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**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. 34, Proposed S.D. 1, Relating to Taxation

BEFORE THE:

Senate Committee on Judiciary

DATE: Tuesday, February 14, 2023

TIME: 9:35 a.m.

LOCATION: State Capitol, Room 016

Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 34, Proposed S.D. 1, for your consideration.

S.B. 34, Proposed S.D. 1, adds a new section to chapter 235, Hawaii Revised Statutes, that provides a nonrefundable income tax credit for the disposition of real property in Hawaii. The tax credit is equal to an unspecified per cent of the amount realized on the disposition of real property, subject to an unspecified maximum amount, from "transferor" to a "qualified transferee." The measure defines "transferor" as any person disposing of real property that is located in Hawaii, and a "qualified transferee" as any person acquiring real property that is located in Hawaii for the purpose of using the property as an "owner-occupant."

The measure further provides an unspecified aggregate cap for all claims of the credit, and that taxpayers who are ineligible to claim the credit for a taxable year due to the aggregate cap being exceeded for that year, are eligible to claim the credit in the subsequent year. Any remaining credit that is claimed, but not used to offset a taxpayer's liability, may be carried forward until exhausted. The measure further includes a recapture provision assessed against the eligible taxpayer should the "qualified transferee" fail to fulfill the definition of "owner-occupant" as provided within the measure.

This measure includes definitions for “owner-occupant,” “qualified transferee,” and “property” or “real property,” among other terms, but does not define the term “amount realized.” S.B. 34, Proposed S.D. 1, is effective upon approval and applies to taxable years beginning after December 31, 2023, and is repealed, or sunsets, on December 31, 2028.

First, the Department notes that a seller may not have a future tax liability to offset with a nonrefundable credit. The Department does not, however, recommend making the credit refundable, as refundable credits are more susceptible to fraudulent claims.

Second, the Department notes that if the buyer fails to meet the owner-occupant requirement for the minimum 365 days, the buyer will not be penalized, but the seller would be penalized via the recapture provision.

Third, the Department notes that aggregate caps are difficult for the Department to administer and often result in uncertainty for taxpayers. The cap may be met early in the year and all other sales would be moved to the subsequent year’s cap, causing a waterfall effect going forward for all future sales. If the aggregate cap is maintained, the Department requests that the credits be certified by an agency with appropriate expertise.

Finally, the Department notes that it will be able to implement this bill based on the current effective date.

Thank you for the opportunity to provide comments on this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Income Tax Credit; Disposition of Real Property; Owner—Occupants

BILL NUMBER: SB 34 SD 1 Proposed

INTRODUCED BY: Senate Committee on Judiciary

EXECUTIVE SUMMARY: Creates a temporary income tax credit for taxpayers who sell real property to owner-occupants.

SYNOPSIS: Adds a new section to chapter 235, HRS, establishing the “Disposition of real property to owner-occupant tax credit.” The credit is ___% of the amount realized on the disposition of real property from a taxpayer, acting as a transferor, to a qualified transferee, up to a maximum of \$_____.

The total amount of tax credits allowed per taxable year shall not exceed \$_____. Any person whose credit is denied because of the cap being breached will be able to claim the credit in the succeeding year.

The credit is nonrefundable but may be carried forward until exhausted.

All claims for the tax credit under this section, including 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 to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

Failure of the qualified transferee to use the real property that is being used to claim the credit as an owner-occupant shall result the taxpayer's ineligibility and a recapture of the credit.

Defines the following terms:

"Owner-occupant" means any individual in whose name sole or joint legal title is held in real property that, simultaneous to such ownership, serves as the individual's principal residence, as defined by the department, for a period of not less than three hundred sixty-five consecutive days; provided that the individual shall retain complete possessory control of the premises of the real property during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held; except that an individual shall be deemed to have complete possessory control even when the individual conveys or transfers the real property into a trust for estate planning purposes and continues in the use of the premises as the individual's principal residence during this period.

"Property" or "real property" has the meaning as the same term is defined in section 231-1.

"Qualified transferee" means any person acquiring real property that is located in Hawaii for the purpose of using the property as an owner-occupant.

"Transferor" means any person disposing of real property that is located in Hawaii.

EFFECTIVE DATE: Taxable years beginning after December 31, 2023; repeals December 31, 2028.

STAFF COMMENTS: First, there is a wrinkle in the definition of owner-occupant. The definition allows for an individual to continue to have complete possessory control of a residence even if the individual conveys the property to a trust for estate planning purposes. But the first sentence of the definition requires title to be held by an individual, solely or jointly, so conveyance of the property to a revocable living trust would violate the definition and cause a credit recapture.

The tax system is there to raise revenue to keep the government moving. Using the tax system to give taxpayers money to do things that lawmakers want them to do for social policy reasons 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?

The additional credit would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive compared to the amount that may be paid out in credits.

Digested: 2/12/2023



February 13, 2023

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Members of the Senate Committee Judiciary

RE: **SB 34– RELATING TO TAXATION**
Hearing date – February 14, 2023 at 9:35 am

Aloha Chair Rhoads and members of the committee,

Thank you for allowing NAIOP Hawaii to submit testimony in **OPPOSITION** to **SB 34 – RELATING TO TAXATION**. NAIOP Hawaii is the Hawaii chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals.

SB 34 amends the taxes withheld on the amount realized by nonresidents from the disposition of Hawaii residential real property from 7.25% to 75%. The measure would apply to real estate dispositions that occur on or after 9/15/2023.

Hawaii already has one of the worst conveyance taxes in the country. The proposed increase on conveyance tax would increase the current conveyance tax for nonresidents tenfold. This would radically curtail economic activity as few properties would trade hands due to exorbitant tax on the sale of property.

Typically, the acquisition of new commercial property comes with additional investment to redevelop and increase value of the asset. The increase of conveyance tax would result in less capital to invest into the property, and thus, would make the transaction economically infeasible. This would lead to less property transactions and reduce the amount of times conveyance tax is collected. As a result, property values would significantly decline in order to account for the increased costs.

NAIOP Hawaii is concerned that this increase in conveyance taxes which reduces the private sectors investment into long term projects which stimulate economic activity. Hawaii is already rated as one of the least business friendly States in the nation and increasing this tax rate will further discourage much needed investment here locally. Rather, additional efforts to encourage investment in Hawaii and incentivize the creation of new projects and businesses in Hawaii would stimulate our economy by creating jobs and tax revenue.

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Members of the Senate Committee Judiciary
February 13, 2023
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Accordingly, NAIOP Hawaii respectfully recommends that SB 34 be deferred.

Mahalo for your consideration,

Jennifer Camp, President
NAIOP Hawaii

SB-34

Submitted on: 2/10/2023 8:16:57 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Christopher	Individual	Support	Written Testimony Only

Comments:

I support!

SB-34

Submitted on: 2/10/2023 8:28:05 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Sharde Nihipali	Individual	Support	Written Testimony Only

Comments:

Aloha, I am a 5th generation Hawaii Resident with my own Keiki. I would love to see my children grow up here and have the ability to buy a home. Please consider allowing us as Hawaii Residents as locals buy homes here. Mahalo.

SB-34

Submitted on: 2/10/2023 8:28:33 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Janice Giles	Individual	Support	Written Testimony Only

Comments:

We need people buying homes who actually live in the house. Let's keep local families in Hawai'i.

SB-34

Submitted on: 2/10/2023 8:36:22 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Kathryn casey	Individual	Support	Written Testimony Only

Comments:

Aloha,

to say it's unconstitutional is a joke because we already have harpta and firpta laws in place. What is unconstitutional is that this stolen land is still being taken away from locals today. The few Hawaiians left here on the island have faced so much adversity. It's about time we start putting locals first.
mahalo

Kathryn

SB-34

Submitted on: 2/10/2023 8:45:41 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Alexander K Kea III	Individual	Support	Written Testimony Only

Comments:

Aloha,

My name is Alika Kea and I'd like to share my thoughts on this bill and the what it could potentially do for the Native Hawaiian community and Hawai'i. For 130 years, Hawai'i has faced injustice of its land being stripped of its natural resources, Kanaka Maoli being pushed out of their lands, overdevelopment, especially over kupuna 'iwi, and the tens of thousands who have died on the waiting list waiting to receive Hawaiian homes. Yet when there is a bill that can finally not only regulate but protect and preserve homes for Native Hawaiians, it is considered "unconstitutional" due to "law of land". Whose land? Whose law? How long must the Kanaka suffer while non-residents are able to buy homes without background checks, using dead land titles, Kūleana lands, etc. with little to no issue. New Zealand has 'sensitive lands' in which they have this exact same law that this bill is proposing and we as Hawaiians need this bill to support our community in the same way. Why continue to deny Kanaka Maoli their right to the land that was promised but never received? How long will Native Hawaiians suffer until we either all move away off island or die off all because the government and the State of Hawai'i caters to non-residents and outsiders? The corruption must stop! The injustices must stop! The lack and ignorance of tending to the rights of Native Hawaiians **MUST STOP!** We are Hawaiian, this is Hawai'i! The only way Hawai'i will ever **STAY** as Hawai'i is if Hawaiians are here, the stewards and caretakers of the land! Do what is Pono and give what we Kanaka are owed...we have suffered long enough waiting for it!

Mahalo

SB-34

Submitted on: 2/10/2023 8:54:48 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Brock Ai	Individual	Support	Written Testimony Only

Comments:

I, Brock Ai, am in support of the "About Time" Bill. Here in Hawaii, kanaka have been continuously pushed out by tourism and malihini, and the government has done nothing to put Hawaiians and locals alike first. What is Hawaii without Hawaiians? Malihini should not be able to buy homes, not should homes be sold to the highest bidders. Put Hawaiians first and Hawaii will be a much better place.

SB-34

Submitted on: 2/10/2023 9:26:17 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Scott Fong Jr	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill. We need to look after the locals best interests instead outside investments. Locals First!

SB-34

Submitted on: 2/10/2023 9:27:12 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Aokeaokalani West	Individual	Support	Written Testimony Only

Comments:

Locals are being misplaced and out bought by rich homeowners who do not even live in Hawai'i.
Change needs to be made! Put the people first!

SB-34

Submitted on: 2/10/2023 9:40:55 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
tania victorine	Individual	Support	Written Testimony Only

Comments:

This needs to be heard in order to give locals a fighting chance. We cannot let foreigners buy land without stipulations.

SB-34

Submitted on: 2/10/2023 10:14:37 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Janai	Individual	Support	Written Testimony Only

Comments:

I support this bill because as a born and raised Hawaiian my own children and so many other local family and friends can't afford to purchase a home here. The cost of living here kills us. Living paycheck to paycheck and unable to save while others in the mainland and other countries live way more comfortable lives with the ability to save up. This gives them the monies to outbid our local families here. Our locals lose a chance to purchase a home because they simply don't have the cash while the non local purchases then later sells at a even higher price that then drives the market up and makes the prices of homes even more unreachable. I believe that this bill may help deter non locals from purchasing a home here because their profit margin will not be as much as they'd get compared to present day. Also, it would be a way for our state to collect more tax monies from a nonresident. For these reasons I support this bill.

SB-34

Submitted on: 2/10/2023 10:29:10 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Kelley Porter	Individual	Support	Written Testimony Only

Comments:

Aloha mai kākou! As a local, 6th generation, born and raised in Hawai'i, I support this bill. For my 'ohana, my 2 keiki and all the local families trying to just survive here and keep our family homes. Please help out the locals before we loose all our aina and properties to investors and rich mainland people. Mahalo for your concern.

Kelley Porter

SB-34

Submitted on: 2/10/2023 10:29:54 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
kamakani de dely	Individual	Support	Written Testimony Only

Comments:

I support

SB-34

Submitted on: 2/10/2023 10:35:27 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Mallory De Dely	Individual	Support	Written Testimony Only

Comments:

I support this bill.

SB-34

Submitted on: 2/10/2023 11:39:37 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Bryce johnson	Individual	Support	Written Testimony Only

Comments:

Please ass this bill for Kauai residents hoping to one day be home owners. Aloha

SB-34

Submitted on: 2/10/2023 11:46:46 PM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Dave Teriirere	Individual	Support	Written Testimony Only

Comments:

Support

SB-34

Submitted on: 2/11/2023 12:24:56 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Reyna	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill to incentivize sellers to sell their home to owners that will live in these homes.

SB-34

Submitted on: 2/11/2023 12:58:03 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Keke Manera	Individual	Support	Written Testimony Only

Comments:

Hawai'i residents need this so badly! We're sick and tired of seeing outsiders snatch up everything in their path leaving nothing for our own people here who are already dealing with so much.

SB-34

Submitted on: 2/11/2023 4:11:16 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Tammi Gumban	Individual	Support	Written Testimony Only

Comments:

Continue to stand in support of this Bill as previously submitted 🙏

SB-34

Submitted on: 2/11/2023 7:14:31 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Dylan Ramos	Individual	Support	Written Testimony Only

Comments:

Aloha,

I testify in strong support of SB34. As the nickname of this bill says, it's about time. No, it won't fix all our housing problems — it may not even be as effective as it hopes to be — but I fully support efforts in this direction that are truly written with the people of Hawai'i in mind.

Mahalo,
Dylan Ramos
96816

SB-34

Submitted on: 2/11/2023 7:27:01 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Curren Ohama	Individual	Support	Written Testimony Only

Comments:

I definitely support SB34, we have to keep trying to get our community who are born and raised here a affordable home to live in.

SB-34

Submitted on: 2/11/2023 9:08:28 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
april	Individual	Support	Written Testimony Only

Comments:

As a longtime resident, I have seen firsthand a large amount of houses that are owned, but not occupied. That creates disparity within the community, people who cannot afford houses can also not afford to rent. People come in from out of state and buy up the property and lend it to Airbnb is regardless of multiple attempts to make that illegal. Local communities cannot find the work force because the local work for us cannot afford to live in the community. People from out of state buy up This property is with the sole intent of turning a profit. We need a community that cares for the community and contributes to it instead of just lining their pockets. Something needs to be done and if they won't listen to the pleas perhaps they will listen to their own pockets

SB-34

Submitted on: 2/11/2023 10:07:56 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Karl Magnacca	Individual	Oppose	Written Testimony Only

Comments:

This bill is ridiculous. The original absurdly wrong-headed proposal for withholding has now been replaced with an income tax credit at sale. We are in a genuine housing crisis yet instead of real solutions, our legislators are pushing more giveaways to wealthy homeowners. Stop this nonsense and work on finding solutions that will actually help the average person in Hawaii, instead of the ones selling their Diamond Head homes to another rich person.

SB-34

Submitted on: 2/11/2023 11:14:15 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Roxy	Individual	Support	Written Testimony Only

Comments:

I fully support this. I am a native Hawaiian and it's been so hard to even try to purchase a home for my family and I. Countless bidding wars and the outcome more than a handful is cash offers get accepted. Now even more the interest rates at an all time high is making this unbearable. If we can't find a change now, than none of our children will have a future here in Hawaii.

TO: Members of the Committee on Judiciary

FROM: Natalie Iwasa, CPA, CPE
808-395-3233

HEARING: 9:30 a.m. Tuesday, February 14, 2023

SUBJECT: SB 34, Proposed SD1 – Creates Temporary Income Tax Credit for Taxpayers
Who Sell Real Property to Owner-Occupants
COMMENTS & Recapture - OPPOSED

Aloha Chair Rhoads and Committee Members,

Thank you for allowing the opportunity to provide testimony on SB 34, proposed SD1, which would create a temporary income tax credit for taxpayers who sell real property to owner-occupants. This is a change from the original bill which would have increased state withholding from 7.5% to 75% for sales of residential properties owned by nonresidents.

An incentive like this is better than an unreasonable withholding tax, but I have several questions.

- How is this going to be monitored?
- What happens if the purchaser fulling intends on being an owner-occupant but then is unable to do so? Why should the transferor be liable for a credit recapture in this case?
- If the purchasers tell the transferor that they will live there but have no intentions on staying the full 365 days, how is the seller to know this? If the seller acted in good faith, why should he or she be penalized?

In addition, I am concerned that the potential credit recapture could end up creating a penalty situation for the taxpayer if estimated taxes and/or withholding do not cover this liability adequately.

In general, I think our system should be simplified rather than made more complex.

To: The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Mike Gabbard, Vice Chair
Members of the Senate Committee on Judiciary

Re: Strong Support of SB 34, Relating to taxation

Hrg: Tuesday, February 14th, 2023 at 9:30am, Conference Room 016

Position: Support

I am submitting testimony in STRONG SUPPORT of SB 34. This bill Creates a temporary income tax credit for taxpayers who sell real property to owner-occupants. As a Native Hawaiian resident, witnessing the influx of property ownership by non-residents seeking to gain a profit through development, driving up the prices and fueling homebuyer competition, has been infuriating. As a hardworking middle-class, single mother of two kids, the hopes of owning a home seems nearly impossible. Over the past year, I've personally gone through emotional grief after witnessing close friends and family, who were faced with the difficult decision to move out of state, seeking a lower cost of living. The price of real estate homes in Hawai'i is roughly 1.06 million dollars, a 22% increase from 2020, and yet our average median household income in Hawaii is roughly \$83,173. The prices of these homes will continue to be on the rise as long as we allow non-residents and non owner-occupants to purchase property. I am in question as to who we are serving and prioritizing because it is obvious that the numbers of these properties are beyond the median income threshold of the majority of Hawai'i residents, making us feel like the minorities in our own State. The last SB34 bill was deemed as "unconstitutional" to increase taxation to non-residents yet my question is, how is it deemed constitutional to allow foreigners and non-residents to come to an island that is limited in property, and purchase property way beyond their means, for example a non-resident Mr. Zuckerberg and his wife purchased nearly 1,300 acres of land on Kaua'i. This should be deemed unconstitutional. I feel like a foreigner in my own homeland and this injustice strips us of our own cultural identity and it needs to end. This reinforces the historical trauma that took place when the Mahele took effect back in 1848, causing many of my ancestors to lose their land and property in Hawai'i because they were not fluent in paying property taxes. I represent the voice of many middle class, hard-working Native Hawaiians who I engage in regular conversations with about the socioeconomic injustices that we continue to face. Passing SB 34 bill will give us a glimpse of hope of a future of more resident owner-occupants. Mahalo nui for your time and consideration.

Na'u nō me ka ha'aha'a,

Kawena Bagano
Kaua'i Resident

SB-34

Submitted on: 2/14/2023 8:37:19 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
Jennifer Alice Murray	Individual	Support	Written Testimony Only

Comments:

STRONGLY SUPPORT! The meaning and impact of this bill could be a massive game changer and benefit to the state of Hawaii and its residents. We need this.

SB-34

Submitted on: 2/14/2023 8:24:32 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
katie ranke	Individual	Support	Written Testimony Only

Comments:

Strongly support. This bill should have been passed decades ago if our reps were planning ahead. Having non-residents owning properties here does nothing for the residents. We desperately need affordable housing for all.

SB-34

Submitted on: 2/14/2023 8:37:10 AM

Testimony for JDC on 2/14/2023 9:35:00 AM

Submitted By	Organization	Testifier Position	Testify
jessica murray	Individual	Support	Written Testimony Only

Comments:

I STRONGLY support raising taxes for non-resident property owners.