NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

FREDERICK D. PABLO
INTERIM DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
FAX NO: (808) 587-1584

HOUSE COMMITTEE ON HEALTH

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 409 RELATING TO TAX CREDITS

WRITTEN TESTIMONY ONLY

TESTIFIER:	**FREDERICK D. PABLO, INTERIM DIRECTOR OF TAXATION (OR DESIGNEE)**
COMMITTEE:	**HLT**
DATE:	**JANUARY 28, 2011**
TIME:	**9:30AM**
POSITION:	**NO POSITION; TECHNICAL AND REVENUE CONCERNS**

This measure provides a refundable income tax credit for "corporate, partnership, and limited liability taxpayers" for qualified costs associated with providing a wellness program for employees.

The Department of Taxation (Department) takes **no position on the merits** of this measure; however raises **several concerns**, including the revenue impact.

DEFERRAL TO DEPT. OF HEALTH ON MERITS

The Department defers to the Departments of Health on the merits of whether tax incentives are necessary for employers to provide wellness programs to employees. As such, the Department takes no position on the substance of this measure.

TECHNICAL CONCERNS

INCORRECT REFERENCE TO TAXPAYERS—As written, this measure provides an income tax credit for "corporate, partnership, and limited liability company" taxpayers. Under Hawaii and federal income tax laws, partnerships and limited liability companies (generally) are not "taxpayers." The tax incidences associated with flow-through entities are passed-on to the individual owners in the capacity as individual taxpayers. As written, this measure will not allow a tax credit for any sole proprietorships, partnerships, or limited liability companies taxed as flow-through entities. This measure should be amended to allow "individual and corporate" taxpayers or "any taxpayers" to claim the credit, with the added proviso relative to flow-through entities:

There shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

* * * * *

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rule.

THESE COSTS ARE ALREADY DEDUCTIBLE—The Department points out that the costs for wellness plans are already deductible. This measure would provide a double benefit. The Department questions whether both a deduction and credit is warranted.

ELIMINATE REFERNCE TO LAWS & RULES—The Department suggests eliminating subsection (c), which is impossible to administer. The Department will never know whether a taxpayer is/is not in compliance with all possible laws, rules, etc.

OPPOSED TO REVENUE LOSS

As with all measures, the Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either. The Department does not support the revenue loss resulting from this measure.

This measure will result in a revenue loss of approximately $2.1 million per year beginning in FY 2011.

HAWAII MEDICAL ASSOCIATION
1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

Friday, January 28, 2011; 9:30AM Conference Room 329

To: COMMITTEE ON HEALTH
Rep. Ryan I. Yamane, Chair
Rep. Dee Morikawa, Vice Chair

From: Hawaii Medical Association
Dr. Morris Mitsunaga, MD, President
Linda Rasmussen, MD, Legislative Co-Chair
Dr. Joseph Zobian, MD, Legislative Co-Chair
Dr. Christopher Flanders, MD, Executive Director
Lauren Zirbel, Community and Government Relations

Re: HB 409 RELATING TO TAX CREDITS

In Support

Chairs & Committee Members:

Hawaii Medical Association supports HB 409.

Wellness programs are a fantastic way to increase an individual's health efficacy, or their desire to improve their own health and make healthy lifestyle changes to achieve this result.

As such, HMA supports workplace efforts to encourage people to avoid behavior that will lead to multiple deadly and costly health conditions while encouraging behavior that increases life span and quality of life.

Thank you for the opportunity to testify.

C

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, Wellness program tax credit

BILL NUMBER: SB 800; HB 409 (Identical)

INTRODUCED BY: SB by Ige, Chun Oakland, Green, Shimabukuro, 6 Democrats and 1 Republican; HB by Say by request

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow a corporate, partnership, or limited liability company taxpayer to claim a qualified wellness program tax credit of 10% of the qualified costs related to providing qualified wellness programs to employees.

Defines "qualified wellness program" as a program offered by an employer to all employees that includes the following components: (1) health awareness, such as health education, preventive screenings, and health risk assessment; (2) employee engagement mechanisms that encourage employee participation; (3) behavioral change elements that have been proven to help improve unhealthy lifestyles, such as counseling, seminars, on-line programs, and self-help materials; and (4) a supportive environment, such as creating on-site policies that encourage healthy lifestyles, healthy eating, physical activity, and mental health. Also defines "qualified costs" for purposes of the measure.

Requires employers to provide evidence that employees have participated in the qualified wellness program and be in compliance with all applicable federal, state, and county statues, rules, and regulations.

No taxpayer shall claim a credit under this chapter for the qualified costs used to properly claim a tax credit under this section for the taxable year.

Credits in excess of a taxpayer's income tax liability shall be refunded to the taxpayer. The director of taxation may adopt rules pursuant to HRS chapter 91 and prepare the necessary forms to claim the credit and may require proof of the claim for the credit. Requires every claim for the credit, including amended claims, to be filed on or before the end of the twelfth month following the close of the taxable year for which the tax credit may be claimed; failure to meet such requirements shall constitute a waiver of the right to claim the tax credit.

EFFECTIVE DATE: Tax years beginning after December 31, 2010

STAFF COMMENTS: The proposed measure would permit certain employers to claim an income tax credit for establishing wellness programs for their employees. It should be remembered that the use of the tax system to promote or encourage social goals is an inefficient use of the system. If enacted, this proposal would result in nothing more than a subsidy by the state and would not in any way address the taxpayer's need for tax relief.

Unless there is some sort of tax burden associated with the provision of such programs, there is absolutely no relationship between the provision of such services and the burden that the tax system imposes on the employer. If any of this measure is enacted, it may open the door for similar requests for tax subsidies.

The measure also fails to recognize what medical insurers have long touted as key to a more healthy workforce that would reduce the long term costs of health care in Hawaii. Prevention of health problems costs much less than the efforts to intervene, correct or mitigate health problems in the long run. In other words, the costs expended on prevention programs such as exercise and diet go a long way toward reducing health ailments that cost several times more to address, mitigate or cure. Thus, in and of itself, "wellness" programs should be the standard rather than the exception for which a tax incentive is needed as the cost of prevention far outweighs the cost of intervention.

It should be remembered that this proposal, like many others, reflects the lack of understanding of the many challenges employers face in their attempt to stay in business and make a profit. Speaking of profit, it should be noted that these proposed credits are worthless to any business that is not making a profit as any excess credits over tax liability will not be refunded to the employer. Thus, unless the business is profitable, there will be no profits to tax and there will be no tax liability against which to apply the proposed credits. While this measure would result in a drain of state resources, it is questionable whether the state can afford this credit given its current financial crisis.

The measure stipulates that "no taxpayer shall claim a credit under this chapter for the qualified costs used to properly claim a tax credit under this section for the taxable year," and if this measure were enacted, no tax credits would be allowed to be claimed for the provision of wellness programs. It appears that the provision should have stipulated that no **other** tax credits may be claimed for the qualified costs for which a tax credit is claimed under this section.

Digested 1/27/11

morikawa2 - Grant

From: Site Administrator [webmaster@hah.org] on behalf of Kevin Roberts [robertka@ah.org]
Sent: Thursday, January 27, 2011 5:25 PM
To: Rep. Ryan Yamane
Subject: Support HB 409: Wellness Program Tax Credit

Jan 27, 2011

Chair Ryan Yamane
HI

Dear Chair Yamane,

U.S. healthcare spending in 2009 consumed 17.3% of the gross domestic product, continuing to rise faster than the general rate of inflation.
Much of the cost of health care is used to treat obesity, diabetes, and heart disease, which are caused by poor lifestyle choices.

These preventable conditions are increasing. For example, obesity in Hawaii has risen from 12% in 1996 to almost double that amount, 23%, in 2009. Poor lifestyle choices such as high fat diets and lack of exercise contribute to loss of lifetime expectancy from five to seven years. In addition, poor lifestyle leads to 82% increase in heart disease and 91% increase in diabetes.

Employers can help their employees make better lifestyle choices by establishing wellness programs, which seek to maintain and promote good health rather than to correct poor health. From the perspective of employers, wellness programs can reduce health care costs, reduce absenteeism, and improve employee retention.

Successful wellness programs provide resources that are convenient to employees, offer them attractive incentives, and focus on helping them feel better rather than just look better. Wellness programs provide consistent education about healthy lifestyles and often use social forces present in natural groups at the workplace to encourage them.

Federal health care reform under the Affordable Care Act will create an incentive by providing grants to those businesses that adopt wellness programs. The HAH bill would supplement that effort by creating a State tax credit.

For the foregoing reasons, I support HB 409.

Thank you.

Sincerely,

Mr. Kevin Roberts
640 Ulukahiki St
Kailua, HI 96734-4454