



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 1311, RELATING TO INDIVIDUAL HOUSING ACCOUNTS.

BEFORE THE:

SENATE COMMITTEE ON HOUSING

DATE: Thursday, February 7, 2019 **TIME:** 1:20 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Clare E. Connors, Attorney General, or
Kristen M.R. Sakamoto, Deputy Attorney General

Chair Chang and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill expands the income tax deduction for amounts paid to an individual housing account pursuant to section 235-5.5, Hawaii Revised Statutes (HRS), by allowing "low-income residents" to claim a deduction for contributions to accounts that will be used for first month's rent, rental deposits, down payment assistance, or closing costs. The term "low-income resident" is defined as an individual who is a resident of the State and whose income is equal to or less than the area median income. Currently, section 235-5.5, HRS, allows an "individual" to claim a deduction for contributions to accounts that will be used for the purchase of the individual's first principal residence.

This bill may be subject to constitutional challenge under the Equal Protection Clause and/or the Privilege and Immunities Clause of the United States Constitution.

The Equal Protection Clause prohibits discrimination against a nonresident based solely on residency. See, e.g., Williams v. Vermont, 472 U.S. 14 (1985) (use tax credit for sales taxes paid on cars purchased in other states invalidated because it was only available to Vermont residents). The Hawaii Supreme Court has recognized that the Equal Protection Clause applies where a tax operates unequally on persons or property of the same class. City & County of Honolulu v. Steiner, 73 Haw. 449, 468 (1992).

Similarly, under the Privileges and Immunities Clause, a state may not impose higher taxes on a nonresident individual than it imposes on its own citizens. Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 296 (1998) (alimony deduction limited to residents struck down as violating Privileges and Immunities Clause). However, a discriminatory tax could be sustained if legitimate reasons for the tax exist and the discrimination bears a substantial relation to those reasons. Id. at 298.

Under this bill, only resident taxpayers of this State who meet the income requirement will be allowed to claim an income tax deduction for certain contributions to an individual housing account while nonresident taxpayers under the same circumstances would not be entitled to the deduction. Accordingly, this bill appears to favor residents over nonresidents and may therefore be challenged under the Equal Protection Clause and/or the Privileges and Immunities Clause. Although there are existing tax statutes that have residency requirements, to date, these statutes have not been subject to constitutional challenge.

To avoid a possible constitutional challenge, we recommend (1) replacing the term "low-income residents" on page 3, line 20 with the term "low-income individual"; (2) replacing the term "low-income resident" on page 5, line 2 with the term "low-income individual"; and (3) deleting the phrase "who is a resident of the State and" on page 5, lines 2-3.

Thank you for the opportunity to provide comments.



STATE OF HAWAII
DEPARTMENT OF TAXATION
830 PUNCHBOWL STREET, ROOM 221
HONOLULU, HAWAII 96813
<http://tax.hawaii.gov/>
Phone: (808) 587-1540 / Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Stanley Chang, Chair
and Members of the Senate Committee on Housing

Date: Thursday, February 7, 2019
Time: 1:20 P.M.
Place: Conference Room 225, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 1311, Relating to Individual Housing Accounts

The Department of Taxation (Department) provides the following comments regarding S.B. 1311 for your consideration.

S.B. 1311 allows a taxpayer to open an individual housing account in the name of the taxpayer's dependent, authorizes low-income residents to establish an individual housing account to make payments for first month's rent or a rental deposit or to provide funding for downpayment assistance or to fund closing costs, includes community development financial institutions as an authorized trustee, and authorizes direct deposits into an individual housing account. The measure is effective upon approval and applies to taxable years beginning after December 31, 2018.

First, with respect to allowing a taxpayer to open an individual housing account upon birth of a dependent, the Department suggests that it be conditioned on obtaining a social security number. Obtaining a Social Security number for a newborn is voluntary, but an account cannot be opened at a financial institution without one. The Department also notes that this provision may unduly benefit higher income taxpayers, who are more able to make such contributions. In addition, it is not clear if the taxpayer is able to claim the deduction for contributions to newborn's individual housing account. As it appears the intent of the measure is to make such contribution deductible, and to take into account the concerns noted above, the Department suggests amending subsection (a) to read as follows:

(a) A taxpayer may establish an individual housing account pursuant to section 235-5.5 in the name of a dependent of the taxpayer upon providing the dependent's birth certificate and social security number to the director of taxation. The individual housing account established pursuant to this section may be opened upon the

birth of the dependent. Any contributions to the individual housing account shall be deductible by the taxpayer until the child reaches age _____, and shall be available only to a taxpayer whose federal adjusted gross income does not exceed \$ _____ for a person filing as singly as married filing separately or \$ _____ for a person filing as married filing jointly.

Second, the Department notes that this measure creates an entirely new section in Hawaii Revised Statutes (HRS) chapter 235. The Department believes that it should simply be added into the current section 235-5.5, HRS, as an additional subsection.

Finally, the Department respectfully requests that the effective date be made for tax years beginning after December 31, 2020 to allow the Department sufficient time to make necessary form, instruction, and computer system changes as well as notifying the public about the change.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Individual Housing Accounts, Increase Caps

BILL NUMBER: SB 1311

INTRODUCED BY: S. CHANG, Kanuha

EXECUTIVE SUMMARY: Allows taxpayers to open an individual housing account in the name of the taxpayer's dependent. Authorizes low-income residents to establish an individual housing account to make payments for first month's rent or a rental deposit or to provide funding for down payment assistance or fund closing costs. Includes community development financial institutions as an authorized trustee. Authorizes direct deposits into an individual housing account.

SYNOPSIS: Adds a new section to chapter 235, HRS, to provide that a taxpayer may establish an individual housing account (IHA) and open it upon the birth of a dependent.

Amends section 235-5.5, HRS, to effectuate the other changes described in the executive summary.

EFFECTIVE DATE: Taxable years beginning after December 31, 2018.

STAFF COMMENTS: Individual housing accounts were established by Act 285, SLH 1982. They were intended to operate like individual retirement accounts, but used for a housing purchase rather than retirement security.

There is no similar provision at the federal level, so the interest in these accounts has been quite limited. In the Department of Taxation's 2002 report "Hawaii Income Patterns – Individuals," it is reported that 83 tax returns took advantage of the IHA deduction, with an average of around \$4,500 taken per tax return. That appears to be last year in which IHA statistics were reported separately.

The idea of reviving IHA accounts does merit discussion, given that federal tax benefits of home ownership were significantly curtailed in the 2017 Tax Cuts and Jobs Act. Specifically, the mortgage interest deduction was limited to the interest on no more than \$750,000 of home acquisition debt, and interest on home equity loans (not used for acquisition) was made entirely nondeductible.

Digested 2/4/2019

SB-1311

Submitted on: 2/6/2019 1:04:38 PM

Testimony for HOU on 2/7/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



1654 South King Street
Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
Fax: (808) 945.0019
Web site: www.hcul.org
Email: info@hcul.org



LATE

Testimony to the Senate Committee on Housing
Friday, February 1, 2019, 2:00 pm
Hawaii State Capitol, Room 225

Comments on SB 1311, Relating to Individual Housing Accounts

To: The Honorable Stanley Chang, Chair
The Honorable Dru Mamo Kanuha, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following comments on SB 1311, Relating to Individual Housing Accounts.

While we understand and appreciate the intent of this bill, there are unanswered questions as to the administration of this concept. Opening the account would not be the issue; the question would be who would have the responsibility of “policing” the account if/when the funds are withdrawn. There would have to be safeguards or specific “triggers” in place to ensure that the funds from an IHA are not spent in an unauthorized manner. Further, it is unclear how the funds would need to be treated when applying them towards a mortgage loan. We would suggest that amendments be made to reduce the burden on the “trustees”, which would be the financial institutions holding the accounts.

Thank you for the opportunity to provide comments.