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## SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TAXATION

### TESTIMONY REGARDING HB 2456 HD 2 RELATING TO TAXATION

**TESTIFIER:** KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)  
**DATE:** MARCH 18, 2008  
**TIME:** 1:15PM  
**ROOM:** 224

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This legislation amends Hawaii income tax law to exclude from gross income those amounts provided to an employee who is a reciprocal beneficiary, which are in excess of benefits provided to a single employee.

The Department of Taxation (Department) takes no position on this legislation.

**ISSUE OVER "DIRECT OR INDIRECT"**—The Department raises the issue of whether identifying the benefits and payments subject to this exclusion necessarily must be "direct or indirect." The Department suggests that simply identifying the terms is sufficient and will not raise unnecessary confusion over whether a benefit is or is not direct or indirect.

- (14) The value of health insurance and other [~~direct or indirect~~] benefits provided by an employer to an employee in excess of what the employer provides to single employees, or would provide to single employees, when such benefits are provided to the employee based on the employee's status as a reciprocal beneficiary as defined in chapter 572C or a domestic partner as defined in the administrative rules of the Hawaii employer-union health benefits trust fund. For the purposes of this paragraph "single employee" means an employee who:
- (A) Is compensated by the employer [~~directly or indirectly~~];
  - (B) Is not married;
  - (C) Has no reciprocal beneficiary as defined in chapter 572C; and

- (D) Has no domestic partner as defined in the administrative rules of the Hawaii employer-union health benefits trust fund."

**REVENUE IMPACT**—Assuming this bill is amended to take effect immediately, this legislation will result in a revenue loss of approximately \$800,000 for FY2009 and thereafter.

Since the 1<sup>st</sup> house draft eliminates the exemption allowed for a taxpayer's reciprocal beneficiary, the Department assumes reciprocal beneficiaries can decrease their tax liability by 5%. According to the Hawaii Family Forum, the Department of Health reported there were 1,284 individuals who registered as reciprocal beneficiaries (2006). This amounts to approximately 1% of the state population. The Department then assumed that reciprocal beneficiaries would decrease their tax liability by 10%. According to the Department of Taxation Annual Report (2005-2006), the state collected approximately \$1.6 billion in individual income tax collections in 2006.



# HAWAII CIVIL RIGHTS COMMISSION

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March 18, 2008  
Rm. 224, 1:15 p.m.

To: The Honorable Carol Fukunaga, Chair, and Members of the Senate Committee on Economic Development and Taxation

From: Sara Banks, Acting Chair, and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 2446, H.D. 2

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC supports the intent of H.B. No. 2456, H.D. 2, which excludes from gross income, adjusted gross income, and taxable income the value of health insurance and other direct or indirect benefits provided by an employer to an employee in excess of what the employer provides or would provide to single employees when such benefits are provided to the employee due to the employee's status as a reciprocal beneficiary or a domestic partner.

The HCRC has previously expressed its support for state laws concerning reciprocal beneficiaries, until such time that domestic partnerships are recognized. To the extent that this proposed legislation does not adversely affect current reciprocal beneficiaries and/or domestic partners, the HCRC supports H.B. No. 2456, H.D. 2.

March 17, 2008

Senator Carol Fukunaga, Chair  
Senator Will Espero, Vice-chair  
Committee on Economic Development and Taxation

Re: Support of HB 2456, HD2, Relating to Taxation

Mahalo for reviewing the Hawaii income tax status of reciprocal beneficiaries and domestic partners. HB 2456, HD2, would remedy an area where the State of Hawaii discriminates against reciprocal beneficiaries and domestic partners:


1. Employer-subsidized health insurance for an employee's domestic partner or reciprocal beneficiary is reported on the W-2 and is treated as taxable income by the State of Hawaii.
2. However, the State of Hawaii does not treat as income the same employer-provided subsidy to married persons.
3. This discrimination is compounded by the fact that the State of Hawaii has denied the status of civil marriage to same-sex couples who have indeed made a family.

HB 2456, HD2, would remedy this problem. On line 16 of page 16 of HD2, the effective date is given as January 1, 2020. Please change this to January 1, 2009.

There are other, similar, issues in the tax code that HB 2456, HD2, does not address. For example, reciprocal beneficiaries are not allowed to file Hawaii income tax forms jointly--a right available to married couples. If you can address the issue of filing status, that would help greatly.

Again, thank you for thinking about these issues. It helps everyone, partly by lowering the demand for costly social services, when you make it possible for people to take care of one another.

Respectfully yours,



Tom Ramsey

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# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Exclude health insurance of domestic partner

BILL NUMBER: HB 2456, HD-2

INTRODUCED BY: House Committee on Finance

STAFF COMMENTS: Amends HRS section 235-7(a) to provide that the value of health insurance and other benefits provided by an employer to an employee in excess of what the employer provides to single employees, when such benefits are provided to the employee due to the employee's status as a reciprocal beneficiary as defined in chapter 572C or a domestic partner as defined in the administrative rules of the Hawaii employer-union health benefits trust fund, shall be excluded from income.

EFFECTIVE DATE: January 1, 2020; applicable to tax years beginning after December 31, 2008

STAFF COMMENTS: Currently neither the state nor federal tax laws recognize reciprocal beneficiaries or domestic partners for income tax purposes. As a result, employer subsidized health insurance for an employee's reciprocal beneficiary or domestic partner is treated as taxable income. This measure proposes that such benefits provided by an employer for an employee's reciprocal beneficiary or domestic partner shall not be taxable under the state income tax law.

In states that recognize same sex marriages, reciprocal beneficiaries or domestic partners, the taxability of the benefits received by an employee for the reciprocal beneficiary or domestic partner generally is not taxable in those states but remains taxable on the federal level. The adoption of this measure would extend similar tax treatment for Hawaii income tax purposes, although Hawaii does not recognize reciprocal beneficiaries or domestic partners. Its adoption would be contrary to the state's intent to conform to the federal Internal Revenue Code for ease of compliance.

While advocates of this proposal may argue that it is unfair to be taxed on such benefits, they should realize that if this amount is exempt for state tax purposes, thereby reducing the state tab, it will increase the amount of income exposed to federal income tax rates which are substantially higher than the state rates. Thus, what is saved on the state tax return winds up being taxed on the federal return as there is no similar exemption at the federal level. Unless the taxpayer can meet the federal dependency test, the federal law will not recognize such amounts as being excluded.

Digested 3/12/08