



SB2704

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| Measure Title: | RELATING TO TAXABLE INCOME EXCLUSION. |
| Report Title: | Income Tax Exclusion; Military |
| Description: | Provides taxable income exclusion for military on active duty who are serving outside the State pursuant to orders. |
| Companion: | |
| Package: | None |
| Current Referral: | PSM, WAM |
| Introducer(s): | SLOM, CHUN OAKLAND, INOUYE, KEITH-AGARAN, KIM, SHIMABUKURO, Gabbard, Green, Harimoto, Tokuda |

STATE OF HAWAII
DEPARTMENT OF DEFENSE

TESTIMONY ON SENATE BILL 2704
A BILL RELATING TO TAXABLE INCOME EXCLUSION

PRESENTATION TO
THE SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL,
AND MILITARY AFFAIRS

BY
MAJOR GENERAL ARTHUR J. LOGAN
ADJUTANT GENERAL
AND DIRECTOR OF THE HAWAII EMERGENCY MANAGEMENT AGENCY
February 2, 2016

Chair Nishihara, Vice Chair Espero, and Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs.

I am Major General Arthur J. Logan, State Adjutant General and the Director of the Hawaii Emergency Management Agency. I am testifying in **SUPPORT** of Senate Bill 2704.

This measure will provide a tax exemption for all Hawaii residents deployed overseas with the United States armed forces. Mobilized members of the Hawaii National Guard serving overseas will also benefit from this tax exemption. It will be a welcomed recognition of their service and sacrifice.

Thank you for allowing me to allowing me to testify in **SUPPORT** of Senate Bill 2704.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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To: The Honorable Clarence K. Nishihara, Chair
and Members of the Senate Committee on Public Safety, Intergovernmental
and Military Affairs

Date: Tuesday, February 2, 2016
Time: 1:20 P.M.
Place: Conference Room 229, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2704, Relating to Taxable Income Exclusion

The Department of Taxation (Department) appreciates the intent of the measure but has concerns regarding certain provisions of this measure due to the breadth of the exclusion and provides the following comments for your consideration.

S.B. 2704 provides an income tax income exclusion for military personnel on active duty who are serving outside the State pursuant to military orders. The measure would apply to taxable years beginning after December 31, 2016, and is effective upon approval.

The Department believes that the provision is overbroad to the extent it would exempt income from any source received and regardless of the amount. Thus, if a military member owned a business, all business income would be exempt. Likewise, interest on savings, dividends from stocks, gambling winnings, and every other source of income is exempt under this measure. In addition, the State income tax could be avoided by related persons by simply shifting income to an active duty military member.

It is also not clear whether S.B. 2704 is intended to cover the spouse of the military member, such that all income earned by the spouse is also excluded, even though the spouse may not be in the military. The Department suggests clarification to avoid any disputes with taxpayers over whether spouses are intended to be included.

The Department is unable to administer the provision that the exclusion is available only for income earned by the military member while out of the State on military orders will cause an undue administrative burden on the Department. Since deployments do not necessarily coincide with the start and end of a taxable year, the Department and the taxpayer will need to determine the amount of income earned out of State while on military assignment manually. The process

would be even more difficult where income varies from month to month, such as where a business is involved.

Finally, it should be noted that there is a potential constitutional problem with this exclusion, since it applies only to residents on active military duty serving outside of the State. While military pay is taxable only by the state of residence of the military member, other income earned by the military member is taxable both by the home state and the state where such additional income is earned. Thus, a non resident military member who owns a rental unit in Hawaii would be subject to tax whereas a resident military member in the same situation would not be, solely because the military member is outside of the State. This could lead to claims of unequal protection by the non-resident military member who would be subject to the tax. Nevertheless, the Department defers to the Department of the Attorney General on this matter.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, Exclusion for Nonresident Active Duty Military

BILL NUMBER: SB 2704

INTRODUCED BY: SLOM, CHUN OAKLAND, INOUYE, KEITH-AGARAN, KIM, SHIMABUKURO, Gabbard, Green, Harimoto, Tokuda

EXECUTIVE SUMMARY: Adds an exemption for service members, but the exemption might not be worth the complexity and the broad language in the bill may exempt more than what is intended.

BRIEF SUMMARY: Amends HRS section 235-7(a) to add a new paragraph excluding income from any source received by resident taxpayers who are on active military duty and serving in the United States Army, Navy, Air Force, or Marine Corps outside the State pursuant to military orders.

EFFECTIVE DATE: Upon approval, applying to taxable years beginning after 12/31/16.

STAFF COMMENTS: While this exemption sounds like a nice gesture, it is an additional exemption that would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive in amount compared to the loss in revenue from the exemption. The impact on the service member probably would be minimal, because the state in which the service member is working would have the right to tax the service member's income under its nonresident rules.

If it is decided to advance the measure, consideration should be given to scaling the exemption back from "income from any source" to something more reasonable such as "compensation for performance of duty" as is used in paragraph (7). Otherwise, the exemption may cover unintended consequences: for example, if the member wanders into a casino while abroad and hits a massive jackpot, all of the winnings would be exempt under the bill's current language.

As a technical matter, Act 220, SLH 2012 provided a temporary exemption of capital gains realized from the conversion of residential leasehold interest to fee simple ownership. That exemption is codified as HRS section 235-7(a)(14), but is not shown on this bill.

Digested 1/29/2016

From: mailinglist@capitol.hawaii.gov
To: [PSMTestimony](#)
Cc: peter.thoenen@yahoo.com
Subject: Submitted testimony for SB2704 on Feb 2, 2016 13:20PM
Date: Monday, February 01, 2016 5:12:38 PM

SB2704

Submitted on: 2/1/2016

Testimony for PSM on Feb 2, 2016 13:20PM in Conference Room 229

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Peter Thoenen | Individual | Oppose | No |

Comments: Hello my name is Peter Thoenen and I highly oppose this bill. While I am against income tax in general, I'm even more opposed to the further creation of special loopholes and exemptions to it. The case the Federal government uses, along with the State of Hawaii, to justify taxing out-of-jurisdiction is that residents of this state (or citizens of this nation) will make use of future resources given an intent to return (hence maintenance of residency) and as such should be taxed. While I am not a fan of this argument it is what it is and there simply is no reason to exempt Federal uniformed employee's who to be members of select uniformed services though I would support it in the following two cases: 1: (14) be changed to simply exempt ALL out of state income from any source period for all residence period. -or- 2: (14) remove the military requirement and apply to all Federal employee's and contractors who are outside the State pursuant to Federal direction. There is simply no reason a Captain in Public Health Service Commissioned Corps, a US Federal uniformed service as you well know, deployed overseas on orders is not exempted as well. Nor do I see a justification why US Federal non-uniformed employee's deployed outside the State, often to combat zones by the same agencies sending uniformed members, aren't exempted but their uninformed partner in the same tent is. Why is a member of the Navy exempt while at sea but our NOAA Corp officers in the same fleet are not? As written I strongly oppose given above.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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