: Opposition to HB1314, H.D. 1, Relating to Taxation

The Hawaiʻi Budget & Policy Center provides the following comments in opposition to House Bill 1314, House Draft 1, Relating to Taxation.

While we support the parts of this bill that would encourage counties to raise real property taxes and increase exemptions for local property owners, and that would give counties the authority to add a surcharge to transient accommodations taxes, **we strongly oppose Sections 9 and 10** that would eliminate state income taxes for individuals, corporations, and regulated investment companies.

Hawaiʻi's individual income tax structure is progressive, imposing higher tax rates on households as their incomes increase. In fiscal year 2019, individual income tax revenues amounted to $2.6 billion and accounted for 36 percent of general fund collections. Corporate income taxes that year provided another $164 million. This bill's proposal to eliminate these taxes is puzzling since it proposes no alternatives to replace them except to allow the state to withhold distribution of the transient accommodations tax to the counties. The amount so distributed in FY2019 amounted to $103 million, a small fraction of income tax collections.

Section 1 of the bill notes an intention to eliminate taxes in order provide financial security and stability to vulnerable working class and ALICE households. In fact, the budget cuts that would result from this measure would be devastating to them and to all residents as funds for public education, housing, the environment, and public services would, of necessity, be slashed.

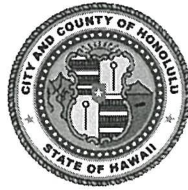
Thank you for the opportunity to testify.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

DEPARTMENT OF BUDGET AND FISCAL SERVICES

CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov



RICK BLANGIARDI
MAYOR

ANDREW T. KAWANO
DIRECTOR DESIGNATE

KELLI J. NISHIMURA
ACTING DEPUTY DIRECTOR

February 17, 2021

Honorable Mark M. Nakashima, Chair
Judiciary & Hawaiian Affairs
Hawaii State Capitol, Room 432
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nakashima, Vice-Chair Matayoshi, and members of the Committee on Judiciary and Hawaiian Affairs:

SUBJECT: In Opposition of HB 1314 HD1

Thank you for the opportunity to testify on behalf of the City and County of Honolulu. While we understand the economic difficulties the State of Hawaii is facing, we are respectfully in **opposition** of this measure. HB1314 HD1 adversely alters the tax policy of each county by significantly increasing the tax burden onto our only tax revenue source, real property taxes, while also impacting the City's credit rating.

Each county factors in tax rates of their primary revenue of real property taxes to prudently meet obligated debt service and to provide essential core services. The proposed tax rate schedule will place further financial burden on local residents living on Oahu. By increasing the minimum tax rate of $15 per $1,000 by 2031, Honolulu residents would see an increase of over four times their current obligation. The current residential tax rate of $3.50 per $1,000 has not changed since the tax year 2011-2012.

In addition to broadening the purpose of real property taxes by implementing a complex circuit breaker program, establishing a residential tax credit, and creating second transient accommodation tax program, this measure will very likely harm the City's strong bond credit rating of Aa1 by Moody's and AA+ by Fitch. A lowering of the credit rating increases debt service cost and could reduce the City's financing options in the future.

For these reasons we oppose this measure as it adversely changes the tax policy landscape at the state and county levels and will overburden local residents by way of increased real property taxes while also impacting the City's bond credit rating, which may result in unfavorable consequences.

Sincerely,

Andrew T. Kawano, Director Designate
Department of Budget and Fiscal Services

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021

ON THE FOLLOWING MEASURE:
H.B. NO. 1314, H.D. 1, RELATING TO TAXATION.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 17, 2021 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Janine R. Udui,
Deputy Attorney General, at 586-1470)

Chair Nakashima and Members of the Committee:

The Department of the Attorney General has concerns regarding this bill and provides the following comments.

The bill's preamble states that "[t]he legislature finds that the current property tax structure caters to non-residents and burdens local residents, particularly the senior population and first-time home buyers." See page 1, lines 2-5. The bill cites to a 2017 Department of Business, Economic Development, and Tourism report indicating that twenty percent of all real property in the State is owned by nonresidents, and 12.5 percent of residential properties are owned by nonresidents. See page 1, lines 5-9. In light of this, the bill states that "[t]he legislature believes that the State has the capacity to shift a portion of the property tax burden to out-of-state homebuyers without placing a further financial burden on local residents who own real property and use it as their principal residence." See page 1, lines 9-13. The preamble goes on to state that "[w]hile the legislature believes that the tax burden should be shifted to non-residents, the legislature also believes that a fair assessment of homeowner exemptions is needed to offset the burdens local residents face." See page 2, lines 3-6. The bill therefore establishes "a residential property owner tax credit and a residential circuit breaker tax credit." See page 3, lines 14-15.

Both credits are available to resident taxpayers, but not to nonresident taxpayers. More specifically, a "qualified taxpayer" eligible to claim the residential property owner tax credit is defined, in part, as a “resident who pays real property taxes to a county of the State for a residential property that is used as the taxpayer’s principal residence.” See page 24, lines 9-12. Similarly, a "qualified taxpayer" eligible to claim the residential circuit breaker tax credit is defined in part as a "resident" that meets certain other requirements. See page 26, lines 7-14. For purposes of both credits, the term "resident" is defined to have the same meaning as defined in section 235-1, Hawaii Revised Statutes (HRS), where that term is defined in part as every individual domiciled in the State or who is in the State for other than a temporary or transitory purpose. See page 24, lines 13-14; page 26, lines 15-16. Under both credits, "principal residence" is defined to mean "a residential property in the State in which a taxpayer has occupied for no less than two hundred seventy calendar days of a calendar year." See page 24, lines 6-8; page 26, lines 4-6. Accordingly, the residential property owner tax credit and residential circuit breaker tax credit will be available to resident taxpayers domiciled in the State, but not to nonresident taxpayers for no other reason than they are nonresidents.

As such, this bill may be subject to challenge under the Privileges and Immunities Clause of the United States Constitution. "The Privileges and Immunities Clause, U.S. Const., Art. IV, § 2, provides that the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states." Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 290 (1998) (internal brackets and quotation marks omitted). "One right thereby secured is the right of a citizen of any State to 'remove to and carry on business in another without being subjected in property or person to taxes more onerous than the citizens of the latter State are subjected to.'" Id. at 296 (quoting Shaffer v. Carter, 252 U.S. 37, 56 (1920)). A court’s determination as to whether a state taxing law violates the Privileges and Immunities Clause "must depend not upon any mere question of form, construction, or definition, but upon the practical operation and effect of the tax imposed." Id. (quoting Shaffer, 252 U.S., at 55, 40 S. Ct., at 226)). The Clause requires "substantial equality of treatment" for resident

and nonresident taxpayers, such that "[w]here nonresidents are subject to different treatment, there must be 'reasonable grounds for … diversity of treatment.;" Id. at 297-98 (quoting Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 79(1920)). Thus, "the Privileges and Immunities Clause bars 'discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states.'" Id. at 298 (quoting Toomer v. Witsell, 334 U.S. 385, 396 (1948)). Along these lines, states may "adopt justified and reasonable distinctions between residents and nonresidents in the provision of tax benefits, whether in the form of tax deductions or tax credits." Lunding, 522 U.S. at 311.

In Reinish v. Clark, 765 So.2d 197 (Fla. Dist. Ct. App. 2000), the Reinishes were residents of Illinois, but owned a parcel of real estate in Florida for use as a part-time residence. Id. at 201. The Reinishes were ineligible to receive Florida's homestead tax exemption because their use of the Florida property did not qualify as a "permanent residence." Id. The Reinishes challenged Florida's homestead tax exemption law on the grounds that they were "not treated substantially equally with Florida residents under the homestead tax exemption scheme because they [were] non-residents." Id. at 208. In response, the appellee contended:

> [T]he exemption does not discriminate against non-residents at all, i.e., no one (whether Florida resident or non-resident) receives an exemption for a home that is not used as a permanent residence. Although the Reinishes are non-residents, their Florida real property is treated the same as any vacation or seasonal homes of Florida residents, who are taxed upon the full value of those properties. This result is consistent with the State's legitimate interest in assisting taxpayers/owners with the costs of their primary shelter and thereby fostering the stability of the basic homestead.

Id. at 208. In determining Florida's homestead tax exemption did not violate the Privileges and Immunities Clause, the court noted that "the exemption is reasonable in effect[,]" was "closely and substantially related to the State's valid objective to promote and protect taxpayers' financial ability to purchase and maintain the primary shelter[,]" and therefore "constitute[d] a substantial justification totally unrelated to state residency." Id. at 210. The court further noted that "[a] secondary or vacation home

does not implicate the same acute public policy concerns relating to the establishment and protection of a stable, financially secure primary residence." Id.

Here, the proposed measure, similar to the one in Reinish, is designed to offset the burdens of owning a primary residence in the State. However, unlike in Reinish, the proposed tax credits can only be claimed by a "resident." Therefore, a resident of the State may claim the credits, whereas a nonresident who would otherwise be eligible (i.e., resided in a secondary vacation residence in the State that qualifies to be a "principal residence" if it is occupied for no less than 270 calendar days of the year) would not be able to do the same solely because of residency. For this reason, and because the bill's preamble indicates the desire to shift the property tax burden from residents to citizens of another state, the bill may be subject to challenge under the Privileges and Immunities Clause.

Based on the foregoing, we respectfully ask that these concerns be addressed. We recommend removing the preamble in order to remove the wording indicating a preference to shift the tax burden to nonresidents. Additionally, we recommend removing the word "resident" from the definition of "qualified taxpayer" in part IV, section 8, and replace it with "person subject to the taxes imposed by this chapter." Specifically, with respect to the residential property owner tax credit, on page 24, starting at line 9, the definition of "qualified taxpayer" should read as follows:

> "Qualified taxpayer" means a [~~resident~~] person subject to the taxes imposed by this chapter who pays real property taxes to a county of the State for a residential property that is used as the taxpayer's principal residence during the taxable year[.]

The definition of "resident" on page 24, lines 13-14, should then be stricken. With respect to the residential circuit breaker tax credit, on page 26, starting at line 7, the definition of "qualified taxpayer" should read as follows:

> "Qualified taxpayer" means a [~~resident~~] person subject to the taxes imposed by this chapter who:
>
> (1) Is sixty-five years of age or older;
> (2) Is not a dependent of another taxpayer;
> (3) Has a total earned income that is less than $20,000; and

(4) Owns and occupies a residential property that is used as a principal residence and the assessed value of the residential property does not exceed $1,000,000.

The definition of "resident" on page 26, lines 15-16, should then be stricken.

These changes to the preamble and the definition of a “qualified taxpayer” to remove the word “resident” would address the possible Privileges and Immunities challenges.

Thank you for the opportunity to express our concern.