

# TAX FOUNDATION OF HAWAII

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SUBJECT: MOTOR VEHICLE, Military Exemption to Vehicle Weight Tax

BILL NUMBER: SB 603

INTRODUCED BY: NISHIHARA, Baker, S. Chang

EXECUTIVE SUMMARY: Active duty military personnel this bill are excused from paying vehicle weight taxes. However, there is no showing that military personnel are unfairly singled out by the tax or otherwise face undue hardship, so why should the rest of us be required to pay for repairs, maintenance, and similar charges on roads they use?

There also may be a constitutional problem because, as amended, the exemption is available to Hawaii residents and is not available to out-of-state residents. This may violate the Privileges and Immunities Clause.

SYNOPSIS: Amends HRS section 249-6.5, which now exempts active duty military assigned to a unit in this State from payment of annual vehicle weight taxes. Under the amendment, active duty military assigned to a unit outside this State but who claim Hawaii as their State of legal residence will enjoy the same exemption.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: The motor vehicle weight tax and registration fees are user charges designed to recover the cost of construction and maintenance of Hawaii's highway system. It should be remembered that all motorists use the state highways and should, therefore, lend a hand in paying for good and safe roads. Note well, that any exemption granted to a select group of users requires that the lost revenues be made up by those who must continue to pay. Motorists who will have to pick up the additional costs created by this proposed exemption should hold those who would propose such an exemption responsible for raising their taxes.

There is also a question of whether the proposed law would be constitutional. The Privileges and Immunities Clause provides

The citizens of each State shall be entitled to all of the Privileges and Immunities of Citizens of the several States.

U.S. Const. Art. IV § 2.

The Privileges and Immunities Clause generally prohibits a state from imposing higher tax rates or taxes on nonresidents than it imposes on residents. Although its language refers to "citizens," the Supreme Court has held that provisions discriminating against nonresidents also discriminate against citizens of other states. The clause does not absolutely prohibit discrimination against nonresidents; it permits states to provide different rules for nonresidents if there is a "valid independent reason for" the treatment. Also, it only applies to interests that are "fundamental,"

that bear on “the vitality of the Nation as a single entity.” A fee or tax on pursuing a trade or business is covered. *Toomer v. Witsell*, 334 U.S. 385, 395 (1948). Differential fees on nonresidents for recreational hunting and fishing are not. *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371 (1978). In general, differential income or property tax rules are covered, since they affect the right to “reside in” or “to pursue trade, agriculture, [or] professional pursuits.” The right to travel is considered fundamental, and ready access to a means of transportation is often essential for professional pursuits. Thus, an exemption from the vehicle weight tax for residents only is constitutionally suspect.

Digested 2/10/2019

**SB-603**

Submitted on: 2/12/2019 11:12:00 AM

Testimony for PSM on 2/13/2019 1:15:00 PM

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

Comments: