

TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, College Savings Program Deduction

BILL NUMBER: SB 3062

INTRODUCED BY: RIVIERE, KEITH-AGARAN, KIM, RUDERMAN, Gabbard, Taniguchi

EXECUTIVE SUMMARY: Proposes a deduction for contributions to a college savings program account. Other states offer similar incentives. However, U.S. constitutional restrictions might not allow the Hawaii incentive to be specific to the Hawaii college savings program and discriminate against other federally qualified programs.

SYNOPSIS: Adds a new section to chapter 235, HRS, to allow a deduction for a contribution to a college savings account established in the Hawaii college savings program under chapter 256, HRS.

The amount deductible is not to exceed \$5,000 (\$10,000 for married taxpayers filing a joint return or separate returns).

The deduction is not allowed for a contribution to the extent that an amount is distributed from the plan within one year after contribution.

Provides for recapture of the deduction if the taxpayer makes a nonqualified withdrawal from the program, or if the account monies are rolled over into another state's college savings program.

Makes conforming amendments.

EFFECTIVE DATE: Upon approval; applicable to taxable years beginning after December 31, 2017.

STAFF COMMENTS: The Hawaii college savings program under chapter 256, HRS, is a college savings program intended to qualify under section 529, IRC.

Under the IRC, contributions to a 529 plan are not deductible, but the monies in the plan can earn income tax-free and will not be taxed when the money is taken out to pay for college.

Hawaii income tax law conforms to IRC section 529, with minor modifications such as a withdrawal is nonqualified for Hawaii purposes if it is used to purchase software. See section 235-2.4(ee), HRS, which decouples from IRC section 529(e)(3)(A)(iii).

According to savingforcollege.com, over 30 states currently offer a full or partial tax deduction or credit for 529 plan contributions. Hawaii does not.

The bill as drafted allows a deduction only to a Hawaii taxpayer with an account in the Hawaii college savings program, as opposed to any other section 529 program. Furthermore, amounts rolled over into another state's program are treated as nonqualified withdrawals, triggering

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recapture of the deduction. This feature of the legislation appears to discriminate against interstate commerce, and could be invalid for that reason under *In re Hawaiian Flour Mills, Inc.*, 76 Hawai'i 1, 868 P.2d 419 (1994).

Digested 1/30/2018

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Submitted on: 1/30/2018 7:27:13 PM

Testimony for HRE on 2/1/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Urasaki		Support	No

Comments:

In support