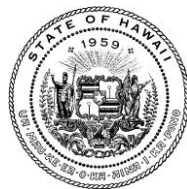


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DEPUTY DIRECTOR

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

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 2108, Relating to Renewable Energy Tax Credits.

BEFORE THE:

Senate Committee on Commerce and Consumer Protection

DATE: Tuesday, February 06, 2024

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 229

Chair Keohokalole, Vice-Chair Fukunaga, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 2108 for your consideration.

S.B. 2108 adds a new section to Chapter 235 of the Hawaii Revised Statutes (HRS), to allow condominium associations who claim the Renewable Energy Technologies Income Tax Credit (RETITC) under section 235-12.5, HRS, to transfer their claimed credit, or a portion of the credit, to unrelated taxpayers for cash. The taxpayer who receives the transfer would be known as the "transferee taxpayer" and would be treated as the taxpayer for purposes of RETITC subsections 235-12.5(f) through 235-12.5(h), HRS. Any amount paid by transferee to the transferor of the credit would not constitute taxable income to the transferor and is not deductible to the transferee.

The bill also amends the RETITC's credit apportionment provisions in section 235-12.5(a), HRS, to explicitly forbid condominium associations who transfer the tax credit, or a portion thereof, from being entitled to any apportionment or distribution of the transferred tax credit in proportion to their respective ownership share.

S.B. 2108 would apply to taxable years beginning after December 31, 2023.

The Department notes that because subsection (a) explains the meaning of “transferee taxpayer,” the proposed definition of “transferee taxpayer” in subsection (f) of the proposed statute may be superfluous and could be deleted.

The Department also notes that it lacks the ability to determine what constitutes “fair and reasonable consideration” in a credit transfer, as the fairness and reasonableness of any consideration depends on a number of different circumstances. Moreover, this phrase is currently not used in state income tax law. The Department recommends deleting the phrase “for fair and reasonable consideration” at page 1, line 10 of the bill.

Additionally, the Department suggests that a definition be added for the term “related,” which appears on page 1, line 9, of the bill. As currently drafted, the bill is unclear when a taxpayer would be “related” to a condominium association.

Finally, given the complex nature of this newly proposed credit transfer provision, the Department requests that S.B. 2108’s applicability be postponed to taxable years beginning after December 31, 2024, instead of December 31, 2023. This will provide sufficient time to make the necessary Form, Instruction, and computer system updates while conducting taxpayer education about this change.

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 TAX; Renewable Energy Technologies Income Tax Credit; Condominium Associations; Credit Transfers

BILL NUMBER: SB 2108

INTRODUCED BY: KEOHOKALOPE, CHANG, FEVELLA, HASHIMOTO, KIDANI, MORIWAKI, RICHARDS, Fukunaga, Shimabukuro, Wakai

EXECUTIVE SUMMARY: Allows a condominium association that claims a Renewable Energy Technologies Income Tax Credit under section 235-12.5, HRS, to transfer the credit, or a portion thereof, to another individual or corporate taxpayer that is not related to the condominium association for fair and reasonable consideration; requires the Director of the Department of Taxation to prepare forms necessary for the transfer of Renewable Energy Technologies Income Tax Credits. Provides that condominium association unit owners shall not be entitled to any apportionment or distribution of a transferred Renewable Energy Technologies Income Tax Credit when a condominium association transfers the tax credit.

SYNOPSIS: Adds a new Chapter 235 section to allow condominium associations to transfer the section 235-12.5, HRS, renewable energy technology tax credit or a portion thereof to another taxpayer for consideration.

The transferee taxpayer shall be treated as the taxpayer for purposes of electing refunds of the tax credit in subsection 235-12(f) through 235-12(h).

Consideration must be in cash and shall not be included in the condominium association's gross income or deducted by the transferee.

New subsection (c), provides that the condominium association shall elect to transfer all or a portion of the credit by a filing with the DOT 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 DOT filing in the year the credit may be claimed waives the right to transfer the credit.

Credit transfers are irrevocable upon election and cannot be transferred by the transferee.

New subsection (e) provides that the director of taxation shall prepare forms necessary to transfer and claim the credit and will adopt rules.

Amends section 235-12.5(a) specifying that transferred credits cannot be apportioned or distributed to the condominium association unit owners.

EFFECTIVE DATE: Upon approval, applicable to taxable years beginning after December 31, 2023.

STAFF COMMENTS: This bill supports renewable energy development by offering alternatives to monetize the renewable energy tax credits. HRS Section 235-12.5(g) currently provides a refundable avenue; albeit with a 30% credit haircut. This proposal is another avenue to monetize the renewable energy tax credit for condominium associations that desire to receive an immediate cash benefit.

This alternative is similar in concept to the credit transferability provisions at the federal level enacted in the Inflation Reduction Act of 2022. Credits are generated from qualified investments, with the marketplace determining who receives the cash incentive. Condominium associations would have the option of allocating the credits to the condominium association unit owners or receiving cash for redeployment.

We have a few concerns for consideration.

Will the condominium association as transferor or would the transferee bear the risk if credits transferred are subsequently reduced upon examination? Transfer documentation may be able to address this potential liability.

New subsection (c) provides that the transfer election must be filed with DOTAX on or before the end of the twelfth month following the close of the taxable year *for which the credit may be claimed*. Unused credits can be carried over and claimed in subsequent taxable years. This language could be confusing, and we recommend rewording the applicable language to “... *for which the eligible renewable energy technology system is installed and placed in service.*”

The bill assumes that when a condominium association installs a renewable energy system, like in a parking lot for example, that it owns the credits and the condominium unit owners do not. We wonder if this is correct in all cases under condominium law. If it is not correct in all cases, should the association be allowed to cut off its unit owners' rights in this fashion?

Digested: 2/4/2024

SB-2108

Submitted on: 2/4/2024 6:32:45 PM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Samuel Wilder King II	Individual	Support	In Person

Comments:

I am a resident of Oahu and currently the President of an AOA at a building with 78 units. I am writing in strong support of SB2108.

It is currently possible for individual condominium unit owners to install solar panels on their common element roof. However, the reality is that individual condominium unit owners are not going to go through the headache of dealing with an AOA board for installing solar panels in addition to the expense of installing private solar panels. However, a homeowners' association does have the financial power, with collective maintenance fees, to install solar facilities on the common element roof.

One of the reasons AOAOs do not do this, however, is that it is too expensive. The reasons for this is that AOAOs are non-profit organizations that do not pay taxes. As such, they cannot benefit from the many tax credits available to private companies for installing solar panels. AOAOs therefore cannot directly install their solar panels and instead have to enter into complex financing arrangements so that private entities can benefit from the tax credits.

Passing this bill will allow condominium owners to benefit directly from tax credits for solar projects. This will create an incentive for condominium owners to launch solar projects, which will create more projects for solar companies, and help Hawaii reach its renewable energy goals.

The way this bill benefits AOAOs is by allowing AOAOs to collect tax credits for solar projects. My understanding of how the credits would work is as follows:

HRS 235-12.5(a) caps the amount of credits awardable to 35% of project cost OR the cap amount determined in (b). HRS 235-12.5(b)(2)(B), for a regular multi-family residential solar install, caps the dollar value of credits awardable to: [number of Units in building] x \$350.

So, if an AOAO has 78 units in a building, the maximum amount of credit said AOAO could obtain is $78 \times \$350 = \$27,300.00$. If the project is less than \$78,000, then the amount of credits available would be 35% of the project cost.

Once the AOAO obtains these tax credits, the AOAO would need to sell them to a third-party for an amount less than the value of the credits so that the buyer gains a value. The AOAO could sell the credits for \$25,000, and the buyer could deduct \$27,300 from their taxes. This would in turn allow the 78-unit AOAO to turn a \$78,000 solar panel installation project into a \$53,000 project.

My only recommendation for this bill would be to add an amendment that increases the amount of tax credit available to multi-family buildings to match what single-family homes are entitled to. I am not clear why single-family homes should be entitled to a higher deduction amount than condominium unit owners. If the 78-unit AOA mentioned above had access to \$5,000 of tax credits per unit, like single-family homes, said AOA could build a \$390,000 solar project. If we are serious about our renewable energy goals, such a credit amount would greatly increase the amount of solar powerplants on residential buildings.

SB-2108

Submitted on: 2/5/2024 9:24:04 AM

Testimony for CPN on 2/6/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Richard S. Ekimoto	Individual	Support	Written Testimony Only

Comments:

I am in favor of SB2108 since it will provide condominium associations the ability to raise funds through the sale of its tax credit and it would encourage associations to install solar energy devices