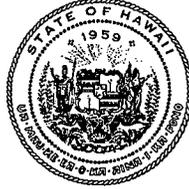


**HB 1907,
HD1
Testimony**

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



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**SENATE COMMITTEE ON WAYS & MEANS
TESTIMONY REGARDING HB 1907 HD 1
RELATING TO TAXATION**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: MARCH 16, 2010

TIME: 10AM

ROOM: 211

As amended, this measure suspends the use of net operating loss carry-backs for the next two taxable years. This measure also caps the amount of itemized deductions and makes the capital goods excise tax credit nonrefundable.

The Department of Taxation (Department) offers the following comments:

I. SUSPENSION OF NOLs

The Department has **no comments** on the impact of the suspension of net operating loss carry-backs. This amendment will generate a revenue gain.

Technically, the following suggestion is made:

Notwithstanding any law to the contrary, including this section, no net operating loss carryback generated in taxable year 2009 under this chapter, may be claimed for taxable years 2007 [and] or 2008, and no net operating loss carryback generated in taxable year 2010 under this chapter, may be claimed for taxable years 2008 [and] or 2009.

II. CAPPING ITEMIZED DEDUCTIONS

The Department **opposes capping the itemized deductions** as proposed in this measure. Hawaii already has some of the highest income tax rates in the nation.

This amendment could also have unintended impact of reducing contributions to charities and other worthwhile causes because a taxpayer's charitable contribution deductions could be

limited. This amendment would likely apply to the wealthy who tend to donate to charitable causes. This provision could impact such donations.

III. NONREFUNDABLE CAPITAL GOODS EXCISE TAX CREDIT

The Department is **not opposed** to the amendment making the Capital Goods Excise Tax Credit nonrefundable.

In a time when revenue raisers are needed to balance the state budget, the Department is not opposed to making the capital goods excise tax credit nonrefundable. The Department is confident that the tax incentives provided by Congress through the stimulus measure and otherwise are sufficient incentives for business to invest in capital assets. This amendment will provide taxpayers with carry-over credit that may be used in the future. Taxpayers will receive the same benefit, only losing the time value of money. Suspending the payout of this otherwise refundable credit is responsible fiscal policy during current times.

IV. REVENUE IMPACT

As amended, this measure will result in the following revenue impacts:

- FY2011, \$56.5 million;
- FY2012, \$39.4 million;
- FY2013, \$3.4 million;
- FY2014, \$5.2 million;
- FY2015, \$6.9 million;
- FY2016, \$8.3 million;
- *FY2017, <\$0.5 million>*.



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March 14, 2010

The Honorable Donna Mercado Kim
Chair, Senate Committee of Ways and Means
Hawaii State Senate

Re: In Opposition to Section 4 of HB 1907, HD 1 Relating to Taxation

Dear Chair Kim and Committee Members:

I am Roy Amemiya, Director of Governmental Relations for Central Pacific Bank (CPB). CPB is Hawaii's 4th largest financial institution with 1000 employees and over 55 years of service to the local community. We understand the challenges facing the Hawaii Legislature in balancing the State operating budget and the intent of HB 1907 in achieving that goal.

However, we object to section 4 of the bill which would have the unintended consequence of eliminating tax refunds for capital goods tax credits for unprofitable businesses, while allowing it for profitable ones. Unlike other tax credits, the capital goods tax credits are intended to reimburse a business for the 4% GET paid at purchase of furniture, fixtures and equipment. Therefore, it is a refunding of taxes previously paid. By limiting the credit only to businesses with tax liability, unprofitable businesses – those who need the credit the most – will not be able to receive the credit until they begin to turn a profit.

For financial institutions that engage in equipment leasing as a line of business, this refunding credit can be substantial. In equipment leasing, the bank purchases and owns the equipment, then leases it back to its customers. By eliminating the refundable credit, HB 1907 would allow profitable competitors to claim the credit immediately, but not CPB.

For these reasons, we oppose Section 4 and ask that the bill be amended accordingly. Thank you for this opportunity to testify.

Aloha,

Roy K. Amemiya, Jr.
Senior Vice President



Testimony to the Senate Committee on Ways and Means
Conference Room 211, State Capitol
Tuesday, March 16; 10:00 a.m.

RE: HOUSE BILL NO. 1907 HD1 RELATING TO TAXATION

Chair Mercado Kim, Vice Chair Tsutsui, and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii. On behalf of the Chamber, I am here to state The Chamber's opposition to House Bill No. 1907 HD1.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 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 its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber opposes HB 1907 HD1 because it would eliminate net operating loss deductions, which would affect not only corporations but all types of businesses, including sole proprietorships. This would impose a major new tax burden on struggling businesses, in effect increasing their taxes when they are most vulnerable. It would also discourage new businesses, which often need a few years to become profitable, from choosing Hawaii as a place to set up shop. Now is the time to support the struggling businesses we currently have, and to encourage new businesses to come to Hawaii. This bill would undermine those goals, and discourage the creation of new jobs.

Thank you for the opportunity to submit comments.



H.B. 1907, H.D.1, Relating to Taxation

Comments to the Senate Ways and Means Committee

March 16, 2010

Aloha Senator Mercado Kim, Senator Tsutsui and Distinguished Members of the Senate Ways and Means Committee. My name is Kekoa Kaluhiwa and I am the Director of External Affairs for First Wind.

First Wind, through its affiliates, has successfully developed, constructed and operates Hawaii's largest utility-scale wind farm, Kaheawa Wind Power (30 MW) which is located on the island of Maui. We are in the final stages of development on a proposed 30 MW facility to be built in Kahuku on the island of Oahu. I would like to make the following **comments** with respect to H.B. 1907, H.D.1, Relating to Taxation, to the extent that the bill removes the refunding feature of the capital goods excise tax credit from January 1, 2010 to December 31, 2015.

Hawaii Holdings, LLC, dba as First Wind Hawaii is the sole member of Kahuku Wind Power, LLC, which intends to develop a 30 megawatt wind farm project near Kahuku on Oahu (the "Kahuku Project"). The Kahuku Project calls for the installation of twelve 2.5 megawatt Clipper Liberty turbines and will have the capacity to generate enough energy to power an estimated 7,700 homes. It would take about 155,000 barrels of oil to produce an equivalent amount of energy. The Kahuku Project will cost more than \$117,000,000 and is expected to employ an estimated 200 construction workers during construction, with another 6 to 10 people employed for its operation.

Under HRS §235-110.7(a), the capital goods excise tax credit is generated when eligible depreciable tangible personal property is placed in service in Hawaii. The Kahuku Project is scheduled to be placed in service by December 31, 2010. The Kahuku Project was anticipating that the capital goods excise tax credit would be refunded after the Kahuku Project is placed in service.

Section 1 of H.B. 2867, H.D.1, Relating to Taxation, which is scheduled for Decision Making by the Senate Economic Development and Technology Committee on March 16, 2010, provides that for taxable years beginning on or after January 1, 2010, and ending before January 1, 2012, no claim for a business credit, such as the capital goods excise tax credit, shall exceed 80% of a taxpayer's tax liability for the taxable year in which the credit is claimed. Section 1 further provides that any business credit generated from January 1, 2010, to December 31, 2011, shall not result in a credit carryover in subsequent taxable years. Because First Wind Hawaii does not anticipate generating any Hawaii taxable income or Hawaii tax liability for its members in 2010 or 2011, First Wind Hawaii believes that any capital goods excise credit on the Kahuku Project could be totally lost under Section 1 of H.B. 2867, H.D.1.

Section 4 of H.B. 1907, H.D.1, amends HRS §235-110.7(b) to provide that from January 1, 2010, to December 31, 2015, if a taxpayer's capital goods excise tax credit exceeds the taxpayer's net income tax liability, the excess credit shall not be refunded, but may be claimed in subsequent years until exhausted.

Under H.B. 1907, H.D.1, any excess capital goods excise credit on the Kahuku Project can be carried forward and will not be totally lost.

Therefore, if the Legislature must choose between the capital goods excise tax credit limitation provisions in H.B. 2867, H.D.1, and those in H.B. 1907, H.D.1, First Wind Hawaii strongly urges the adoption of the provisions in H.B. 1907, H.D.1.

TESTIMONY STRONGLY OPPOSED to HB1907 HD1
Relating to Taxation
Submitted by David H. Rolf —owner Rolf Advertising
To the Senate Committee on Ways and Means
for the public hearing 10 a.m. Tuesday, March 16, 2010
in conference room 211, Hawaii State Capitol

Chair Kim, Vice Chair Tsutsui and members of the committee:

I am David Rolf, owner of Rolf Advertising, a small advertising and public relations agency marking our 25th year in business in the islands.

We've kept the business, in hard times, by borrowing on the equity our home so as to pay salaries and expenses. It's something many small business owners do to sustain their business during economic downturns. The interest on the borrowed money (which in effect is a business loan) is deductible.

But this bill caps itemized deductions, including mortgage deductions for a sole proprietor, at \$100,000.

This would be DEVASTATING to small business owners.

Simply devastating.

The home equity is often the ONLY asset that a small business owner has. It's business capital for a small business...and borrowing on that capital should be deductible.

I'm speaking on behalf of small business owners like myself. Some smaller auto dealers are likely faced with the situation that this would adversely affect, but I have not polled the association yet.

Thus, I'm speaking today, only on behalf of myself and my wife—co-owners of our small business.

Representative Lee sent me a letter indicating that this bill was deferred. It is a surprise to see it return.

Jobs must be created one at a time; this bill will start layoffs at small businesses...one at a time.

We respectfully request that you HOLD this bill; it carries GRAVE CONCERNS for the job producers.

Respectfully submitted,

David H. Rolf
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TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Suspend net operating loss carryback, limit itemized deductions, nonrefundable capital goods excise tax credit

BILL NUMBER: HB 1907, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 235-7(d) to suspend the net operating loss carryback deduction for losses generated in 2009 and 2010.

Adds a new section to HRS chapter 235 to provide that itemized tax deductions under the state income tax shall not exceed: (1) \$100,000 for taxpayers filing a joint return or as a surviving spouse; (2) \$80,000 for taxpayers filing as a head of household; (3) \$50,000 for taxpayers filing as unmarried individuals or not as a surviving spouse or not as a head of household; or (4) \$50,000 for taxpayers filing as married individuals filing separately.

Amends HRS section 235-110.7 to provide that the capital goods excise tax credit shall be nonrefundable between January 1, 2010 and December 31, 2015.

EFFECTIVE DATE: July 1, 2020; applicable to tax years beginning after December 31, 2009

STAFF COMMENTS: It appears that this measure would temporarily suspend the net operating loss carryback deduction for state income tax purposes for losses generated in tax years 2009 and 2010 to address the state's dire financial condition. It should be remembered that by suspending the carryback provision for state income tax purposes, taxpayers will then have to keep two sets of books to record the application of the losses for both the federal and state income tax. It should also be remembered that the carryback provisions are there to provide relief to taxpayers during times of financial and economic hardship in their businesses. To deny that ability to recapture taxes previously paid when such a lifeline may be sorely needed could ultimately have dire consequences for that business and, of course, for its employees.

This measure also proposes that the capital goods excise tax credit shall be made temporarily nonrefundable until December 31, 2015. The legislature by Act 178, SLH 2009, suspended the capital goods excise tax credit for calendar year 2009. Currently the capital goods excise tax credit is refundable so that any credit in excess of a taxpayer's income tax liability is refunded to the taxpayer. While this measure temporarily removes the refunding feature of the capital goods excise tax credit to address the state's fiscal crisis, one has to question the prudence of this strategy as one has to assume that when the moratorium expires in 2015, the capital goods excise tax credit will once more become refundable. If it is assumed that the current economic conditions will continue for some time to come and businesses do not turn a profit because of the slump in the economy, they will probably have very little income tax liability.

If that is the case, when the refundable feature is restored in 2015 there will, no doubt, be an onslaught of

claims with the general fund taking a huge hit as claims for the refundable credit are filed. According to the most recent report of the credit by the department of taxation, the credit had a revenue impact of \$23.5 million on the state general fund for tax year 2005. Multiply this by the six years of nonrefundable status and the state could be hit with a tab of nearly \$120 million.

More importantly, it should be remembered that this credit was adopted to reduce the cost of capital goods which everyone acknowledges are crucial to the creation of jobs. Given the rising unemployment rate as a result of the downturn in the economy and it makes no sense to eliminate the refundable feature of this credit. Unlike many other targeted business tax credits, the capital goods excise tax credit is available to any and every industry. The refundable feature insures that businesses see an immediate return of this tax which supplements their cash flow, keeping them in business during these tough times.

It should be remembered that when this credit was enacted in 1987, it was considered preferable to an exemption from the general excise tax as the use of the capital equipment could be verified that it was to be used in the production of income. Since the credit is claimed by the purchaser, the purchaser was held responsible to prove that the capital equipment was used in the production of income. More importantly, the credit was to provide a return of the tax on an immediate basis so the reduction in the cost of the equipment could be redirected to other costs associated with the creation of jobs. Thus, the delay in realizing the reduction in the cost of the capital equipment defeats the purpose of the credit, that is, to encourage the creation of new employment opportunities, a need that is sorely wanting at this time.

While the adoption of these provisions would penalize Hawaii businesses, in the search for additional revenues to alleviate the shortfall in revenues consideration should be given to running government like a real business. In the private sector real world, if sales are down, a business does not expand and each cent is scrutinized to eliminate waste. Government must examine its priorities and pare down spending commensurate with the revenues it receives.

This measure also caps the amount of itemized deductions that may be claimed on state income tax returns. At the federal level, taxpayers with high adjusted gross incomes may see some of their itemized deductions being reduced. The types of itemized deductions that are pared by the limit include deductions for taxes, interest paid, charitable contributions, job expenses and certain other miscellaneous deductions. Those itemized deductions which are not limited because of high incomes include: medical and dental expenses, investment interest expenses, casualty and theft losses, and gambling losses. If this is the goal of this particular proposal, then consideration might be given to patterning it after the federal application. At least this would be one step closer to conformity in this area although the legislature could set different adjusted gross income thresholds as the state income tax rates are not as high as the federal rates.

Digested 3/15/10