

## EDB Committee

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**From:** Marilyn Niwao <niwao@mauicpa.com>  
**Sent:** Tuesday, July 07, 2020 10:35 PM  
**To:** EDB Committee  
**Cc:** Lesley J. Milner  
**Subject:** Testimony of Marilyn M. Niwao re Circuit Breaker Tax  
**Attachments:** Testimony of Marilyn M. Niwao, M.S.P.H., J.D., CPA re - Circuit Breaker Tax Credit - July 8, 2020.pdf

Hi Lesley –

I'm attaching my testimony regarding the Circuit Breaker Tax. Unfortunately, my Outlook notified me that the email address you sent ([edb.committee@mauicounty.us](mailto:edb.committee@mauicounty.us)) is no longer valid. Could you forward my testimony to the proper email address?

Thank you and aloha –

Marilyn

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R O B E R T S

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July 7, 2020

The Honorable Keani N.W. Rawlins-Fernandez, Chair  
and Members of the Economic Development and Budget Committee  
Maui County Council  
200 S. High Street  
Kalana O Maui Bldg, 8<sup>th</sup> Floor  
Wailuku, Hawaii 96793

Comments regarding Circuit Breaker Tax Credit (EDB-81) – Proposed bill  
entitled “A Bill For An Ordinance Amending Section 3.48.810, Maui County Code,  
Relating to the Circuit Breaker Tax Credit”

Dear Chair Rawlins-Fernandez and Members of the Economic Development and  
Budget Committee:

I would like to add my comments and concerns regarding the proposed bill regarding  
the Circuit Breaker Tax Credit, first by reviewing the Principles of Sound Tax Policy in  
considering tax legislation. The general policies and considerations are as follows:

**A. Principles of Sound Tax Policy** (generally recognized from the 1988 conference  
of lawmakers and academics organized by the National Conference of State  
Legislatures (NCSL) and the Lincoln Institute of Land Policy).

- 1. Provision of Appropriate Revenues** – assuring funds are available to meet  
present and future costs of desired government services.
- 2. Neutrality** – minimizing tax consequence impacts on market decisions
  - a. Achieved by broad tax base (few exceptions, deductions or credits) and  
low tax rates.
- 3. Fairness and equity** – real or perceived differences in taxation of equals  
undermines public confidence in a tax system. Exemptions or credits that  
favor a few and undermine equality do not give rise to political unrest if there  
is consensus that the favored group deserves the preference.

- a. Horizontal equity – all taxpayers in the same circumstances should bear equal burdens.
- b. Vertical equity – If taxpayers differ in their circumstances, the ability to pay should be factored in tax rates. (Note, however, there is a problem with multiple tax authorities (Federal, State) also providing tax credits or tax relief to the same group of taxpayers. Nonprofit organizations also target and serve the same group for services, resulting in multiple subsidies to a category of taxpayers at the expense of other taxpayers.)

#### **4. Easy and Economical to Administer (i.e., Efficient)**

- a. Costs of compliance for taxpayers and costs of collection should be minimized. An efficient revenue system avoids complex provisions and regulations, multiple filing and reporting requirements, and numerous deductions, exclusions, exemptions, and credits. The more governments create tax breaks ... the more they complicate the system.

#### **5. Accountability** – assuring fair and open implementation of the system as intended, including both legislative and administrative policies.

- a. Fair and efficient administration, lack of corruption and incompetence.
- b. Actual enforcement of tax laws.
- c. Open, transparent tax policies and decision-making processes (legislative and administrative). Sound tax policy avoids political favoritism.

#### **B. Circuit Breaker tax break for low-income taxpayers should be narrowly defined to avoid abuse and the impression that some are benefiting from the tax credit when they are relatively wealthy when considering either their net worth or income.**

- 1. “Household income does not exceed \$130,000” is likely too high a threshold. Under this criteria, most Maui households would meet this income threshold.
  - a. According to the most recent U.S. Census data for Maui County, the median household income is \$77,117. See attached U.S. Census Bureau report.

2. For the calculation of the Circuit Breaker tax, the total gross assessed value of the land and building should be used, not the homeowner's gross building assessed value. The valuation of land versus building is not accurate and is not relied upon by the Internal Revenue Service during audits.

**C. Calculation of "Household Income" should use "gross income", as defined by the Internal Revenue Code, rather than "adjusted gross income" because of the deductions allowed in computing "adjusted gross income".**

1. Use of Federal Adjusted Gross income probably will not accurately reflect a taxpayer's ability to pay his/her fair share of real property taxes since various deductions from gross income are used to calculate adjusted gross income.
  - a. Items that may be deducted and used to reduce gross income include (and this is not a comprehensive list):
    - 1) 50% of self-employment taxes paid
    - 2) Contributions made to retirement accounts
    - 3) Self-employment health insurance paid for taxpayer, spouse, and dependents, limited to net self-employment income
    - 4) IRA contributions made (to traditional IRA plans)
    - 5) Student loan interest
    - 6) Tuition and fees
    - 7) Alimony or separate maintenance payments made under a divorce decree or separation agreement executed before 2019
2. Even the use of Federal Gross Income may not represent the ability of a taxpayer to pay his/her share of real property taxes since:
  - a. Recent changes in the tax laws offer generous depreciation deductions for businesses, and so the net business income of a taxpayer may be lower than the net cash generated by the business.
  - b. Wealthy taxpayers oftentimes have investments, such as municipal bond interest, which would not be included as income. In addition, due to low interest rates, a taxpayer may have a lot of disposable cash and investments to pay real property taxes, but not very much reportable income.
  - c. Other receipts of cash that are not taxable for Federal income tax purposes should perhaps be considered in the equation – for example, child support payments, alimony, etc. Also, what if the homeowner is a dependent?

**D. The circuit breaker tax credits allow a tax advantage to some, to the detriment of others who must bear the burden of supporting County government services.**

**E. Who is the County trying to subsidize with the Circuit Breaker Tax Credit?**

1. If the elderly, on fixed income, perhaps an exemption for those 65 years and older could be considered. For example, Honolulu has a home exemption of \$140,000 for those 65 years and older. This exemption may be easier to administer than trying to scrutinize the tax returns of those seeking the circuit breaker tax credit.
2. Assistance to those with a temporary cash flow problem or temporary hardship scenario (like catastrophic medical bills)? Perhaps the Circuit Breaker Tax Credit could be administered as a temporary deferral of real property taxes, with accumulated real property taxes deferred paid upon the sale of the underlying real estate. This would insure equitable treatment for all who own real property.

In closing, the definition of "Gross Income", and "Adjusted Gross Income" changes almost every year. As a result, County revenues each year will change as a result of Federal tax legislation over which the County has no control. In addition, there is the problem of unreported income in the underground economy, and the circuit breaker thresholds may inadvertently create an incentive to commit tax fraud.

It is worth repeating that there may be no such thing as a "fair" tax. Therefore, it is universally accepted that the best tax system applies a low tax rate to the broadest possible base, with few exceptions, deductions, or credits.

Thank you for considering the above.

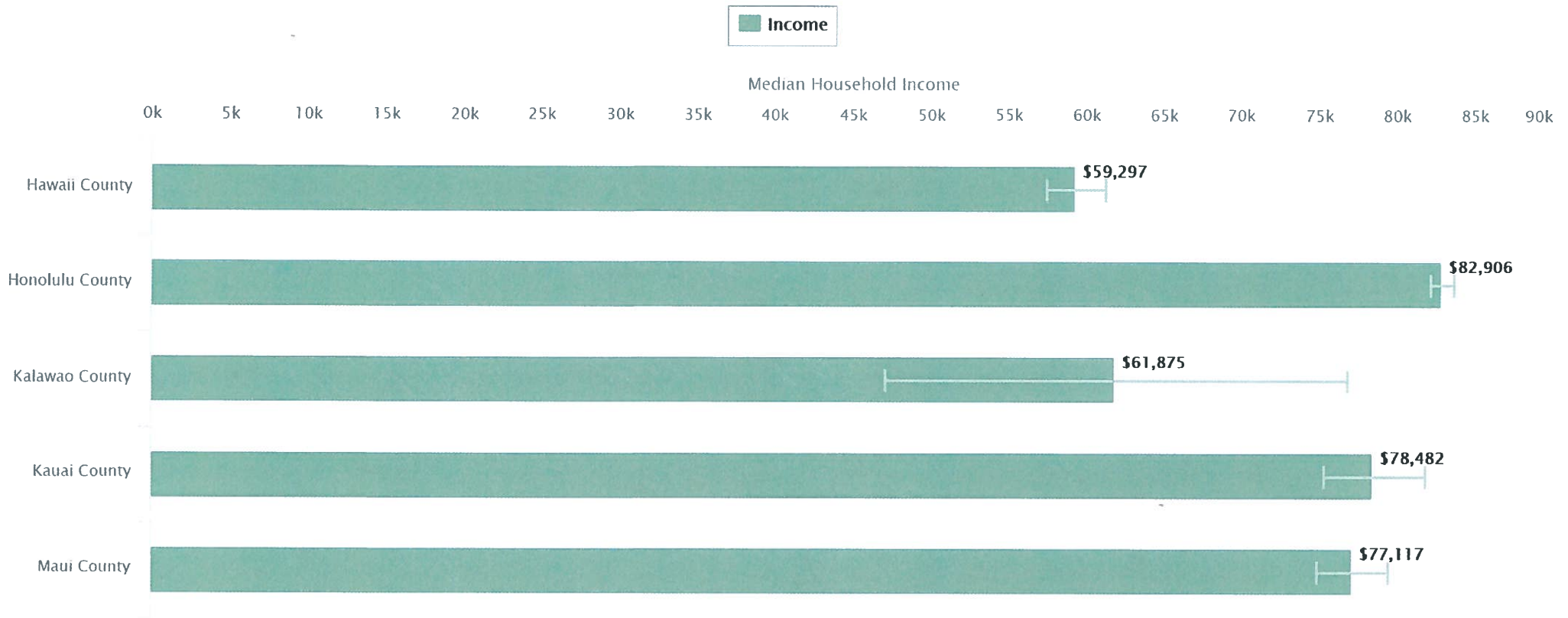
Respectfully submitted,

A handwritten signature in black ink, reading "Marilyn M. Niwao". The signature is fluid and cursive, with a long horizontal flourish extending from the end of the name.

Marilyn M. Niwao, M.S.P.H., J.D., CPA, CGMA  
President

Enclosure

## Median Household Income by County



Source(s): U.S. Census Bureau, 2014–2018 American Community Survey 5–Year Estimates  
Data may contain sampling error. Sampling error and margin of error may render some of the differences between geographies statistically insignificant.

United States  
**Census**  
Bureau

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