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To: The Honorable Sean Quinlan, Chair
The Honorable Daniel Holt, Vice Chair
and Members of the House Committee on Economic Development

From: Isaac W. Choy, Director
Department of Taxation

Date: February 3, 2021
Time: 9:30 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 836, Relating to Income Tax Credits

The Department of Taxation (Department) offers the following comments regarding H.B. 836 for your consideration.

H.B. 836 creates a new non-refundable income tax credit for an employer that allows at least 30% of its workforce to telework. The amount of the credit is an unspecified amount per employee who is allowed to telework at least two-thirds of the time. H.B. 836 also establishes an aggregate cap on the credit of an unspecified amount. The bill is effective upon its approval and applies to taxable years beginning after December 31, 2020.

The Department notes that it is unable to administer the aggregate cap without a certifying agency. If the aggregate cap is to remain in place the Department strongly suggests that a certifying agency be inserted into the bill. In addition, the Department suggests specifying in the bill how the credits should be certified (proration) and what happens if the amount being applied for exceeds the aggregate cap.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

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

SUBJECT: INCOME, Telework Tax Credit

BILL NUMBER: HB 836

INTRODUCED BY: ILAGAN, CULLEN, HOLT, ICHIYAMA, JOHANSON, KITAGAWA, MCKELVEY, MIZUNO, NAKAMURA, NISHIMOTO, OHNO, QUINLAN, TAKAYAMA, YAMANE

EXECUTIVE SUMMARY: Establishes a telework tax credit for employers who allow telework for at least thirty per cent of their employees. Applies to taxable years beginning after 12/31/20.

SYNOPSIS: Adds a new section to chapter 235, HRS. Provides a nonrefundable credit to the employer of $_____ for each employee who is allowed to telework at least 2/3 of the time that the employee is expected to work, not to exceed $_____ in any taxable year.

Provides that all claims for tax credits, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure shall constitute a waiver of the right to claim the credit.

Defines "employer" as any employer upon whom an income tax is imposed by this chapter.

Defines "telework" as an alternative work arrangement whereby employees perform the normal duties and responsibilities of their positions through the use of telecommunication devices, either at home or another place apart from the employees' usual place of work.

EFFECTIVE DATE: Taxable years beginning after 12/31/2020.

STAFF COMMENTS: The tax system is there to raise revenue to keep the government moving. Using the tax system to shape social policy merely throws the revenue raising system out of whack, making the system less than reliable as there is no way to determine how many taxpayers will avail themselves of the credit and in what amount.

Furthermore, tax credits are nothing more than the expenditure of public dollars, but out the back door. If, in fact, these dollars were subject to the appropriation process, would taxpayers be as generous about the expenditure of these funds when our kids are roasting in the public school classrooms, there isn't enough money for social service programs, or our state hospitals are on the verge of collapse, overtaxed by the pandemic?

If lawmakers want to subsidize this activity, then a direct appropriation would be more accountable and transparent. That way lawmakers will be very clear on (1) how much we taxpayers are paying, and (2) what we are getting in return.

If lawmakers wish to proceed with this credit, they may wish to consider the following technical concern:

- As written, the credit is applied irrespective of where the employer and employee are located, meaning that the credit can be granted if a Texas employer grants Massachusetts employees the ability to telework, as long as the employer is subject to Hawaii tax.
- Furthermore, the factual predicate for the credit is easy to satisfy. All that is necessary for an employee to qualify is that the employee be at home or on the road more than 60% of the time and that the employee employ a means of communication on the job. Traveling salespeople, construction workers, installation technicians, and other workers who travel frequently all would seem to qualify under this definition.

Digested 2/1/2021