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SENATE COMMITTEE ON WAYS AND MEANS

COMMENTS OF THE DEPARTMENT OF TAXATION REGARDING HB 1307, HD 1, SD 1 RELATING TO TAXATION

COMMITTEE: WAM
DATE: MARCH 30, 2011
TIME: 9:30AM

POSITION: SUPPORT INTENT; TECHNICAL CONCERNS

This measure establishes a refundable Ohana residential housing income tax credit for qualified taxpayers who purchase a qualified principal residence on or after April 1, 2011, and before April 1, 2013. The credit is equal to 2% of the purchase price up to a maximum of $6,000 and is payable in two equal installments in the two taxable years following the purchase.

The Department of Taxation (Department) supports the intent of this policy; however has technical concerns about the provision.

SUPPORT FOR CONSTRUCTION INDUSTRY—During the current economic times, incentives to stimulate certain industries, including the construction industry, are important.

CONCERN OVER ADMINISTERING A TWO-YEAR PAYOUT—The Department does not support that this credit is paid out over two years. With a cap at only $6,000, such an amount should be paid out once. Delaying the payout requires taxpayers and the government to maintain records and cross references to prior periods, which can lead to errors.

CONCERNS REGARDING "PURCHASE PRICE"— The stated credit is two percent of the purchase price of the residence, excluding land acquisition costs and escrow closing costs, up to a maximum credit of $6,000. Since land costs are not generally separately stated in a sales agreement, the Department envisions that taxpayers will attempt to limit the portion of the purchase price allocable to the land so as to maximize the amount of credit. The Department anticipates time-consuming audits and litigation over the fair value of the land in any sales contract subject to the credit.

CONCERN WITH ADJUSTED GROSS INCOME DETERMINATION— The measure provides for income limitations based on adjusted gross income. Although it appears that the intent was to use federal adjusted gross income for measuring income qualification, unless the bill specifically states this, the default will be Hawaii adjusted gross income. It should be noted that social security benefits and many pension payments are not subject to Hawaii income tax and are therefore excluded from Hawaii adjusted gross income. The end result would be that some taxpayers may be eligible for the credit if Hawaii adjusted gross income is used but would not be if federal adjusted gross income were used. The inclusion of a grantor of a trust in the adjusted gross income limitation is confusing.

CONCERN WITH SPLIT IN CREDIT—This bill provides that, where multiple persons contribute to the purchase of a property, the credit is to be allocated evenly. The Department suggests that the credit should follow economics and be allocated pursuant to each purchaser's proportionate contribution to the purchase price. Why should someone whose name is placed on the deed, but pays no money, receive the credit? In addition, married persons who file separate returns could also need to allocate the credit. Therefore, a married couple should not be treated as one qualified taxpayer.

RECAPTURE – The recapture provision in subsection (g) is unclear. What does pro rata basis mean in this context?