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To: The Honorable Jill N. Tokuda, Chair
and Members of the Senate Committee on Ways and Means

Date: Monday, March 2, 2015
Time: 1:00 P.M.
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 676, S.D. 1, Relating to Capital Infrastructure Tax Credit

The Department of Taxation (Department) provides the following comments for your consideration on S.B. 676, S.D. 1.

S.B. 676, S.D. 1, increases the maximum amount of capital infrastructure tax credits that can be issued to a qualified infrastructure tenant in any taxable year from \$1.25 million to \$2.5 million per year and requires that a qualified infrastructure tenant first expend \$40,000,000 before being eligible for the tax credits. In addition, the bill provides that if there are any capital infrastructure tax costs that are incurred which result in the credit generated being in excess of the annual maximum credit amount, the excess costs may be used to generate the credit in a subsequent tax year. The measure takes effect on July 1, 2015, and applies to taxable years beginning after December 31, 2014.

The bill redefines "capital infrastructure costs" under section 235-17.5, Hawaii Revised Statutes (HRS) to "means capital expenditures, as used in section 263 of the Internal Revenue Code and the regulations promulgated there under, or capital expenditures for real property and fixtures that are paid or incurred in connection with the displaced tenant's move of the tenant's current active trade or business to the tenant's new location; provided that the capital infrastructure costs shall not include amounts for which another credit is claimed under this chapter". The Department notes that this new definition vastly expands the types of costs which are eligible for the credit.

As it currently stands, the credit is available only for expenditures for real property and fixtures attached to the real property. The new definition applies to all capital expenditures, and would include such things as computers, vehicles, trailers, machinery, floating docks, and the like. This measure also amends the final provision in the definition of "capital infrastructure

costs" to say that "capital infrastructure costs shall not include amounts for which another credit is claimed under this chapter". The Department is uncertain as to the intent or operation of this amendment and requests that this provision be clarified.

The Senate Committee on Economic Development and Technology added the requirement that a "qualified infrastructure tenant shall have expended \$40,000,000 within a taxable year prior to the release of tax credits provided by this section". From an analysis of the language, it appears that the intent was to require an eligible taxpayer to first expend \$40,000,000 in a taxable year before the credit becomes available. Once that threshold is met, the taxpayer is eligible for the credit in all succeeding years without regards to the \$40,000,000. Since the maximum credit that can be generated in any one taxable year cannot exceed \$2,500,000, any excess expenditures must be carried over to subsequent years. As such, even if the taxpayer incurs no additional qualified expenditures beyond the \$40,000,000 threshold, the taxpayer will still be able to claim the credit in each subsequent year until the credit sunsets on December 31, 2019. The Department believes that the measure should explicitly state that in no event may a tax credit be claimed under HRS section 235-17.5 for tax years beyond December 31, 2019, other than for tax credits that have already been claimed and properly carried over by a taxpayer. To reflect such, the Department recommends the following revision to subsection (c):

(c) The amount of the tax credit shall be equal to fifty per cent of the capital infrastructure costs paid or incurred by the qualified infrastructure tenant during the taxable year, up to a maximum credit of \$2,500,000, and provided that the qualified infrastructure tenant shall first have expended \$40,000,000 within a taxable year prior to being eligible for the tax credits provided by this section. Any qualified capital infrastructure costs paid or incurred that result in a tax credit in excess of \$2,500,000 in a given taxable year may be used in subsequent tax years for generation of the credit in such subsequent year, provided that in no event may the credit claimed in any one year exceed \$2,500,000 per qualified infrastructure tenant and further provided that in no event shall such qualified infrastructure tenant generate a credit under this section after December 31, 2019.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: INCOME, Capital infrastructure tax credit

BILL NUMBER: SB 676, SD-1

INTRODUCED BY: Senate Committee on Economic Development and Technology

BRIEF SUMMARY: Amends HRS section 235-17.5 to allow a qualified infrastructure tenant to claim up to \$2.5 million in tax credits in a taxable year; provided the tenant has expended \$40 million within a taxable year prior to the release of tax credits provided by this section. Provides that if a tenant has tax credits in excess of \$2.5 million, the tenant is allowed to carry any excess credit forward to be applied to tax liability in subsequent years.

EFFECTIVE DATE: July 1, 2015; applicable to tax years beginning after December 31, 2014

STAFF COMMENTS: Act 200, SLH 2014, allows investors who make an investment in a qualified infrastructure tenant displaced by the Kapalama terminal modernization project to claim a capital infrastructure tax credit equal to 50% of the capital infrastructure costs, up to \$2.5 million in infrastructure *costs* per year. This measure would allow a tenant with \$40 million in expenditures to allow its investors to claim up to \$2.5 million in tax *credits* per year, in effect doubling the rate at which the credits may be utilized by the investors.

Tax credits generally are designed to reduce the tax burdens of certain groups by refunding a portion of taxes paid on purchases of essential items and services. The capital infrastructure tax credit adopted last year provides financial assistance to displaced tenants, and it is, of course, arguable that some financial assistance is justifiable given the circumstances. Now it appears obvious that the revenue hit is going to be in excess of \$20 million, although spread over a number of years.

This measure proposes to double the utilization rate of credit that may be claimed for a credit that was enacted just last year, which of course makes one wonder whether the proponents of the credit last year were completely forthright with lawmakers about the needs they were trying to address. In any event, this credit amounts to nothing more than a subsidy of state funds. As with any subsidy, this one needs to be paid for. Either government needs to shrink, or the cost of government must be borne by all other taxpayers who do not qualify for the subsidy.

Digested 2/27/15



**Testimony to the Senate Committee on Ways and Means
Monday, March 2, 2015 at 1:00 P.M.
Conference Room 211, State Capitol**

**RE: SENATE BILL 676 SD1 RELATING TO THE CAPITAL INFRASTRUCTURE
TAX CREDIT**

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **supports the intent of SB 676 SD1**, which sets the maximum amount of capital infrastructure tax credits that may be issued to a qualified infrastructure tenant in any taxable year at \$2,500,000 and allows any capital infrastructure tax credit in excess of the maximum amount to be applied to subsequent tax years. Also requires a qualified infrastructure tenant to expend \$40,000,000 before the release of tax credits.

The Chamber is the largest business organization in Hawaii, representing about 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber fully supports the bill's intent to provide aid to all tenants affected by the Kapalama container terminal project. These companies will have to invest tens of millions of dollars to move their companies and infrastructure. The aid offered in this bill does not only support tenants affected by the project, but also positively impacts maritime commerce in Hawaii.

Thank you for the opportunity to testify.



FOR SENATE COMMITTEE ON WAYS AND MEANS

March 3, 2015 at 1:00 p.m. State Capitol, Conference Room 211

In Support of **SB676 SD1 RELATING TO THE CAPITAL INFRASTRUCTURE TAX CREDIT**

TO: Honorable Chair Tokuda, Vice-Chair Kouchi and Members of the Committee:

FROM: Ann Chung, representing Pacific Shipyards International

RE: Testimony in Support of SB676 SD1 and requesting Admendments

Mahalo for the opportunity to submit testimony in **STRONG SUPPORT of SB676 SD1 with Amendments.**

This bill was passed last year by the Legislature with the intent to help displaced waterfront tenants from the Kapalama Container Terminal site secure financing to be relocated and build out. The main reason for this year's bill was to clarify language in the bill (now Act 200) based on discussions with DoTAX.

Pacific Shipyards International (PSI) has operated a commercial ship repair facility in Honolulu Harbor for 70 years and our tax revenues and hundreds of high-paying jobs are important to Hawaii's economy, maritime community, and port security. We are the state's only drydocks capable of servicing inter-island cargo fleets and we have provided this essential drydocking capability for Hawaii at large capital and operating costs.

PSI is being forced by the State to move out of Pier 41 and relocate to Piers 24/25. We are going from an existing shipyard with 45,000 sq. ft of building space to essentially "bare land" or empty piers that require full infrastructure build-out. There are no replacement companies and Hawaii-based vessels will be forced to go to the mainland for drydocking, significantly increasing costs to Hawaii taxpayers. Supporting the displaced waterfront tenants of the Kapalama project supports the growth of commerce in the State and supports maritime jobs. This credit helps displaced tenants raise financing and IMPROVE STATE-OWNED LANDS, which the State is not currently collecting revenues from.

Based on further discussions with DoTAX, we humbly request the following amendments:

- Change language on pg 1, lines 6-12 to read
"Capital infrastructure costs" means capital expenditures, as used in section 263 of the Internal Revenue Code and the regulations promulgated thereunder[; ~~provided that the~~ provided that the, or capital expenditures are ~~are~~ for real property, ~~and~~ fixtures, structures, machinery, equipment, or other ship repair specific capital assets that are paid or incurred (including payments against capital financing by loan or capital lease) in connection with the displaced tenant's move of the tenant's current active trade or business to the tenant's new location;
- Insert language on pg 2, after line 9
(4) may also include a Special Purpose Entity(s) ("SPE") formed for purposes of raising investor capital pursuant to this credit; provided that the SPE cannot generate any additional credits beyond the limits per Qualified Infrastructure Tenant as provided under sub Section (c).
- Change or remove language on pg 2, lines 18-20
The language in SD1 requiring the expenditure of \$40M in 1 year by each qualified tenant – conflicts with the established cap, contradicts the bill's original intent of helping displaced tenants secure financing, and is unachievable as it will take years to fully build out.

SB676

Submitted on: 2/28/2015

Testimony for WAM on Mar 2, 2015 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Kacey Lock	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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SB676

Submitted on: 3/1/2015

Testimony for WAM on Mar 2, 2015 13:00PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Schiff	Individual	Support	No

Comments: I strongly support bill SB676.

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