



**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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To: The Honorable Justin H. Woodson, Chair
and Members of the House Committee on Lower & Higher Education

Date: Friday, February 1, 2019
Time: 2:00 P.M.
Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 1469, Relating to the College Savings Program

The Department of Taxation (Department) offers the following comments on H.B. 1469 for the Committee's consideration. H.B. 1469 provides the following:

- Creates a deduction from income tax for contributions made to an account in the Hawaii College Savings Program, up to \$5,000 per year for individual taxpayers or married taxpayer filing separately, and up to \$10,000 per year for taxpayers filing jointly, heads of household, or surviving spouses.
- Allows the deduction to be carried forward into subsequent tax years until exhausted if not entirely expended on the return filed for the year the contributions were made.
- The deduction is subject to 100% recapture if the taxpayer makes a subsequent nonqualified withdrawal from the Hawaii College Savings Program or rolls the Hawaii College Savings Program account into another state's college savings program.

First, the Department notes that this deduction would result in providing a double tax benefit as distributions from a qualified 529 plan are not subject to tax.

Second, the Department notes that it is unclear from what amount the contribution to the Hawaii College Savings Program can be deducted. In subsection (a), the bill says the contribution will be deducted from gross income. In subsection (d), the bill discusses the consequences of a contribution exceeding taxable income. In subsection (e), the bill discusses recapture of amounts deducted from adjusted gross income. The Department suggests clarifying from what amount contributions may be deducted and using that term consistently in subsections (a), (d), and (e). The Department's recommendation would be to allow the deduction from Hawaii adjusted gross income.

Lastly, the Department respectfully requests this measure be amended to apply to taxable years beginning after December 31, 2019.

Thank you for the opportunity to provide comments on this measure.

TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, College Savings Program Deduction

BILL NUMBER: HB 1469

INTRODUCED BY: ELI, CULLEN, HOHANSON, KITAGAWA, D. KOBAYASHI, MATAYOSHI, TARNAS, WILDBERGER

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). Only amounts contributed within the taxable year count; if a contribution is mailed in, it counts if it is postmarked within the taxable year.

The deduction is not allowed for a contribution that is rolled over from another state's college savings program.

If the amount of the deduction exceeds the taxpayer's taxable income, the excess may be used as a deduction in subsequent taxable years until exhausted.

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, 2018.

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(hh), 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 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 1/30/2019

HB-1469

Submitted on: 1/31/2019 1:58:08 PM

Testimony for LHE on 2/1/2019 2:00:00 PM

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

Comments:

LATE

HB-1469

Submitted on: 2/1/2019 12:29:49 PM

Testimony for LHE on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tom Scheiding	Individual	Support	No

Comments:

With over 30 states in the United States permitting residents to deduct from their state taxes made to their own state's 529 plan, Hawaii's lack of deductibility has meant that residents are provided no incentive to participate in Hawaii's sponsored plan. Given the lower investment expenses and higher returns from other state plans, more notably plans such as NY SAVES for the state of New York, there is a sizable amount of funds that are invested elsewhere. This bill does not go so far as to allow residents to still deduct contributions to other state plans as 7 other states currently do -- the passage of this bill will aid in the ability of the HI529 plan to acquire more assets and lower the expenses of administering the plan. Depending on the income level of a parent saving in such a plan, the tax savings could be nearly \$500 a year. This would be a significant incentive to encourage parents to use the 529 investment vehicle (thus reducing a student's need for state financial aid) and align Hawaii's support of 529 plans with most of the other states in the United States. I wholeheartedly believe that the passage of this bill would contribute positively to encouraging and enabling students to pursue higher education.