L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Credit for organ donation; electronic health records tax credit

BILL NUMBER: HB 2137, SD-2

INTRODUCED BY: Senate Committee on Economic Development and Taxation

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to establish a refundable tax credit for the expenses incurred relating to the donation of organs. The credit shall be available to individual taxpayers with adjusted gross income of less than $50,000 or $100,000 in the case of those filing a joint return, and have donated one or more organs to another human being, excluding organs sold for monetary or other consideration. The credit shall not exceed $_______ per taxpayer per year and $________ for all taxpayers per year for unreimbursed travel expenses, lodging expenses, and a lost wages stipend of $100 or less per day provided that the lost wages are actual and not reimbursable or due to leave without pay. The taxpayer shall be entitled to one credit in a lifetime.

Defines "human organ" as all or part of a liver, pancreas, kidney, intestine, lung or bone marrow.

This credit shall be applicable to tax years beginning after December 31, 2007, shall sunset on December 31, 2012 and be repealed on June 30, 2014.

Adds a new section to HRS chapter 235 to allow licensed physicians to claim a refundable tax credit for expenses directly related to the establishment and implementation of electronic medical records system during a tax year if: (1) the taxpayer is using a CCHIT-compliant software program; (2) the installation and technical support of the software program are supplied by suppliers with at least ____ years of experience in implementing electronic medical records system; and (3) the taxpayer is eligible for, or participating in, a Hawaii health insurer's grant program or comparable program for transition to an electronic medical records system. The credit shall not exceed $_______ in the tax year the taxpayer claims the credit and $_______ for all taxpayers in any single tax year.

This credit shall be applicable to tax years beginning after December 31, 2008, shall sunset on December 31, 2012 and be repealed on June 30, 2014.

The director of taxation may adopt rules pursuant to HRS chapter 91, prepare the necessary forms to claim the above credits, may require proof of the claim, and allocate the credit on a first-come, first-served basis.

If any other tax credit or deduction under Title 14, including a deduction under IRS sections 162 or 213, is taken than no credit shall be allowed under the above sections for the same costs.

EFFECTIVE DATE: July 1, 2020

STAFF COMMENTS: This measure allows taxpayers to claim a credit for expenses incurred as a result of donating a human organ to another person.

It should be remembered that this measure would grant preferential tax treatment to a select group of taxpayers and it does so without the taxpayer's need for tax relief. Generally, preferential tax treatments are designed to alleviate an undue burden on those who are unable to carry that burden, largely the poor and low income. An example is the general excise tax food credit for purchases made by the poor. If this measure is enacted, it would merely result in a subsidy by the state to encourage taxpayers to donate their organs without regard to a taxpayer's need for tax relief.

In a sense this proposal is insulting in that it attempts to reward a person for having made a donation of a human organ in order to save a life, a humanitarian act that has been reduced to an income tax credit. It should be remembered that the word "donation" has its genesis in the Latin word "*donare*" which means to give or give freely without contingency and, as such, donations of human organs should be given without consideration for compensation.

If the intent is to cover some of the costs associated with the donation of a human organ, then just appropriate the money to a department that can then judge what are appropriate costs to reimburse the donor. Why complicate the tax forms and instructions for a handful of taxpayers?

That said, there are some major flaws in this proposal. For example, the bill does not define "lost wages." For a salaried employee, that might not be such a difficult calculation, but when it comes to hourly workers, does that calculation take into hourly differentials like overtime or those who are paid more for shift work? What about those employees who are commissioned or perhaps receive bonuses for work output and performance?

There is a limitation on adjusted gross income for single filers of $50,000 or $100,000 for joint filers, but no provisions made with respect to married taxpayers filing separate returns. Finally, the proposal does not specify how the credit is to be calculated. Is it, in fact, a 100% reimbursement of the costs listed in the bill or is it a fraction thereof? As noted above, if it is a complete reimbursement of expenditures incurred for the donation of a human organ, then why involve the tax department which has no expertise in this area to make a determination of reasonable costs. This is truly an inappropriate use of the state tax system.

The measure also proposes to encourage physician taxpayers to utilize electronic medical records systems through the use of an income tax credit. It should be noted that the tax credit proposed in this measure does not have any bearing on the claimant's ability to pay state income taxes that might be due. In fact, the credit would be made available to those who may have no income tax liability. Thus, this measure would merely use the tax system to hand out a subsidy of taxpayer dollars through the back door by way of the tax credit, its enactment cannot be justified. It should be remembered that revenues foregone because of this credit mean that those not so favored will have to pick up the cost of the lost revenues.

It should be noted that in Hawaii, the Hawaii Medical Services Association (HMSA) introduced the HMSA Initiative for Innovation and Quality (HI-IQ) to help HMSA physicians acquire electronic medical records systems. A total of $50 million over three years is available to doctors and hospitals for new programs to improve patient care, including $20 million to help physicians acquire nationally certified electronic medical records programs. HI-IQ is funded from HMSA's reserve and investment income and not from health plan dues. If physicians utilize this program, the proposed income tax credit may be unnecessary.

Digested 3/31/08

April 1, 2008

The Honorable Rosalyn H. Baker, Chair
The Honorable Shan S. Tsutsui, Vice Chair

Senate Committee on Ways and Means

Re: HB 2137 HD2 SD2 – Relating to Health

Dear Chair Baker, Vice Chair Tsutsui and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2137 HD2 SD2 which would provide a tax credit for expenses related to an organ transplant and donation and also for expenses incurred by independent physicians pursuant to a health insurer's grant program established or sponsored by a medical association or health insurer to establish and implement electronic medical records systems for the independent physicians. HMSA strongly supports Part II of the measure.

In October 2006, HMSA introduced the HMSA Initiative for Innovation and Quality (HI-IQ). HI-IQ helps to fund innovative advancements by Hawaii hospitals and provides assistance in acquiring Electronic Medical Records (EMR) systems for Hawaii physicians. Through HI-IQ a total of $50 million is committed with $20 million to be given to independent participating physicians statewide to assist them in acquiring EMR systems and $30 million for participating acute care hospitals slated to fund unique projects to improve quality of care.

HMSA appreciates the initiative taken by the Senate to promote the use of EMRs. This type of legislative support for a private sector program will help serve our community well. We believe that by offering this additional incentive the rate at which Hawaii physicians are able to transition to the use of EMR systems may increase. Increased usage of EMR systems would benefit consumers and physicians throughout the state especially in times of crisis.

We would however respectfully request some minor amendments to this measure. On page 5, line 18 we would ask that the word "independent" be added since the physician component of HI-IQ only applies to independent physicians. This changes the sentence to read:

<u>licensed independent physician of the State that has incurred expenses</u>

We also believe that page 6, lines 3-6 could be amended to require that training be provided by an experienced "vendor" as opposed to "provider" and that this section encompass hardware as well as software. Changing this section to the following:

The training, installation and technical support of the hardware and software program are supplied by vendors with at least years of experience in implementing electronic medical records systems; and

Thank you for the opportunity to testify in support of HB 2137 SD2.

Sincerely,

Jennifer Diesman
Assistant Vice President
Government Relations

Organ Donor Center
of Hawaii

1149 Bethel Street, Suite 801 • Honolulu, HI 96813

Before
Honorable Rosalyn Baker, Chair
Honorable Shan Tsutsui, Vice-Chair
Senate Committee on Ways and Means

Public Hearing – 10:15AM Tuesday, March 31, 2008 - Conference Room 211

RE: **Testimony in strong support of HB 2137, HD2, SD2 - Relating to Health**
Provides a tax credit for expenses related to an organ donation

The Honorable Rosalyn Baker, Chair; Honorable Shan Tsutsui, Vice-Chair and members of the committee:

My name is Tony L. Sagayadoro, Program Coordinator of the Minority Organ Tissue Transplant Education Program (MOTTEP), a minority outreach program of Organ Donor Center of Hawaii, a founding member of the Hawaii Coalition on Donation, a 2000 Kidney Transplant Recipient and on behalf of Organ Donor Center of Hawaii, I submit our testimony in support of the amendment/comments submitted by National Kidney Foundation of Hawaii.

We respect and support the intention of HB 2137 HD2, SD2 that includes the implementation of Electronic Medical Records systems for independent physician, **HOWEVER, given all the reasons submitted by National Kidney Foundation of Hawaii,** we humbly request that you amend HB 2137 HD2, SB2 by deleting Part II of the bill.

We also support to amend HB 2137 HD2 SD2 by deleting Part II for the following reasons:

- recognize the financial burden, and offers an amount of relief to an individuals who gives so much of themselves by giving the *Gift of Life*
- remove one barrier for a potential living donor to consider
- encourage more people to serve as living donors
- helps increase the supply of the critically needed organs and bone marrow
- saves the lives of critically ill patients who needs organ transplant
- Other states have already passed similar legislation to address the critical shortage of organs for transplantation: Arkansas, signed into law, March, 2005; Georgia, signed into law, April, 2004; Idaho, signed into law, July, 2006; Iowa, signed into law, May, 2005; Minnessota, signed into law, July, 2005; New Mexico, signed into law, April 2005; North Dakota, signed into law, March, 2005; Utah, signed into law, March, 2005; other states like Oklahoma, Wisconsin; and other states who have pending legislation.

Thank you.

Sincerely,

Tony L. Sagayadoro

TeamPraxis℠

A **Data**House Holdings COMPANY

REGULAR SESSION OF 2008

SENATE COMMITTEE ON HEALTH

Tuesday, April 1, 2008
State Capitol, Conference Room 211

In consideration of
Senate Bill HB2137 HD2 SD2
Tax Credit; Organ Donation

I am the CEO and President of TeamPraxis. I founded the company 15 years ago to serve independent and small physician practices in Hawaii. It has been a long journey building our physician network and today we serve about 1000 physicians throughout the State. TeamPraxis (www.teampraxis.com) has over 140 full time employees offering a full range of technology and business support services providing one point of accountability for our local physician customers.

TeamPraxis is an Act 221 organization and has partnered with HMSA this past year to be part of their HI-IQ initiative to help physicians in Hawaii adopt Electronic Health Record (EHR) Systems. Our goal over the next two year is to implement 500 physicians using an EHR system in their practice.

Since the majority of healthcare spending in the U.S. is determined by individual physicians, government and insurance companies are working closely with physicians to implement innovative quality programs that reward physicians for use of technology, reduce medical errors, reduces variations and duplicate tests, improve chronic disease management and preventative health programs.

We support HB2137 because it will help accelerate the adoption of EHR systems in the physician's office. Using an EHR system in the physician's office will provide better and more accurate patient care with lower healthcare cost. If HB2137 is passed, this will offer Hawaii and neighbor island physicians with a cost incentive to retain their practice in Hawaii.

Creighton D. Arita
Presidend/CEO
TeamPraxis, LLC

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
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SENATE COMMITTEE ON WAYS & MEANS

TESTIMONY REGARDING HB 2137 HD 2 SD 2
RELATING TO HEALTH

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: APRIL 1, 2008
TIME: 10:15PM
ROOM: 211

This bill provides a tax credit up to an unspecified amount for the costs associated with the donation of an organ.

The House Committee on Health amended the bill by providing the Department with the authority to issue credits on a first-to-file basis.

The House Committee on Finance amended the measure requiring maximum adjusted gross incomes in order to claim the credit, as well as unspecifying the credit amounts.

The House of Representatives passed this measure on third reading.

The Senate Committee on Health amended the measure by providing a lost wage stipend in lieu of lost wages and by precluding any cost from qualifying for the credit if the credit was reimbursed with insurance proceeds. The Committee on Health also precluded any cost from qualifying to the extent a deduction or other credit was claimed.

The Senate Committee on Economic Development & Taxation amended the measure by removing the residency component contained in the measure and by adding a tax credit for the implementation of an electronic medical records system pursuant to a grant.

The Department of Taxation has **strong concerns** with this legislation as amended.

I. ORGAN DONATION CREDIT

LOST WAGES PROVISION—The Department supports the intent of eliminating the "lost wages" category of losses that qualify for the credit in exchange for a flat dollar amount. However, the Department believes that the current language may be unworkable and confusing. Because the language provides that the taxpayer can claim a stipend of $100 per day "or less," it is unclear whether the person must claim the actual amount of wage loss if less than $100.

Also, the current bill would preclude a person that does not work from claiming the stipend. The Department suggests that the provision be amended in its entirety to allow for any person to have a $100 per day stipend, regardless of their employment status. For example, under the current bill, a stay-at-home spouse would be precluded from obtaining the stipend if they donate an organ to their spouse, even though additional expenses could be incurred, such as hiring a housekeeper to carry out those activities normally carried on by the stay-at-home spouse. The Department recommends to the Committee that the bill be amended to provide the stipend to all donors regardless of what the stipend represents.

The provision could be clarified by the following amendments:

(c) A taxpayer may claim the tax credit only once per lifetime for the following unreimbursed related expenses incurred by the taxpayer:

(1) Travel expenses;
(2) Lodging expenses; and
(3) A **[~~lost wages~~]** stipend of one hundred dollars **[~~or less~~]** per day **~~, or actual lost wages, whichever is less; provided that the lost wages are actual and not reimbursable or due to leave without pay~~]**.

CAP IN THE AGGREGATE—The bill currently contains a credit cap for all taxpayers. The Department opposes credit caps in the aggregate because they are difficult to administer. The bill should be amended to eliminate the cap.

II. <u>CREDIT FOR IMPLEMENTING AN ELECTRONIC MEDIAL RECORDS SYSTEM.</u>

The Department has strong reservations about providing a credit for the proposed electronic medical records system implementation. The Department has the following substantive and technical concerns:

CREDIT CALCULATION—The credit is currently vague as to how the credit is calculated. Is the credit for initial start-up costs only? Or, is the credit for any recurring costs as well that may be incurred on an annual basis? Currently, a credit for annual recurring costs cannot be read out of the measure and sophisticated taxpayers may be entitled to make such a claim. The Department suggests clarifying exactly how the credit is to be calculated.

REFUNDABLE CREDIT—The Department questions the need for a refundable tax credit. The Department recognizes the importance of the healthcare industry and its participants. However, the Department assumes that medical professionals earn substantial incomes and therefore would have more than sufficient income to be offset by a nonrefundable credit. Moreover, a nonrefundable credit encourages business success so that the credit can be utilized. A refundable credit does not encourage successful businesses because the money will be returned to the taxpayer regardless of his or her efforts.

CAP IN THE AGGREGATE—The bill currently contains a credit cap for all taxpayers. The Department opposes credit caps in the aggregate because they are difficult to administer. The bill should be amended to eliminate the cap.

STRONG CONCERNS WITH THE FISCAL PRIORITY OF THIS LEGISLATION BECAUSE THIS INDUSTRY SEGMENT ALREADY POTENTIALLY ENJOYS NUMEROUS BENEFITS—The Department strongly questions the intent in providing a generous tax incentive for this industry for bases other than encouraging rural healthcare services or lowering the cost of medical practice. There are strong reservations with this credit's fiscal priority for the following reasons:

- **POTENTIALLY ALREADY SUBSIDIZED**—The Department is primarily concerned that the electronic medical records systems may already have been subsidized by the state in some form. Without commenting on any particular circumstance nor taxpayer, software development could potentially qualify for the 20% refundable research and development credit, as well as the 100% high technology business investment credit. Without providing more, the Department raises the issue for the Committee to discern whether or not generous incentives have already been provided.

- **GRANTS WILL SUPPORT**—The credit is a matching component to an existing grant program. Is an additional financial incentive for doctors really necessary?

- **DEPRECIATION DEDUCTION COULD BE MORE GENEROUS**—It is likely that placing these systems in service will qualify for both state and federal depreciation deductions and potentially the Section 179, IRC, expensing provision, which allows all of the cost to be written-off in the first year. This write-off may be more lucrative than the credit. Ultimately, taxpayers already enjoy generous tax incentives through alternative means.

- **REDUCTION IN STAFF OVERHEAD**—The Department finally points out an inherent flaw with this legislation, which is that it will ultimately lead to the phase-out of important healthcare industry positions in favor of streamlined computer enhancement. This system apparently will likely eliminate the need for support staff, which could result in the loss of jobs. The Department raises this issue for the Committee's consideration.

III. REVENUE ESTIMATE.

If it is assumed that it is effective for taxable years after December 31, 2007, this legislation will result in an indeterminate revenue loss because the amounts are blank.

With regard to particular sections:

Section 1 (organ donor credit):

Indeterminate. If it is assumed that the cap is $1,000 per person with a non-binding global cap, the revenue impact is estimated at $15,000.

Section 3 (Electronic health records tax credit):

Indeterminate. The credit percentage and implementation are currently unspecified. If it is assumed that the credit is a flat $1,500 credit per claimant per year, then the estimated revenue impact is:

- **FY 2010 (loss): $500,000**
- **FY 2011 (loss): $1.0 million**
- **FY 2012 (loss): $1.5 million**

Assuming 1,000 physicians are being targeted for this grant program, over a period of approximately 3 years, and assuming that the credit is a flat $1,500 credit per physician per year, the credit due to front-end conversion costs would total $1,500 x 1,000 x .33 = $500,000 per year.