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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Thursday, March 19, 2015
Time: 2:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 1136, Relating to Section 235-55.91, Hawaii Revised Statutes

The Department of Taxation (Department) supports S.B. 1136, an Administration measure, intended to correct certain references in the Hawaii Revised Statutes (HRS) to the Internal Revenue Code (IRC). However, the Department requests the measure be amended to correct errors it discovered upon further consideration of this measure.

Section 235-55.91, HRS, references IRC descriptions of certain relationships. The Working Families Tax Relief Act of 2004, Public Law No. 108-311, moved those references from section 152(a)(1) to (9) to section 152(a) to (d) of the IRC. S.B. 1136 is intended to amend section 235-55.91 so that it references the IRC sections as they exist following the passage of the Working Families Tax Relief Act. In other words, the intent of this measure is merely to clean up an outdated reference to the IRC without substantively changing Hawaii Tax Law; however, as currently drafted, the Department notes that a substantive change would occur.

As drafted, S.B. 1136 would disallow the credit for wages paid to any person who is a dependent of the taxpayer. Using this language captures the technical tax relationship of "dependent", and thus, would only disallow the credit for wages paid to a person who is a tax dependent of the taxpayer, rather than disallow the credit based on the lay relationship of child, stepchild, brother, etc., as the law currently does.

In order to correct this error and update the references to the IRC without substantively changing the existing law, as originally intended by the Department, the Department requests that section 1 of this bill be replaced with a new section 1 that reads as follows:

"SECTION 1. Section 235-55.91, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The following wages paid to vocational rehabilitation referrals are ineligible to be claimed by the employer for this credit:

- (1) No wages shall be taken into account under this section with respect to a vocational rehabilitation referral who:
 - (A) Bears any of the relationships described in section [~~152(a)(1) to (8)~~] 152(d)(2)(A) to (G) of the Internal Revenue Code to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than fifty per cent in value of the outstanding stock of the corporation (determined with the application of section 267(c) of the Internal Revenue Code);
 - (B) If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in section [~~152(a)(1) to (8)~~] 152(d)(2)(A) to (G) of the Internal Revenue Code to a grantor, beneficiary, or fiduciary of the estate or trust; or
 - (C) Is a dependent (described in section [~~152(a)(9)~~] 152(d)(2)(H) of the Internal Revenue Code) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.
- (2) No wages shall be taken into account under this section with respect to any vocational rehabilitation referral if, prior to the hiring date of the individual, the individual had been employed by the employer at any time during which the individual was not a vocational rehabilitation referral.
- (3) No wages shall be taken into account under this section with respect to any vocational rehabilitation referral unless such individual either:
 - (A) Is employed by the employer at least ninety days; or
 - (B) Has completed at least one hundred-twenty hours of services performed for the employer."

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, Update references

BILL NUMBER: SB 1136; HB 967 (Identical)

INTRODUCED BY: SB by Kim by request; HB by Souki by request

BRIEF SUMMARY: Amends HRS section 235-91 to update references to a taxpayer who is a “dependent,” “a corporation,” or “estate or trust.”

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This is an administration measure submitted by the department of taxation TAX-07 (15). The Working Families Tax Relief Act of 2004, P.L. 108-311, moved the references in HRS section 235-91(e) from section 152(a)(1) to (9) to section 152(a) to (d) of the Internal Revenue Code, necessitating this update.

Digested 2/13/15