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HOUSE COMMITTEE ON JUDICIARY

TESTIMONY REGARDING HB 2456 RELATING TO TAXATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: JANUARY 25, 2008
TIME: 2:00PM
ROOM: 325

This legislation amends Hawaii income tax law to allow reciprocal beneficiaries to file in a manner similar to that of a married couple, including the ability to file a joint return.

The Department of Taxation (Department) has concerns regarding this legislation due to potential administrative difficulty.

I. ADMINISTRATIVE CONCERNS

DECOUPLING FROM THE INTERNAL REVENUE CODE MUST BE CONSIDERED CAREFULLY—The primary concern of the Department is that this legislation seeks to decouple from the Internal Revenue Code (IRC). As a conformity jurisdiction with an income tax law based primarily on the IRC, legislation such as this begins to erode certain principles upon which the income tax law is based. For example, certain provisions of the IRC may apply based upon return filing status. Therefore, should all respective provisions of the IRC likewise apply to a joint return filed by reciprocal beneficiaries? (*e.g.*, Hawaii has its own personal exemption and standard deduction, which could be logically extended to those filing joint returns. However, the IRC provision that limits itemized deductions based upon filing joint returns is contemplated only for those that can file a joint return for federal purposes. This disparity is an issue.).

POSSIBLE ABUSE AND UNWARRANTED TAX ADVANTAGE—The Department is also unfamiliar with the reciprocal beneficiary law; however understands it to allow the union of any two adults precluded from marrying. The Department is unaware of any abusive unions; however is concerned with the potential abuse that may arise if there is an unwarranted tax advantage. For example, assume one person to a union with zero income and the other having a large income. If a union is formed, the person with the large income can join with the person with zero income and reduce the larger person's income by using the person with zero income's personal exemption and standard deduction that would have otherwise gone unclaimed. The person with the larger income

has obtained an otherwise unwarranted tax advantage by joining a union to reduce their income. Again, the issue may be more theoretical, but nonetheless could occur to the detriment of the general fund.

MEANS OF ACCOMPLISHING THE POLICY SHOULD BE CLOSELY ANALYZED—Another issue is how such a proposal is to be accomplished. One means would be to simply provide a definition of "married couple" or "spouse" in Hawaii tax law to include a reciprocal beneficiary. This would apply across the board. The other means is by way of the proposed legislation, which may be confusing.

Also, the Department points out that this legislation may be impacted by other areas of the income tax law that specifically refer to a "husband and wife" as those that can file a joint return. For example, in Act 210, Session Laws of Hawaii 2007, the constitutional credit used the conventional language:

"(b) There shall be allowed to a *husband and wife who file a joint return* a one-time general income tax credit...."

Based on this language, which could be in other areas of the law, reciprocal beneficiaries would be precluded from obtaining any such benefits regardless of any enabling statute. For this reason, the Department requests that the means of accomplishing this policy should be closely analyzed.

RECIPROCAL BENEFICIARIES MUST BE DEFINED—The term "reciprocal beneficiary" is not defined for tax purposes. At a minimum, a cross-reference to Chapter 572C or other law regulating these relationships should be included in any amendments.

REVIEW OTHER JURISDICTIONS—The Department suggests that the Committee consider other jurisdictions that have allowed reciprocal beneficiaries or domestic partners to file jointly. Based upon the Department's brief analysis, there is less than a handful of states that allow such filing status. These include California, New Jersey, and the District of Columbia.

MISLEADING DESCRIPTION—The Department also points out that this legislation contains a misleading description, which suggests that "domestic partners" may file jointly as proposed. The Department's research has concluded that Hawaii law does not recognize "domestic partners," *per se*. Only reciprocal beneficiaries that formally register as such are recognized at law. The description should be amended to eliminate any reference to domestic partner, which the Department understands is an informal relationship between adults who may be—but are not necessarily—reciprocal beneficiaries.

EFFECTIVE DATE—The current effective date is upon approval. Amendments to the income tax law typically apply to a specific taxable year. The bill should be amended to apply to taxable years beginning after December 31, 2008.

II. REVENUE ESTIMATE

This legislation will result in a revenue loss of \$1.6 million per year.

January 24, 2008

Representative Tommy Waters, Chair
Representative Blake K. Oshiro, Vice-chair
Judiciary Committee

Re: Support of HB 2456, Relating to Taxation

Mahalo for reviewing the Hawaii income tax status of reciprocal beneficiaries and domestic partners. HB 2456 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.

HB2456 also makes explicit some filing options for reciprocal beneficiaries: a single return for the couple reporting joint income, filing separately, or filing as individuals. These options should help reciprocal beneficiaries of all kinds to take improved care of one another, thus reducing the need to call upon expensive and complex government-provided social services.

Respectfully yours,

Tom Ramsey
Professor of Mathematics
University of Hawaii, Manoa

JUDtestimony

From: Alan Spector [bwallack@earthlink.net]
Sent: Thursday, January 24, 2008 7:49 PM
To: JUDtestimony
Cc: Rep. Thomas Waters; Rep. Blake Oshiro
Subject: HB 2456, Public Hearing 1/25/08 at 2:00 PM, room 325

Dear Members of the House Judiciary Committee:

I am writing to express my support of House Bill 2456, Relating to Taxation.

In the State of Hawaii, a Reciprocal Beneficiary (R.B.) relationship is the only form of legal recognition currently available to same-sex couples. Hawaii law discriminates against same-sex couples by not granting us the same legal rights and benefits available to married couples. The R.B. law attempts to address this wrong, albeit, by only providing a very limited set of legal rights that does not compare to the rights granted to spouses in marriage. Passage of HB 2456 represents a significant incremental expansion of the RB law and takes us one step closer on the path towards equality.

In 2007, we took advantage of the Domestic Partner health benefits available to state employees through the EUTF. Unfortunately, the value of this health benefit is taxed as if it were actual income, increasing our total tax liability by over \$1000. Married couples do not pay taxes on the employer health benefits provided to their spouses. This unequal treatment is simply unfair.

Sincerely,

Alan R. Spector, LCSW
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