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HOUSE COMMITTEE ON FINANCE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 306 PROPOSED HD 1 RELATING TO TAXATION

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR
DESIGNEE)
COMMITTEE: FIN
DATE: MARCH 3, 2011
TIME: 10:00AM

POSITION: SUPPORT PART I; CONCERNS WITH PART II; NO
POSITION ON PART III

This bill has three parts. Part I clarifies the estate tax law. Part II repeals the income tax credit for taxpayers who pay income taxes to other jurisdictions. Part III imposes a new excise tax on gross income received from providing broadcast satellite services.

COMMENTS ON PART I – The Department of Taxation (Department) supports Part I of this bill. The Department has one technical recommendation: change the effective date of this part so that it applies retroactively to the estates of decedents who died after April 30, 2010.

Because this bill merely clarifies the existing estate tax and makes no substantive changes, the Department estimates no revenue impact.

COMMENTS ON PART II – The Department is concerned Part II may potentially be unconstitutional if the repeal of this tax credit is characterized as double taxation. However, the Department defers to the Department of the Attorney General for final analysis.

For informational purposes, the Department would like to provide the amount of these credits claimed in past years:

- Tax Year 2006: \$44.3 million
- Tax Year 2007: \$29.6 million
- Tax Year 2008: \$22.4 million
- Tax Year 2009: \$20.0 million

COMMENTS ON PART III – The Department takes no position on this part and notes only that it cannot provide a revenue estimate due to the small population of vendors that would be subject to this tax.

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ESTATE AND TRANSFER, INCOME, MISCELLANEOUS, State imposition; repeal credit for taxes paid; tax on direct broadcast satellite providers

BILL NUMBER: HB 306, Proposed HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 236D-3 to provide that an estate and transfer tax shall be imposed on the transfer of the taxable estate of every resident according to the following:

If the taxable estate is:	The tax shall be:
Not over \$3,560,000	0
Over \$3,560,000 but not over \$3,600,000	9.6% of the amount in excess of \$3,560,000
Over \$3,600,000 but not over \$4,100,000	\$3,840 plus 10.4% over \$3,600,000
Over \$4,100,000 but not over \$5,100,000	\$55,840 plus 11.2% over \$4,100,000
Over \$5,100,000 but not over \$6,100,000	\$167,840 plus 12% over \$5,100,000
Over \$6,100,000 but not over \$7,100,000	\$287,840 plus 12.8% over \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$415,840 plus 13.6% over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$551,840 plus 14.4% over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$695,840 plus 15.2% over \$9,100,000
Over \$10,100,000	\$847,840 plus 16% over \$10,100,000

Repeals the "federal credit" provision of the maximum amount of the credit for state death taxes allowed by section 2011 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent's adjusted taxable estate and the federal exclusion amount under HRS section 236D-2.5. This section shall be applicable to tax years beginning after December 31, 2010.

Repeals HRS section 235-55 which provides an income tax credit in the amount of taxes paid by resident taxpayers in any state, or to the District of Columbia, Puerto Rico, or any other territory or possession of the United States, or to a foreign country. This section shall be applicable to tax years beginning after December 31, 2010.

Adds a new chapter to the HRS to impose an excise tax on direct broadcast satellite service providers. The tax shall be assessed and collected annually on such providers on account of their business and other activities in the state measured by gross revenues derived from the sale of direct broadcast satellite services, multiplied by ____%. The tax shall not apply to internet access services, including services purchased, used, or sold to provide direct broadcast satellite services. Delineates provisions for the remittance, reporting, and record keeping by the provider. The revenue from the excise tax shall be deposited into the general fund. This section shall take effect on January 1, 2012 and be applicable to tax years beginning after December 31, 2011.

EFFECTIVE DATE: Upon approval as noted

STAFF COMMENTS: With the adoption of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the federal estate tax was phased out and ultimately repealed over a ten-year period. Along with that repeal, the credit that is allowable under the federal law recognizing that an estate may have incurred state death taxes is phased out over a three-year period beginning in 2002. Hawaii, like many other states, has utilized this amount as its state death tax since 1983 and is known as the “pick up” tax as the state merely picks up what the federal table allows as state death taxes.

The pick up tax was created in 1924 when Congress provided a credit against the federal estate tax which had been created in 1916 in recognition of the estate having been required to pay death taxes to the state. This dollar-for-dollar credit against state taxes paid enables the state to “pick up” some of the federal tax liability without increasing the total liability of the state. Thus, when the state chose to eliminate its old inheritance tax in favor of the pick up tax in 1983, it eliminated any additional state tax liability for the estate and made its tax revenues from this source completely dependent on the federal law. One of the pluses to utilizing the pick up tax is that it eliminated any additional paperwork that a separate state death tax would involve.

On January 1, 2010, the federal estate tax was officially repealed by EGGTRA, but on December 17, 2010, it was reinstated retroactively to January 1 by Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (PL 111-312). The federal estate tax is now 35% with a \$5 million individual exemption for the 2010, 2011 and 2012 tax years. On January 1, 2013 the exemption and rate are scheduled to revert back to the numbers that were in effect in 2002 - a \$1,000,000 exemption and 55% estate tax rate.

This measure proposes to “decouple” from the federal provisions and impose a tax on estates of over \$3,560,000 at 9.6% to 16% for estates \$10,100,000 and over. It should be noted that while Hawaii utilized the “pickup tax” and relied on the federal Internal Revenue Code provisions, and this measure would adopt a similar tax for Hawaii tax purposes, it is questionable whether the estate and transfer tax provisions under HRS section 236D are updated to be efficient and equitable since these provisions have not been needed and have not been amended or updated.

Further, it should be noted that in the closing days of the 2010 session of Congress, federal lawmakers resurrected the federal death tax, setting the estate tax exemption at \$5 million and a top rate of 35% of any amount of an estate over and above the basic exemption applicable to those dying after December 31, 2009 but before January 1, 2013. This measure appears to use \$3,560,000 as the floor for state tax exemptions for Hawaii estates, which is slightly higher than the federal tax exemption that was in effect through the calendar year 2009. That extension of the federal estate tax will sunset on December 31, 2012 when the federal exemption will drop back to \$1 million which will force federal lawmakers to revisit this issue at that time. Thus, this measure should be as another temporary measure to reinstate the estate tax for Hawaii purposes. Regardless, given that Hawaii went without an estate tax for nearly five years, one questions what the motive for the reinstatement of the law accomplishes other than a grab for additional general fund revenues. If nothing else, lawmakers should impose a sunset provision of 2013 on this proposed change to force local lawmakers to review what Congress will do in 2012 in order to put the Hawaii law in synch with the federal law. Under this law, some estates may be taxable for state purposes but not for federal purposes in the next two years.

This measure also repeals the provision that allows taxpayers to claim a credit for taxes paid in any state, the District of Columbia, Puerto Rico, or any other territory or possession of the United States or foreign county. This provision was adopted to prevent taxpayers from being taxed twice on the same income. Inasmuch as that portion of income earned from sources outside Hawaii will be taxed by the local jurisdiction where that income is realized, this tax credit allows the taxpayer to pay only the maximum tax that would otherwise be due on that income. Should the income tax rate be higher in the other jurisdiction, Hawaii sees no part of the tax on that income. On the other hand, should the tax imposed on by the other jurisdiction be lower than what Hawaii imposes on that same income, the credit allows the taxpayer to take credit for that tax paid, but still pay the additional amount of tax due as a result of Hawaii imposing a higher rate. Should this provision be repealed, the taxpayer would end up paying the other jurisdiction's tax plus the Hawaii tax from dollar one, again, a double taxation of the same amount of income.

This measure also proposes an excise tax on the providers of direct broadcast satellite service, such as Direct TV, Dish network, etc. While the tax would be based on a percentage of the amount of gross revenue derived from providing service in the state, depending on the percentage adopted, a rate set too high may be considered confiscatory and any attempt to extract too much from these providers will cause these providers to stop offering service to Hawaii. While it is not known how these businesses are currently being taxed or how the tax is being applied, caution is advised given the fact that this is a closed circuit service receiving transmissions both from within the state and without. Whether or not the fees paid for these services should be apportioned begs a closer examination of this communications service.

Digested 3/2/11

March 3, 2011

The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: H.B. 306, Proposed H.D. 1, Relating to Taxation

HEARING: Thursday, March 3, 2011 at 10:00 a.m.

Aloha Chair Oshiro, Vice Chair Lee and members of the Committee:

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR would like to make the following **comments** with respect to Part I of H.B. 306, Proposed H.D. 1, Relating to Taxation, which amends the method of computing the estate and transfer tax.

HAR believes that the computation of the Hawaii Estate and Transfer Tax under HRS §§ 236D-3 and 236D-4 is confusing and does not reflect the legislative intent of Act 74, SLH 2010. HAR further believes that this confusion is in large part caused by HRS §236D-2.5 which HAR believes should be repealed.

HRS §236D-2.5 was inserted into Act 74 to ensure that estates valued at under \$3,500,000 would not be subject to the Hawaii Estate and Transfer Tax as was the case in 2009 under the federal Estate Tax Law (and which has consistently been the position of the Obama Administration). Part I of H.B. 306, Proposed H.D. 1, inserts what amounts to a \$3,560,000 exemption which is currently contained in Act 74 into a tax table which incrementally applies the Hawaii Estate and Transfer Tax to "taxable estates" (as defined in HRS §236D-2) in excess of \$3,560,000 at rates equivalent to the former credit for state death taxes under IRC §2011 (i.e., from 9.6% to 16%).

Part I of H.B. 306, Proposed H.D. 1, thereby corrects what HAR believes may be a misinterpretation of Act 74 by the Department of Taxation on the attached Form M-6 whereby the first dollar over \$3,560,000 is apparently taxed at smaller of: (a) \$234,960 plus 9.6% of one dollar (possibly an unconstitutional taking), or (b) 45% of one dollar (the 2009 federal estate tax rate which is higher than the current federal rate of 35% under IRC §2001).

Because Act 74 applies to property interests of persons who die after April 30, 2010, HAR believes that you should consider adopting a provision similar to the special election with respect to estate of decedents dying in 2010 under the current federal estate tax law (P.L. 111-312) which was enacted on December 17, 2010, and amend Section 8 of H.B. 306, Proposed H.D. 1, to read as follows:



SECTION 8. This Act shall take effect upon its approval; provided that:

- (1) A personal representative may elect to have the provisions of Part I apply to the transfer of property interests of a person who dies after April 30, 2010 and prior to the effective date of this Act;
- (2) Part II shall apply to taxable years beginning after December 31, 2010; and
- (3) Part III shall take effect on January 1, 2012, and shall apply to taxable years beginning after December 31, 2011.

Mahalo for the opportunity to testify.

Attachments

United States Estate (and Generation-Skipping Transfer) Tax Return

OMB No. 1545-0015

Department of the Treasury
Internal Revenue Service

Estate of a citizen or resident of the United States (see separate instructions).
To be filed for decedents dying after December 31, 2008, and before January 1, 2010.

Part 1—Decedent and Executor	1a Decedent's first name and middle initial (and maiden name, if any)		1b Decedent's last name		2 Decedent's Social Security No.		
	3a County, state, and ZIP code, or foreign country, of legal residence (domicile) at time of death		3b Year domicile established	4 Date of birth	5 Date of death		
	6a Name of executor (see page 5 of the instructions)		6b Executor's address (number and street including apartment or suite no.; city, town, or post office; state; and ZIP code) and phone no.				
	6c Executor's social security number (see page 5 of the instructions)						
	7a Name and location of court where will was probated or estate administered					7b Case number	
	8 If decedent died testate, check here <input type="checkbox"/> and attach a certified copy of the will. 9 If you extended the time to file this Form 706, check here <input type="checkbox"/>						
10 If Schedule R-1 is attached, check here <input type="checkbox"/>							

Part 2—Tax Computation	1 Total gross estate less exclusion (from Part 5—Recapitulation, page 3, item 12)	1		
	2 Tentative total allowable deductions (from Part 5—Recapitulation, page 3, item 22)	2		
	3a Tentative taxable estate (before state death tax deduction) (subtract line 2 from line 1)	3a		
	b State death tax deduction. IRC § 2058.	3b		
	c Taxable estate (subtract line 3b from line 3a)	3c		
	4 Adjusted taxable gifts (total taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts that are includible in decedent's gross estate (section 2001(b)))	4		
	5 Add lines 3c and 4	5		
	6 Tentative tax on the amount on line 5 from Table A on page 4 of the instructions	6		
	7 Total gift tax paid or payable with respect to gifts made by the decedent after December 31, 1976. Include gift taxes by the decedent's spouse for such spouse's share of split gifts (section 2513) only if the decedent was the donor of these gifts and they are includible in the decedent's gross estate (see instructions)	7		
	8 Gross estate tax (subtract line 7 from line 6)	8		
	9 Maximum unified credit (applicable credit amount) against estate tax	9	IRC § 2010	
	10 Adjustment to unified credit (applicable credit amount). (This adjustment may not exceed \$6,000. See page 6 of the instructions.)	10		
	11 Allowable unified credit (applicable credit amount) (subtract line 10 from line 9)	11		
	12 Subtract line 11 from line 8 (but do not enter less than zero)	12		
	13 Credit for foreign death taxes (from Schedule(s) P). (Attach Form(s) 706-CE.)	13		
	14 Credit for tax on prior transfers (from Schedule Q)	14		
	15 Total credits (add lines 13 and 14)	15		
	16 Net estate tax (subtract line 15 from line 12)	16		
	17 Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)	17		
	18 Total transfer taxes (add lines 16 and 17)	18		
19 Prior payments. Explain in an attached statement	19			
20 Balance due (or overpayment) (subtract line 19 from line 18)	20			

"Hawaii" taxable estate" under HRS § 236D-2.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than the executor) is based on all information of which preparer has any knowledge.

Sign Here	Signature of executor		Date	
	Signature of executor		Date	
Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Phone no. ()	

STATE OF HAWAII — DEPARTMENT OF TAXATION
HAWAII ESTATE TAX REPORT

THIS SPACE FOR DATE RECEIVED STAMP

TO BE FILED FOR DECEDENTS DYING AFTER APRIL 30, 2010
ATTACH COMPLETED FEDERAL FORM 706 OR 706-NA



DRF101

PRINT OR TYPE	Estate of _____	Probate No. _____
	Actual Place of Death _____	Date of Death _____
	Resident of _____	Decedent's Social Security Number _____

COMPUTATION OF TAX RESIDENT DECEDENT	1	Tentative Hawaii Estate Tax (From Line 6 of Tentative Tax Computation Schedule on page 2.)	1	
	2	Estate or Inheritance Tax Actually Paid to Other State(s)	2	
	3	Gross Value of Property in Other State(s)	3	
	4	Value of Gross Estate(s) (From 2009 federal Form 706)	4	
	5	Percent of Property in Other State(s) (Line 3 divided by Line 4)	5	%
	6	Prorated Credit (Line 1 multiplied by Line 5)	6	
	7	Deduction Allowed (Enter the smaller of Line 2 or Line 6)	7	
	8	Hawaii Estate Tax (Line 1 minus Line 7)	8	●
NONRESIDENT DECEDENT	9	Tentative Hawaii Estate Tax (From Line 6 of Tentative Tax Computation Schedule on page 2.)	9	
	10	Gross Value of Property in Hawaii (Identify on attached 2009 federal Form 706)	10	
	11	Value of Gross Estate (From 2009 federal Form 706)	11	
	12	Percentage of Property in Hawaii (Line 10 divided by Line 11)	12	%
	13	Hawaii Estate Tax (Line 9 multiplied by Line 12)	13	●
PENALTY AND INTEREST	14	Penalty: 5% per month or fraction thereof (Maximum of 25%)	14	
	15	Interest From _____ To _____	15	
TAX DUE	16	TOTAL TAX, PENALTY, AND INTEREST (LINE 8 OR 13 PLUS LINES 14 & 15)	16	
	17	Amount paid with extension or letter (Attach a copy of Form M-68.)	17	
	18	Balance due or (refund) (Line 16 minus Line 17)	18	
	19	AMOUNT PAID - Pay the amount due in full. Attach check or money order for full amount payable to "Hawaii State Tax Collector." Write the decedent's name, social security number, and "Form M-6" on it. Pay in U.S. dollars. Do not send cash.	19	●

I declare, under the penalties set forth in section 231-36, HRS, that this report (including accompanying schedules or statements) has been examined by me and, to the best of my knowledge and belief, is a true, correct, and complete report, made in good faith, for the taxable year stated, pursuant to the Hawaii Estate and Transfer Tax, Chapter 236D, HRS.

PLEASE SIGN HERE	Signature of Personal Representative, surviving spouse, etc. _____	Print Name _____	
	Address of Personal Representative, surviving spouse, etc. _____	Date _____	
PAID PREPARER'S USE ONLY	Preparer's Signature and date _____	Preparer's identification number _____	Check if self-employed <input type="checkbox"/>
	Print Preparer's Name _____		
	Firm's name (or yours if self-employed), address, and Postal/Zip Code _____	Federal E.I. No. _____	
		Phone No. _____	



DRF102

Estate of	Decedent's Social Security Number
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Tentative Tax Computation Schedule	
1. Amount from 2009 federal Form 706, Line 3a or 2009 federal Form 706-NA, Part II, Line 1	
2. Less Allowed Deduction	60,000
3. Adjusted Taxable Estate (Line 1 minus Line 2, but not less than zero)	
4. State Death Tax Credit for Amount on Line 3. (See below for rates.)	
5. Net federal estate tax from 2009 federal Form 706, Line 12, or from 2009 federal Form 706-NA, Part II, Line 8	
6. Tentative Hawaii Estate Tax (enter the smaller of Line 4 or 5)	
If decedent was a resident of Hawaii, enter this amount on line 1.	
If decedent was a nonresident of Hawaii or a nonresident - noncitizen, enter this amount on line 9.	

State Death Tax Credit Rates - If the amount on line 3 above is:					
Over	But not over	the credit is:			
\$ -----	\$ 90,000				\$ 40,000
90,000	140,000	\$ 400	plus	1.6%	of amount over 90,000
140,000	240,000	1,200	plus	2.4%	of amount over 140,000
240,000	440,000	3,600	plus	3.2%	of amount over 240,000
440,000	640,000	10,000	plus	4.0%	of amount over 440,000
640,000	840,000	18,000	plus	4.8%	of amount over 640,000
840,000	1,040,000	27,600	plus	5.6%	of amount over 840,000
1,040,000	1,540,000	38,800	plus	6.4%	of amount over 1,040,000
1,540,000	2,040,000	70,800	plus	7.2%	of amount over 1,540,000
2,040,000	2,540,000	106,800	plus	8.0%	of amount over 2,040,000
2,540,000	3,040,000	146,800	plus	8.8%	of amount over 2,540,000
3,040,000	3,540,000	190,800	plus	9.6%	of amount over 3,040,000
3,540,000	4,040,000	238,800	plus	10.4%	of amount over 3,540,000
4,040,000	5,040,000	290,800	plus	11.2%	of amount over 4,040,000
5,040,000	6,040,000	402,800	plus	12.0%	of amount over 5,040,000
6,040,000	7,040,000	522,800	plus	12.8%	of amount over 6,040,000
7,040,000	8,040,000	650,800	plus	13.6%	of amount over 7,040,000
8,040,000	9,040,000	786,800	plus	14.4%	of amount over 8,040,000
9,040,000	10,040,000	930,800	plus	15.2%	of amount over 9,040,000
10,040,000	-----	1,082,800	plus	16.0%	of amount over 10,040,000

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March 3, 2011

Honorable Marcus Oshiro, Chair
Honorable Marilyn Lee, Vice Chair
House Committee on Finance

RE: HB 306 – Relating to Taxation – Support HD 1 Amendment
Finance Committee Agenda (#1) – March 3, 2011, Room 308, 10 A.M.

Aloha Chair Oshiro, Vice Chair Lee and members of the committee:

On behalf of Oceanic Time Warner Cable (Oceanic), which provides a diverse selection of entertainment, information, and communication services to nearly 350,000 households, schools and businesses and currently employs more than 900 highly-trained individuals, we appreciate the opportunity to support the proposed amendment contained in Section 6 to House Bill 306, Relating to Taxation.

Oceanic provides a diverse selection of entertainment, information and communication services to nearly 350,000 households, schools and businesses and currently employs more than 900 highly-trained individuals in Hawaii.

BACKGROUND:

Cable customers pay more taxes and fees than satellite (DirecTV and Dish, for example) customers. This plain and simple fact can be verified by comparing a cable television service bill with a bill a satellite television service bill. Over time, states around the country have enacted parity measures like this one to equalize taxes and fees on cable and satellite services.

PROVIDING HAWAII RESIDENTS A TAX-NEUTRAL CHOICE:

Today, Hawaii customers who wish to purchase video services from Oceanic must pay multiple taxes and fees of up to a combined 5%, as well as state and local general excise taxes. While the state general excise tax is imposed on direct broadcast satellite ("DBS") service, the other taxes and fees, including local general excise taxes, are not imposed on DBS providers or their customers.

Some may ask: "aren't franchise fees paid primarily or solely for use of the rights of way?" The answer is an emphatic "no." In fact, in addition to their payment of franchise fees, Oceanic must separately pay to maintain and repair the rights-of-way as part of

their franchise agreements. Further, in consideration of their franchises, Oceanic is required to provide public access and other free services to local government, which Satellite companies do not pay.

Whether franchise and other fees are treated as a "tax" or a "fee", the impact is the same – Hawaii cable subscribers have to reach deeper into their pockets than Hawaii satellite subscribers. Oceanic simply supports that Hawaii allow its residents a tax neutral choice by equalizing the taxes and fees imposed on functionally similar video services.

VIDEO TAX NEUTRALITY IN OTHER STATES:

Ten states enacted some form of video tax parity: Ohio, Kentucky, Delaware, Florida, Massachusetts, North Carolina, Tennessee, Utah, Virginia, and Washington. These states recognized the unfair treatment of some video programming service providers and the impact the disparate treatment has on consumers.

CONCLUSION:

Oceanic respectfully requests that Hawaii close the satellite loophole and enact tax reform to ensure that functionally equivalent services are taxed similarly. Sound tax policy dictates as much. Indeed, a fair and administrable tax system would promote the growth of the video programming marketplace and provide a tax-neutral choice for Hawaii consumers.

Further, this tax reform is helpful to providing relief to the state's budget deficit problem.

We appreciate your careful consideration of this matter and urge the Committee to support this amendment.

Sincerely,

Bob Barlow
President of Oceanic Time Warner Cable

March 2, 2011

The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: H.B. 306, Proposed H.D.1, Relating to Taxation

HEARING: Thursday, March 3, 2011 at 10:00 a.m.

Honorable Chair Oshiro, Vice Chair Lee and members of the Committee:

My name is Constance Liu, an estate planning attorney in the State of Hawaii.

As an estate planning practitioner, I **support Part I of H.B. 306, Proposed H.D.1**, because it clarifies what the estate tax rates are under Chapter 236D of the Hawaii Revised Statutes.

Practitioners are having difficulty calculating the Hawaii estate tax rates under the current law, and sometimes coming up with different results. More importantly, practitioners are unable to tell clients what their expected Hawaii estate tax will be.

This proposed amendment to Chapter 236D of the Hawaii Revised Statutes provides a tax table that is easy to comprehend and allows practitioners to give clients an estimate of what their estate tax liability will be.

Thank you for the opportunity to testify.

March 2, 2011

The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

Re: H.B. 306, Proposed H.D.1, Relating to Taxation
Hearing Date: March 3, 2011 at 10:00 a.m.

Honorable Chair Oshiro, Vice Chair Lee, and members of the Committee:

My name is Caron Ikeda and I am an attorney. I would like to submit the following comments with respect to Part I of H.B. 306, Proposed H.D. 1, Relating to Taxation ("H.B. 306").

I support Part I of H.B. 306 because it clarifies the Hawaii estate tax rates and matches the law more closely with what the legislature intended when it changed Hawaii's estate tax laws during the 2010 legislative session. I also believe that other, more complicated issues need to be addressed. Under Act 74, which became law on April 29, 2010, Hawaii now imposes an estate tax of up to 16.0% on Hawaii gross estates in excess of \$3.5 million. At the time Act 74 became law, there was no federal estate tax. However, with the passage of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "Tax Act"), there is now a \$5 million estate tax exemption amount on the federal level. The Tax Act will sunset on December 31, 2012.

This means that until at least the end of 2012, the state and federal exemption amounts will be different. The differences existing between the state and federal laws lead to tremendous difficulties for the state government and for community members that are being overlooked. This separate state estate tax law will be significantly difficult and costly for the State to administer. For professionals in this area, having bifurcated laws is complicated and leads to higher costs for consumers. For example, this difference in exemption amounts is resulting in the creation of very complex trusts for clients to accommodate both sets of laws. I believe that the problems caused by Act 74 should be remedied by amending the Hawaii laws to conform the Hawaii estate tax exemption amount to the federal estate tax exemption amount, which will greatly simplify both administration and planning.

Thank you for the opportunity to testify.

TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE
ON
H.B. 306 proposed HD1 RELATING TO TAXATION
3 March 2011
10:00 A.M.
Conference Room 308

by
Scott W. Smart

Chairman Oshiro and members of the House Committee on Finance:

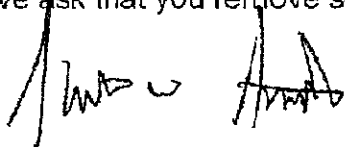
I am testifying AGAINST proposed HD1 to HB306.

Section 4 of the proposed HD1 would repeal H.R.S Chapter 236D section 2.5, which provides a credit against Hawaii state individual income tax for income taxes paid to another state.

My wife and I are joint filers and Hawaii residents. We own residential real estate outside of Hawaii, and the rental income from this property is treated as source income for the states in which the property is located resulting in the requirement to file non-resident individual income tax returns for those states.

My understanding is that it is accepted practice for states to allow credits for taxes paid to two states on the same income, except in some cases where adjoining states negotiate agreements not to tax non-residents. Likewise, the Federal Income Tax provides for a credit for taxes paid to foreign countries. Repealing this credit will result in a significant increase in our Hawaii state income tax liability due to having to pay income tax to two different states on the same income.

We ask that you remove section 4 from proposed HD1.



Scott W. Smart
94-210 Kakaili Pl
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