

HB 1092

HD1, SD1



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 1092, H.D. 1, S.D. 1, RELATING TO TAXATION.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, April 7, 2011 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): David M. Louie, Attorney General, or
Hugh R. Jones Deputy Attorney General

Chair Ige and Members of the Committee:

This testimony concerns Senate Draft 1 of House Bill No. 1092, which is similar to Senate Bill No. 570, House Draft 1, which would impose Hawaii's income tax on pension income.

Part I of the proposed Senate Draft 1, could be the subject of a constitutional legal attack. Should this bill become law in this proposed form, it could be challenged, the outcome would not be certain, and the Attorney General would defend it as is the Attorney General's duty. Court decisions in other states cut both ways. The law would be presumed to be constitutional, however, it could take years to litigate the issue through the Hawaii court system and subject the State to "refund" lawsuits if the bill is found unconstitutional.

That being said, we want to be clear that the Department of the Attorney General is not recommending that you should not pass the bill. As noted, court decisions on this issue have gone both ways, and it is certainly possible that even if a constitutional challenge is raised, it may fail. We are bringing the possibility of a legal challenge to your attention for the sole purpose of making sure that you have as much information as possible available to you as you consider this

bill. Indeed, it is worth noting that any bill passed by the Legislature could be subject to legal challenge (whether or not such a challenge is well-founded). Where - as here - the outcome of such a challenge is uncertain, that alone may not be reason enough not to pass the bill.

Insofar as House Draft 1 would impose Hawaii's net income tax on the pensions, annuities and retirement allowances of retired State and county employees and their beneficiaries who have incomes over certain dollar thresholds, which at present are non-taxable¹, it could be the potential subject of a legal challenge on the grounds that they may violate article XVI, section 2 of the Hawaii Constitution, or may impair the Contracts Clause of the U.S. Constitution.

Article XVI, section 2 of the Hawaii Constitution provides:

EMPLOYEES' RETIREMENT SYSTEM

Section 2. Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired. [Ren Const Con 1978 and election Nov 7, 1978] (emphasis added).

An attempt to subject pensions, annuities, and retirement allowances of retired Oregon State employees to state personal income taxation was the subject of a legal challenge under an Oregon statute that exempted such retirement benefits from state, county, and municipal taxes "heretofore or hereafter imposed" and an analogous Oregon constitutional provision barring the impairment of contracts.² In Hughes v. State, 838 P.2d 1018 (Or. 1992), the Oregon Supreme Court held that a provision in Oregon's employees' retirement law exempting

¹ See section 88-91, Hawaii Revised Statutes.

² Article I, section 21 of the Oregon Constitution provides in part "No *ex-post facto* law, or law impairing the obligation of contracts shall ever be passed . . . ,"

pensions, annuities, and retirement allowances from taxation³ was a term of the Oregon Public Employees' Retirement System (PERS) "contract" with state employees. Hughes, 838 P.2d. at 1032-1033. The Court held that the Oregon Legislature's amendment of that provision to remove the exemption "breached" the PERS contract by taxing retirement benefits for work accrued or accruing before the change in the law. Hughes, 838 P.2d at 1035.

Recent Hawaii Supreme Court decisions suggest that the holding in the Hughes decision, while not binding, might be found persuasive by Hawaii Courts. In Kaho'ohanohano v. State, 114 Hawaii 302, 342 (2007), our Supreme Court stated the framers' intent underlying article XVI, section 2 of the Hawaii Constitution was to deprive the legislature of the right to reduce benefits of state employees as to past services to the State.

In Everson v. State, 122 Hawaii 402 (2010), the Court construed article XVI, section 2 such that the term "accrued benefits" included not only "pension" benefits but retiree health benefits. The Court rejected an argument that the Hawaii Constitution protects only benefits provided by the Employees' Retirement System, stating "it is those "accrued benefits" arising from *membership* in an ERS, and not simply those benefits provided by an ERS, that is protected by article XVI, section 2." Everson, 104 Hawaii at 416.

It is not clear whether the Hawaii Supreme Court would find that the non-taxability of State and county employee retirement benefits is an "accrued benefit" similar to retiree health benefits or whether the current law exempting those benefits

³ The statute (O.R.S. 237.201) was amended in 1991 to except Oregon personal income taxation from the exemption.

from taxation is part of the "contract" between ERS members and the State as the court in the Hughes decision found.

In the Hughes decision, the Oregon Supreme Court briefly discussed the argument that Oregon's sovereign power to tax could not be contracted away by the Oregon Legislature so as to preserve the State's power to tax state employee retirement benefits. In Hughes, the Court found that such a suggestion could not be found within the language or history of Oregon's "Contracts Clause." Hughes, 838 P.2d at 1025. However, in contrast, Hawaii's Constitution expressly recognizes that "[t]he power of taxation shall never be surrendered, suspended or contracted away." See Haw. Const. Art. VI, §1. As such, in Tax Appeal of Director of Taxation v. Medical Underwriters of California, 115 Hawaii 180, 366 (1997), the Court recognized that the power to tax is a sovereign power that was not subject to the doctrine of "estoppel."

For example, the Georgia Supreme Court upheld a state enactment that subjected previously exempt retirement benefits to state income tax because the Georgia Constitution denied to the Georgia Legislature the power to surrender the sovereign right of the state to tax. Parrish v. Employees' Retirement System of Georgia, 398 S.E.2d 353 (Ga. 1990). Significantly, the Hawaii Supreme Court in both the Kaho'ohanohano and Everson decisions did not have the opportunity to consider article VI, section 1 of the Hawaii Constitution when it examined the respective legal challenges under article XVI, section 2 of the Hawaii Constitution.

Court decisions in New Mexico and Montana reach opposite conclusions to that reached in Hughes. See Pierce v. State of Mexico, 910 P.2d 288 (N.M. 1995) and Sheehy v. Public Employees Retirement Div., 864 P.2d 762 (Mont. 1993). The Pierce and

Sheehy decisions, however, did not involve a constitutional provision similar to article XVI, section 2 of the Hawaii Constitution, and the Hawaii Supreme Court's decisions in Kaho'ohanohano and Everson cast doubt on whether they would be found persuasive by Hawaii courts.

A legal challenge by retired State and county employees concerning the matters discussed in this memorandum could be obviated by making the amendments effective on a prospective basis only, i.e., to future members of the ERS.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



FREDERICK D. PABLO
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SENATE COMMITTEE ON WAYS AND MEANS

COMMENTS OF THE DEPARTMENT OF TAXATION
REGARDING HB 1092 HD1 SD1
RELATING TO TAXATION

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR
DESIGNEE)
COMMITTEE: WAM
DATE: APRIL 7, 2011
TIME: 9:30AM
POSITION: SUPPORT

This measure amends the current law that excludes employer-funded pension income from income tax. It treats employer-funded pension income like all other income, similar to that of the federal tax code. It starts in the 2011 tax year.

The Department of Taxation (Department) supports this measure.

PART I: TAXATION OF PENSION INCOME

FAIRNESS—This proposal makes taxation of pensioners more "even handed." Currently, retirees without employer-funded pensions are taxed on their retirement income, such as 401K, dividends, rental income, and other sources of income. It is a fair tax policy to treat the taxation of employer-funded retirement income similar to the self-funded retirement income.

The 1995-1997 and 2001-2003 Tax Review Commission recommended a phase in taxation of all pension income. Similarly, the 2005-2007 Tax Review Commission recommended conforming to the federal tax treatment of retirement income, excluding an annual base amount (e.g.: \$50,000). Hawaii is one of only ten (or 20%) states that exclude all federal, state and local pension income from taxation¹. Forty (or 80%) states taxed pension.

¹ The ten (10) states are as follows: Alabama, Hawaii, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, New York and Pennsylvania.

PRESERVE THE EXEMPTION FOR THOSE WITH MODEST INCOME—

This measure proposes to preserve the exemption of the pension income for those with a federal Adjusted Gross Income of less than:

- \$100,000 for single or married filing separately;
- \$150,000 for head of household;
- \$200,000 for joint returns or surviving spouse.

The Abercrombie-Schatz Administration proposes to preserve the exemption of the pension income for those with a federal Adjusted Gross Income of less than:

- \$37,500 for single or married filing separately;
- \$56,250 for head of household;
- \$75,000 for joint returns or surviving spouse.

The thresholds chosen by the Administration took into consideration the average household income and average pension amount. According to the US Census Bureau, average Hawaii household income in 2008 was \$66,701. According to the 2008 Federal Individual Income tax data, the average Hawaii residents' pensions and annuities taxed at the federal level was \$22,686. According to the 2009 State Individual Income tax data, the amount of pensions taxed at the federal level but not by the State is \$2.61 billion. This exemption currently benefits approximately 96,200 taxpayers, or only 18% of Hawaii resident taxpayers².

This measure will impact 3,988 taxpayers (or approximately 0.7% of Hawaii resident taxpayers), whereas the Administration's proposal will impact 43,520 taxpayers (or approximately 8.1% of Hawaii resident taxpayers).

REVENUE GAIN—This measure will result in an estimated revenue gain of \$17.2 million per year for FY 2012 and thereafter, whereas the Administration's proposal will result in an estimated revenue gain of \$112.3 million per year for FY 2012 and thereafter.

PART II: STATE TAX DEDUCTION

SOUND TAX POLICY—It is a fundamental tax policy to eliminate an absurd deduction allowed by the same source that is taxing the income. The current deduction is irrational and poor tax policy. It also simplifies the tax code. Only a handful (approximately 5) other states allow a state tax deduction for state income tax paid.

² Total number of 2009 resident individual income tax returns is 535,996.

PRESERVES THE DEDUCTION FOR THOSE WITH MODEST INCOME—

This measure proposes to preserve the state tax deduction for those with a federal Adjusted Gross Income of less than:

- \$75,000 for single or married filing separately;
- \$112,500 for head of household;
- \$150,000 for joint returns or surviving spouse.

ABERCROMBIE-SCHATZ ADMINISTRATION'S PROPOSAL REPEAL THE DEDUCTION ENTIRELY BUT PHASES-OUT THE REPEAL FOR THOSE WITH MODEST INCOME—

Eliminates the deduction for the 2011 tax year for those earning:

- \$75,000 or more for single or married filing separately;
- \$112,500 or more for head of household or surviving spouse;
- \$150,000 or more for joint returns.

Phases-out the deduction by reducing it over two taxable years for all others:

- 50% reduction for 2011
- 75% reduction for 2012
- 100% reduction for 2013.

This measure will impact 36,157 taxpayers (or approximately 6.7% of Hawaii resident taxpayers), whereas the Administration's proposal will impact 313,470 taxpayers (or approximately 58.5% of Hawaii resident taxpayers).

REVENUE GAIN—This measure will result in an estimated revenue gain of \$33.2 million for FY 2012 and thereafter, whereas the Administration's proposal will result in an estimated revenue gain of \$63.7 million for FY 2012, \$79.0 million for FY 2013, \$94.4 million for FY 2014 and thereafter.

TOTAL REVENUE GAIN FOR PART I AND II—This measure will result in an estimated total revenue gain of \$50.4 million for FY 2012 and thereafter.

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 1092, H. D. 1, S. D. 1

April 7, 2011

RELATING TO TAXATION

House Bill No. 1092, H. D. 1, S. D. 1, amends Chapters 88 and 235, HRS, to preserve the exemption from income taxes of employer-funded pension income of taxpayers with federal adjusted gross income (AGI) of: 1) less than \$100,000 for a taxpayer filing a single return or a married person filing separately; 2) less than \$150,000 for a taxpayer filing as a head of household; or 3) less than \$200,000 for a taxpayer filing a joint return or as a surviving spouse. The bill also preserves the deduction for State taxes paid for taxpayers with federal AGI of: 1) less than \$75,000 for a taxpayer filing a single return or a married person filing separately; 2) less than \$112,500 for a taxpayer filing as a head of household; or 3) less than \$150,000 for a taxpayer filing a joint return or a surviving spouse. The preservation of the pension income exemption and the State income tax deduction is applicable for tax years beginning after December 31, 2010, and is made permanent.

The Department of Budget and Finance supports the intent of this proposal. However, we strongly believe that lower exclusion thresholds on pension incomes than provided for in this bill need to be considered to address the general fund budget shortfall. We also believe that the State income tax deduction should be totally repealed, but that the repeal should be phased-in for taxpayers whose federal AGIs are less than the thresholds established in the bill.

We defer to the Department of Taxation regarding technical issues of the bill.

TAXBILLSERVICE

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SUBJECT: INCOME, Tax on certain pension income

BILL NUMBER: HB 1092, SD-1

INTRODUCED BY: Senate Committee on Judiciary and Labor

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to provide that beginning after December 31, 2010 pension income under HRS sections 88-91, 235-7(a)(2), and 235-7(a)(3) shall be excluded from state income taxation if a taxpayer's **federal** adjusted gross income (FAGI) is: (1) less than \$100,000 for a taxpayer filing a single return or a married person filing separately; (2) less than \$150,000 for a taxpayer filing as a head of household; or (3) less than \$200,000 for a taxpayer filing a joint return or as a surviving spouse.

Amends HRS section 235-2.4(h) to provide that the deduction for state taxes **shall not be operative** to corporate taxpayers and **shall be operative** if a taxpayer's **federal** adjusted gross income (FAGI) is: (1) less than \$75,000 for a taxpayer filing a single return or a married person filing separately; (2) less than \$112,500 for a taxpayer filing as a head of household; or (3) less than \$150,000 for a taxpayer filing a joint return or as a surviving spouse.

The amendments made to HRS section 235-7(a) by this act shall not be repealed when that section is reenacted on January 1, 2013 by Act 166, SLH 2007.

EFFECTIVE DATE: Upon approval for tax years beginning after December 31, 2010

STAFF COMMENTS: While Hawaii does not currently tax pension income, this measure recognizes those who depend on that pension income for their basic needs by setting a floor before pension income is to be included in gross income for state income tax purposes. As proposed by this measure, this "floor," or threshold, is set at \$100,000 of federal adjusted gross income for individuals, \$150,000 for heads of households, and \$200,000 for those filing a joint return.

The problem with using "federal adjusted gross income" is that not only does it already include pension income but it may also include one-half or more of the taxpayer's Social Security benefits. Thus, this proposal not only changes the policy regarding the taxation of pension income, but it also changes the policy with regard to the taxation of Social Security benefits. It is not that the state tax will be levied on Social Security benefits per se, but because federal adjusted gross income includes Social Security benefits which then define whether or not one's pension becomes taxable for state income tax purposes, it has an indirect effect of taxing those benefits. This approach also ignores the actual size of the retiree's pension income as exceeding the threshold or floor and throws all of the retiree's income on the table in determining whether or not one's pension will be taxable for state income tax purposes.

So, the retiree may have been employed at a business where the pension plan met the bare minimum requirements of the law and the contributions to the plan may have been relatively small in favor of

paying more generous wages. That retiree, being prudent, set aside some of those generous wages either in savings or purchased equities to provide for his or her retirement. As a result, the earnings of those savings and investments provide for the bulk of the retiree's income. Because these sources of income are included along with what might be considered a pittance of pension income, the retiree exceeds the threshold subjecting all of the pension income to the state income tax. On the other hand, another retiree's only source of income is his pension, but that pension falls just below the proposed threshold of federal adjusted gross income and thus escapes any state income tax. It would seem fairer that if pension income is now to be taxable for state income tax purposes, the threshold be measured only against the form of income called pensions. Treatment of this form of income would be identical regardless of other sources of income and regardless of the federal definition of income.

Of the forty-four other states which levy a state personal income tax, 18 states set a dollar floor amount with the most generous being Michigan at \$45,120 followed by Kentucky which grants a \$41,110 floor before pension income is subject to state taxes in the Bluegrass State. Of those states with income taxes, 17 states tax pension income from dollar one with no exclusion, four states, including Hawaii, tax some form of retirement income and four states completely exempt all retirement income.

Further, it should be noted that of the exclusions listed under HRS 235-7 where the pension exclusion is currently lodged, the exclusion applies to amounts of the types of income excluded. For example, in the case of income received by components of the army reserve and national guard, it is specific dollar amounts that are excluded from the state income tax. None of these excluded amounts are contingent upon the taxpayer's adjusted gross income. Thus, it would seem only consistent and fair that an amount of pension income be excluded as opposed to the method proposed which would make one's entire pension is subject to tax if the taxpayer's FAGI goes over the threshold by a single dollar. It should be noted the most recent report of the Tax Review Commission suggested an exclusion of \$50,000 of pension income as an example.

That said, one has to ask why has it come to this point that the state has to tax a source of income that traditionally has been exempt? All taxpayers, both workers and retirees, must share the blame as few paid attention to how lawmakers frittered our tax dollars away on this or that program. Now that many of those programs and services lawmakers initiated in the last few years have constituencies, it has been difficult for lawmakers to rein in that spending. The swift and vehement rejection of the proposal to tax pensions lies not so much in the fact that it will now tax income that was formerly exempt as much as it is the fact that taxpayers already reel under the heavy burden of taxes in Hawaii. As one senior noted, "What have lawmakers been doing with all the taxes we pay? "

While a previous draft of this measure eliminated the deduction for state taxes paid for all taxpayers, this draft retains the deduction for taxpayers whose FAGI is: (1) less than \$75,000 for a taxpayer filing a single return or a married person filing separately; (2) less than \$112,500 for a taxpayer filing as a head of household; or (3) less than \$150,000 for a taxpayer filing a joint return or as a surviving spouse.

Although the state administration may argue that the federal Code does not allow for the deduction of federal income taxes withheld, it should be remembered that the federal code does allow for the deduction of state income tax paid and withheld. In its effort to conform as closely as possible with the federal definition of income, the state picks up this provision which recognizes that to **NOT** allow the deduction of state income taxes withheld and paid would be to impose the state income tax on state

income taxes. That said, if the intent is to generate additional revenue from the state income tax then lawmakers should just raise rates which is much more honest. Lawmakers should remember why the state conforms to the federal law, to reduce administrative and compliance costs for both the tax department and the taxpayer. Falling out of conformity merely increases the cost of compliance and should be viewed as an additional “tax” imposed by policymakers. Not only will the deductions on Schedule A be different for state and federal tax purposes, but should the taxpayers receive a refund of state taxes withheld or paid in estimated tax payments, that refund would no longer be reported on the subsequent tax year’s return as no benefit accrued with the loss of the income tax deduction. This would represent another difference between state and federal reporting of income.

If the sole intent of eliminating the deductibility of state income taxes is to generate additional monies for the general fund, then an implicit increase in income tax rates would certainly be more honest. No doubt taxpayer’s income tax liability will rise should this deduction be eliminated, the same could be accomplished with an increase in rates. The difference is that taxpayers would know that lawmakers increased income tax rates. With the elimination of the deduction it would cause an increase in the taxpayer’s bill without setting out that the reason was the loss of the deduction. Given that Hawaii’s standard deduction is so low, taxpayers in Hawaii are more likely to itemize than in other states because income taxes are so high along with the cost of housing that drives up the mortgage interest deduction and the fact that people in Hawaii tend to be more generous and, therefore, have more charitable contribution deductions than income taxpayers in other states. Therefore, the elimination of the deductibility of state income tax amounts to nothing more than an income tax increase for which lawmakers should shoulder the responsibility.

While this and other “revenue enhancement” measures are proposed to address the state’s budget deficit, it should be remembered that the adoption of this and other similar “revenue enhancement” measures will not be effective unless government expenditures are also curtailed.

Digested 3/30/11



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

TESTIMONY ON HOUSE BILL 1092, HOUSE DRAFT 1, SENATE DRAFT 1, RELATING TO TAXATION

Senate Committee on Ways and Means

Hon. David Y. Ige, Chair

Hon. Michelle Kidani, Vice Chair

Thursday, April 7, 2011, 9:30 AM

State Capitol, Conference Room 211

Honorable Chair Ige and committee members:

I am Kris Coffield, representing the IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 60 local members. On behalf of our members, we offer this testimony in support of HB 1092, HD1, relating to taxation.

Currently, Hawaii is one of only ten states that exclude all local, state, and federal pension income from taxation. At the same time, following the financial devastation wrought by the recent tsunami, the state's biennium deficit has breached \$1.3 billion, and may be exacerbated by a depleted Japanese visitor stream over the coming months. To help rectify that gap, this bill would tax resident pensioners and amend the federally adjusted gross income levels of taxpayers subject to deductions under sections 164(a)(3) and 164(b)(5) of the Internal Revenue Code to comport with three threshold levels: single individuals and married retirees filing separate returns whose federally adjusted gross income is less than \$75,000, heads of household whose AGI is less than \$112,500, and joint filers or surviving spouses whose AGI is less than \$150,000. Though the IMUAlliance fully supports efforts to raise revenue via the enactment of a pension tax, we also support revising the threshold level downward for parts one and two of this bill to match the threshold levels contained in part three, while also lowering the threshold for joint filers and surviving spouses in all three parts to \$125,000, an income cutoff tendered and vetted by your committee earlier this session (via proposed SB 162, SD1), thereby raising over \$50 million in total revenue, according prior estimates.

Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, April 05, 2011 10:48 AM
To: WAM Testimony
Cc: beebiejai@aol.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: comments only
Testifier will be present: No
Submitted by: Patricia Cardinal
Organization: Individual
Address:
Phone:
E-mail: beebiejai@aol.com
Submitted on: 4/5/2011

Comments:

It is a shame that the House and Senate can only tax and spend. I haven't heard anyone say enough is enough. We must live within our means. If we don't have the money then don't spend. No one has said cut or even freeze our spending levels. Many of the voters are retired. We don't have the ability to increase our income, yet our budget gets smaller and smaller as our taxes, user fees continue to rise. Once you start taxing pensions and deficits continue to grow the threshold will continue to shrink and then all pension income will be taxed! This is a very slippery slope that you're headed down.

To the Hawaii Legislature on HB1092.txt

To the Hawaii Legislature on HB1092
Apr 2011

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We who have pensions have EARNED them. We paid our taxes during the years we worked to earn our pensions, we contributed to the success of this state and nation during those years and we should not have them taxed by you because of your inability or refusal to balance your budget. You are mandated to serve your constituents not to tax them into starvation so that you can have an extra source of income for a state budget that you refuse to balance.

During the working years of our pension building we were productive members of society and we deserve your respect not your disdain. Don't treat the pensioners of Hawaii as a piggybank that you can break into because you've run out of money due to your spending binges. Discipline yourselves and stop your excessive spending which requires you to raid the hard earned pensions of those who have been disciplined enough to plan for their futures.

You as a governing body should not have to be told that you can't spend more money than you take in; but apparently you do need to be told. I as a Hawaii voter am telling you to stop spending more money than you take in!

I oppose HB1092 and I want you ALL to vote against this bill which only shows the disrespect of some in the state government to those of us who are fiscally responsible. Stop creating bills in the Hawaii Legislature which cause you to have to look for more money in "creative ways" and start reducing the size of government, government handouts and the welfare state/ entitlement mentality that pervades the governing body of the State of Hawaii.

Sincerely,

Joseph P. Picon
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Taxation Testimony 4/1/2011

I want to take this opportunity to share some of my thoughts regarding the governor's proposed change to tax retired income.

I chose to retire in Hawaii following the conclusion of my military career. However, I also expected that my retired pay would not be subject to HI State income tax. It was part of my decision to retire in Hawaii...which is not an inexpensive place to retire by any measure. Hawaii has the highest \$/KWH electricity in the nation, water/sewage is the highest I've ever paid and will probably double over the next few years to pay for the secondary treatment mandated by EPA, real estate is some of the most costly in the nation, and we could go on. However, Hawaii's "veteran friendly" taxation was a matter of discussion at the "transition assistance program (TAP) " seminars I attended in the years before my retirement and it was a factor that made me think I could live here, despite the high costs, and make ends meet. This proposed tax, is indeed a surprise.

In my personal situation, since my retirement from over 30 years of service with the United States military, I have established a business. For this income, I pay GET, the HI State income tax, and I spend virtually all of my income in Hawaii and therefore pay more GET. This is what I expected would happen regarding that income. Additionally, my wife still works full time. She pays taxes too. When our family budget doesn't balance, we make cuts. We do not have the option of telling our neighbors to pay for our expenses.

The taxation of my military retirement, even with the most recently announced AGI levels of \$100K single, and \$200K joint, will cause me to cease operating my business as the state taxes will simply be too onerous. It makes it not worthwhile for me to work a second career and grow a business. It makes it more cost effective for me to not work, not pay GET, not spend more earnings in Hawaii, and not pay GET on those expenditures. This increased taxation will not only tax my retired pay, but it will increase our marginal income tax rate at the same time.

The editorial attached below by Mr. Pace, which I read last month and I'm sure you saw as well, makes what I consider to be some good points on this issue.

- The thresholds are indeed sharp. \$1.00 in earnings can cost a person thousands.
- Not only does Hawaii have the highest marginal income tax, I recently read we have the highest collective rate of taxation.
- I certainly did make financial and life plans based on Hawaii not taxing my retired pay. Future retirees will conduct similar analyses.
- I agree that this is a long-term solution to a short-term crisis. The governor is indeed "not letting a good crisis go to waste."
- If this tax is enacted, I will examine my options of where to live in retirement and spend my retired, and possibly second career, pay. I believe others will as well.
- Like the AMT, this tax will eventually affect many more people due to the reality of inflation.
- There is too much duplication between city/county and state functions in Hawaii. There are simply too many government employees for the tax payer to fund.
- I do not consider myself to be financially wealthy. I chose long ago to live my life within my means so that I could live a comfortable, not exorbitant, retirement. Now the rules are possibly changing, and without much notice.

Economists state that taxation changes behavior. I haven't yet decided to leave Hawaii, but if this proposal to tax retired pay is enacted (retroactively, it seems to January 1, 2011) I will certainly look at that possibility. It is simply a matter of cost of living and quality of life.

I hope you will consider my inputs and the impact this proposed increase in taxation will cause.

Sincerely,
Dana E. Ware
Kapolei

Abercrombie's pension tax idea is misguided and just plain wrong

By Jeff Pace

POSTED: 01:30 a.m. HST, Feb 10, 2011

Gov. Neil Abercrombie's proposal to tax pensions is shortsighted and just plain wrong. Here are the reasons why this is a very bad idea:

» The proposal is fundamentally unfair. Retirees who make one dollar over the adjusted gross income (AGI) thresholds will find their entire pension taxed. Retirees who make one dollar less will pay nothing. (The governor says Social Security will not be taxed, but last time I looked it was included in the computation of the federal AGI and the draft legislation makes no specific exception for Social Security.)

» The pension tax is a big enough tax increase to force higher-earning middleclass people out of the state and discourage them from coming here in the first place. We already have the highest marginal income tax rate in the country. The pension tax will just raise the tax bar higher and, in the long run, be more likely to reduce tax revenues than raise them.

» This tax will hit those least able to go back to work -- the elderly -- with a very large surprise tax increase. People made plans, committed to mortgages, made long-term health provisions based on long-standing state tax policy which is now going to be changed without warning. Financial obligations don't just magically go away because a politician suddenly decides a taxpayer has excess income.

» This will be a permanent, never-ending tax to address a temporary, recession-induced shortfall. With every recession in our history, tax revenues have fallen, then recovered as the economy regained its footing. In effect, the governor will be using a short-term crisis to increase funding for his post-recession plans. All taxpayers should be concerned about what the next fiscal crisis will bring.

» This isn't just about elderly retirees. Hawaii's military retirees in their 40s and 50s will now have to think hard about whether or not they can afford to live here. A single person or a two-earner couple with a military pension could easily exceed the AGI threshold. It would be a shame to lose more good citizens, many of them locals, who leave the military and hope to stay here. Is this a way to thank the veterans who have just spent the last decade at war?

» The AGI threshold amounts aren't indexed to inflation. Meaning, as pensions are increased by cost of living allowances, more pensions will cross into tax territory. Soon enough, by the governor's definition, we will all be "wealthy" enough to bear more taxation.

» The governor hasn't shown he's serious enough about cutting duplication, waste and unnecessary programs. Nowhere in his piece does he mention cutting state programs or eliminating those that duplicate the city's. Until he's done that, new tax revenues will just go into the same old political black hole.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, April 05, 2011 6:20 PM
To: WAM Testimony
Cc: swartzg001@hawaii.rr.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: gregory swartz
Organization: Individual
Address:
Phone:
E-mail: swartzg001@hawaii.rr.com
Submitted on: 4/5/2011

Comments:
Testimony submitted previously.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, April 06, 2011 3:14 PM
To: WAM Testimony
Cc: brownm009@hawaii.rr.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Colonel Mark L. Brown, USA (Ret.)
Organization: Individual
Address:
Phone:
E-mail: brownm009@hawaii.rr.com
Submitted on: 4/6/2011

Comments:

My wife and I are Kaneohe residents represented in the State Senate by Senator Jill N. Tokuda.

Hawaii is one of only 17 states that either do not tax pension and social security income, or do not tax personal income at all. Like for other resort States such as Florida (which has no personal income tax), this tax advantage encourages tens of thousands of retirees to settle here in their golden years. Retirees are very beneficial economically because they bring their assets and pension income to their new home and usually do not compete for employment. In effect, they are long-term tourists who boost local job opportunities and business income substantially across-the-board. Taxing pensions would discourage future retirees from settling in Hawaii and cause some current retired residents to leave for lower cost-of-living alternatives on the Mainland.

Although the higher Adjusted Gross Income (AGI) pension tax boundaries provided by HB 1092 HD1 SD1 (of \$200k for a joint tax return) is a considerable improvement over the low \$75k AGI (for a joint return) threshold originally proposed by Gov. Abercrombie, clearly any pension tax would be harmful to the State economy.

I therefore recommend the State legislature discard the pension tax alternative and select other options, such as the modest increases in General Excise Taxes proposed by HB 793, which would meet budgetary requirements and not harm the State economy to a disproportional extent.

Thank you for your thoughtful consideration.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, April 06, 2011 8:58 PM
To: WAM Testimony
Cc: josephpollarddo@yahoo.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Joseph Pollard
Organization: Individual
Address:
Phone:
E-mail: josephpollarddo@yahoo.com
Submitted on: 4/6/2011

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, April 06, 2011 11:32 PM
To: WAM Testimony
Cc: sassylady3128@yahoo.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Lisa Reed
Organization: Individual
Address:
Phone:
E-mail: sassylady3128@yahoo.com
Submitted on: 4/6/2011

Comments:

I am strongly opposed to this bill for the following reasons:

1. The budget should not be balanced on the backs of retirees on fixed incomes. They were promised no State income tax and many planned their finances based on that. They are the ones who can least afford it.
2. The bill is also unfair since people who earn a pension \$1 more than the limit would have all their pension taxed, while those earning \$1 less would not.
3. There is a precedent from the State Supreme court that the Hawaii Constitution says that accrued benefits shall not be diminished or impaired. There will be a lawsuit if this bill passes.
4. I am also concerned that if this bill passes it will be a "foot in the door." Then it will be easy to just lower the limits where pensions will be taxed.

Thank you.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, April 06, 2011 11:55 PM
To: WAM Testimony
Cc: aberky@honolulu.gov
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Andy Berky
Organization: Individual
Address:
Phone:
E-mail: aberky@honolulu.gov
Submitted on: 4/6/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 12:00 AM
To: WAM Testimony
Cc: jsherlock@honolulu.gov
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: James Sherlock
Organization: Individual
Address:
Phone:
E-mail: jsherlock@honolulu.gov
Submitted on: 4/6/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 12:26 AM
To: WAM Testimony
Cc: majorfb@earthlink.net
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Forrest Broome
Organization: Individual
Address:
Phone:
E-mail: majorfb@earthlink.net
Submitted on: 4/7/2011

Comments:

As a Honolulu Police Officer for more than 30 years I had an excellent sick leave record, and did all the things I was asked to do for the the people of Honolulu, and as directed by the political structure of the Department, County and State. Please do not set in motion a tax on pensions that could very easily become an unintended Well to pay for political inefficiencies such as redundant oversights by numerous agencies. Work on trimming the fat in government and let the retirees live and die in peace.

For over 30 years I knew I would be a first responder to events you would not be asked to go to; and that I knew I was tasked with the responsibility to attend to. Now that I'm in my mid 60's I am disabled, and in need of constant medical care and have been thrown into the Medicare system which the National Politicians have done there best to cut and trim so that it can be spread way too broadly and is now far too thin to cover many things that my HMSA plan did cover. The loss of a dollar means far less money for the already additional expenses I face from illness and disabilities and a politically drained medical system. Please be cognizant of what you do now as it may have a disastrous affect on YOU when you are retired and unable to contribute to your own upkeep any longer. It is a very stressful and helpless place to be... I pray that NO Hawaii Retiree experience the hopelessness of being elderly, ill, and unemployed.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 12:30 AM
To: WAM Testimony
Cc: ramosj002@hawaii.rr.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: John RAMOS
Organization: Individual
Address:
Phone:
E-mail: ramosj002@hawaii.rr.com
Submitted on: 4/7/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 1:25 AM
To: WAM Testimony
Cc: jlouiskahanu@honolulu.gov
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: J. K. Louis-Kahanu
Organization: Individual
Address:
Phone:
E-mail: jlouiskahanu@honolulu.gov
Submitted on: 4/7/2011

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 3:35 AM
To: WAM Testimony
Cc: H1frwy@aol.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Arcadio Ramos Jr
Organization: Individual
Address:
Phone:
E-mail: H1frwy@aol.com
Submitted on: 4/7/2011

Comments:
Pensioner paddled the canoe already!

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 5:31 AM
To: WAM Testimony
Cc: higurby@hawaii.rr.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Ninette Vonier
Organization: Individual
Address:
Phone:
E-mail: higurby@hawaii.rr.com
Submitted on: 4/7/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 7:54 AM
To: WAM Testimony
Cc: vegasa001@hawaii.rr.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Alan Vegas
Organization: Individual
Address:
Phone:
E-mail: vegasa001@hawaii.rr.com
Submitted on: 4/7/2011

Comments:

Please do not unduly burden our retirees, who have worked and contributed already for years and years.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 7:55 AM
To: WAM Testimony
Cc: vegasa001@hawaii.rr.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Alan Vegas
Organization: Individual
Address:
Phone:
E-mail: vegasa001@hawaii.rr.com
Submitted on: 4/7/2011

Comments:

Please do not unduly burden our retirees, who have worked and contributed already for years and years.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 8:17 AM
To: WAM Testimony
Cc: d8.heavy@gmail.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: b.perez
Organization: Individual
Address:
Phone:
E-mail: d8.heavy@gmail.com
Submitted on: 4/7/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 8:18 AM
To: WAM Testimony
Cc: d8.heavy@gmail.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: b.perez
Organization: Individual
Address:
Phone:
E-mail: d8.heavy@gmail.com
Submitted on: 4/7/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 8:17 AM
To: WAM Testimony
Cc: d8.heavy@gmail.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: b.perez
Organization: Individual
Address:
Phone:
E-mail: d8.heavy@gmail.com
Submitted on: 4/7/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 10:13 AM
To: WAM Testimony
Cc: bhottendorf@gmail.com
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Blake Hottendorf
Organization: Individual
Address:
Phone:
E-mail: bhottendorf@gmail.com
Submitted on: 4/7/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 07, 2011 10:38 AM
To: WAM Testimony
Cc: rlurbe@honolulu.gov
Subject: Testimony for HB1092 on 4/7/2011 9:30:00 AM

Testimony for WAM 4/7/2011 9:30:00 AM HB1092

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Raymond LURBE
Organization: Individual
Address:
Phone:
E-mail: rlurbe@honolulu.gov
Submitted on: 4/7/2011

Comments: