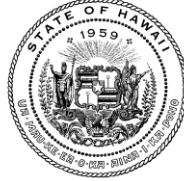
DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR

ISAAC W. CHOY
DIRECTOR OF TAXATION



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair;
and Members of the Senate Committee on Judiciary

From: Isaac W. Choy, Director
Department of Taxation

Date: Friday, February 4, 2022
Time: 9:30 A.M.
Place: Via Video Conference, State Capitol

Re: S.B. 3182, Relating to Wealth Asset Tax

The Department of Taxation (Department) has some concerns about S.B. 3182 in its current form and offers the following comments for your consideration.

S.B. 3182 creates a wealth tax that is equal to one percent of a taxpayer's worldwide net worth that exceeds $20 million for a joint income tax filer and $10 million for any other income tax filer. The bill becomes effective upon approval and applies to taxable years beginning after December 31, 2021.

First, the Department notes that this bill does not define the set of taxpayers meant to be subject to the wealth tax. The bill defines "taxpayer" as any person subject to tax under this chapter, but the bill creates a new chapter, so that definition is not effective. The Department recommends the bill be amended to define the taxpayers the new tax is to be imposed upon.

Second, the Department notes that the bill uses the income tax concept of a joint return in defining the threshold. Applying the joint income tax return concept to a wealth tax may not be appropriate. If the intent is to tax the aggregation and sustaining of wealth, the Department recommends imposing the tax on an individual basis.

Third, the Department notes that the bill excludes "interests in real property" from taxation under the proposed tax. This exclusion does not seem necessary as the wealth tax is only imposed on the value that exceeds the applicable threshold. The Department also has concerns about this exclusion due to the likelihood that taxpayers will take a liberal view of what

is included as an interest in real property. For example, a taxpayer may claim that shares in real estate investment trusts represent interests in real property.

Fourth, the Department believes that creating a new tax type requires extensive consideration and deliberation. The Department recommends the bill be amended to add the required detail to the policy and mechanics of the proposed tax. One specific issue that is not addressed in this measure is how the assets are to be valued. This is a common point of contention in regard to estate tax and it is likely to be a point of contention with this new wealth tax as well. Alternatively, the Department suggests the topic be studied in detail, potentially through a working group as S.B. 3250 proposes.

Finally, if this proposal to impose a wealth tax is moved forward, the Department requests the effective date be delayed and be made applicable to taxable years beginning after December 31, 2022. Since this is a completely new tax type requiring the development of forms, instructions, and computer system modifications the Department is unable to administer this measure with its current effective date.

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

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, New Wealth Asset Tax

BILL NUMBER: SB 3182

INTRODUCED BY: DECOITE, CHANG, MISALUCHA, RHOADS, SAN BUENAVENTURA, Baker, Fevella, Ihara, Keith-Agaran, Kidani, Taniguchi, Wakai

EXECUTIVE SUMMARY: Establishes a wealth asset tax of one percent on all assets of a taxpayer except for interests in real property, in excess of $20,000,000 for taxpayers filing joint returns, or $10,000,000 for every other taxpayer.

SYNOPSIS: Adds a new chapter to the HRS to establish a wealth asset tax.

The new tax is on the activity of sustaining excessive accumulations of wealth.

The amount of tax to be paid every year is 1% of the worldwide net worth of each taxpayer in excess of: $20 million for joint filers, or $10 million for other filers.

A taxpayer's net worth includes but will not be limited to the aggregate value of assets in the following categories:

(l) Stock in any publicly and privately traded C corporation;

(2) Stock in any S corporation;

(3) Interests in any partnership;

(4) Interests in any private equity or hedge fund;

(5) Interests in any other noncorporate business;

(6) Bonds and interest-bearing savings accounts;

(7) Cash and deposits;

(8) Farm assets;

(9) Interest in mutual funds or index funds;

(10) Put and call options on securities;

(11) Futures contracts;

(12) Art and collectables;

(13) Financial assets held offshore;

(l4) Pension funds;

(15) Debts other than mortgages or other liabilities secured by real property; and

(16) Other assets;

provided further that interests in real property shall not be included.

The tax imposed is to be reported and paid at the same time as income taxes.

Assets belonging to any person who can be claimed as a dependent that are in excess of $50,000 are aggregated with the assets of the taxpayer who can claim the person as a dependent.

The department of taxation is to prescribe forms and rules to implement the chapter.

EFFECTIVE DATE: Applicable to taxable years beginning after December 31, 2021

STAFF COMMENTS: As proposed, the wealth tax violates the U.S. Constitution. It is, in theory, imposed on any taxpayer with nexus with Hawaii, including residents, nonresidents, domestic corporations, foreign corporations, domestic estates and trusts, and foreign estates and trusts. The tax is imposed on worldwide wealth. If another U.S. state were to adopt the same tax, then a person living in one state and working in the other would be subject to the same wealth tax two times. That violates the principle called *internal consistency*, as used in cases such as *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274 (1977), and would run afoul of the Commerce Clause of the U.S. Constitution.

If the tax were to be amended to conform the tax base to the estate tax base, for example, we would still wonder whether it was a good idea.

The national Tax Foundation (no relation to our organization) recently did a study of wealth tax systems in the OECD at https://taxfoundation.org/wealth-taxes-in-the-oecd/. The number of current OECD members that collected revenue from net wealth taxes has grown from eight in 1965 to a peak of 12 in 1996 to just five in 2020. The article suggested that with so many countries abandoning the wealth tax, we in the United States shouldn’t adopt one in the first place.

Digested: 2/1/2022

AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING ADDRESS
John Bickel, President	Melodie Aduja	Jan Lubin	Bill South	P.O. Box 23404
Alan Burdick, Vice President	Keola Akana	John Miller	Zahava Zaidoff	Honolulu
Dave Nagajji, Treasurer	Juliet Begley	Jenny Nomura		Hawaii 96823
Doug Pyle, Secretary	Stephanie Fitzpatrick	Stephen O'Harrow		

February 2, 2022

TO: Chair Rhoads and Members of the Judiciary Committee

RE: SB 3182 Relating to A Wealth Tax

Support for hearing on February 4

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support this bill as we support a more progressive tax structure. We like that this bill would establish a wealth asset tax of one percent on all assets of a taxpayer except for interests in real property, in excess of $20,000,000 for taxpayers filing joint returns, or $10,000,000 for every other taxpayer. We add information from ITEP on the current regressivity of our taxes. This bill would help.

Thank you for your favorable consideration.

Sincerely,

John Bickel, President

HAWAII

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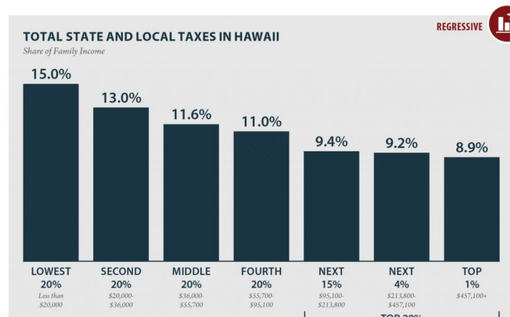

HBA
Hawaii Bankers Association

TEL:
808-524-5161
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1000 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation to The
Committee on Judiciary
Friday, February 4, 2022, 9:30 AM
State Capitol, Via Videoconference

Testimony on SB 3182 In Opposition

TO: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, Executive Director of the Hawaii Bankers Association (HBA). HBA represents seven Hawai`i banks and three banks from the continent with branches in Hawai`i.

In a time when Hawai`i is flush with money, this bill proposes to create a disincentive for people to work hard, be creative, and innovative, which are some of the characteristics needed to become wealthy. This bill would create a 1% wealth tax for single taxpayers with worldwide assets greater than $10 million and for couples with worldwide assets greater than $20 million.

We already have a wealth tax. It is called an estate tax which is paid upon death. As said in a letter by Benjamin Franklin: "Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except **death and taxes**." The Hawai`i estate tax rate ranges from 10% to 15.75% and the top federal estate tax rate is 40% when your taxable amount is $1 million.

In essence, the bill would create a ceiling rather than a floor on our populace, especially our youth, and rather than create a bell-shaped curve, create a flattened box, informing all, that if they do well, Hawai`i will punish you. This bill would incentivize population and brain drain.

It is amazing that even pensions are included as an asset because unlike art and stock, pensions cannot be held in eternity and must be withdrawn and be subject to tax. They are considered tax-deferred products. Pensions such as 401k are subject to a required minimum distribution at age 72 and the distribution is taxed as income. The percentage that has be withdrawn each year increases each year. To be subject to a wealth tax is double-taxation and harms your plans to enjoy your golden makule years and plans to take care of your children and your children's children, as well taking care of your diminishing health.

The 401K is likely not worth $10 or$ 20 million but when coupled with other assets, the threshold may be breached. For a couple with $18 million in worldwide assets, they may not be subject to the wealth tax, but as soon as one spouse dies, the $10 million threshold will be breached because the living spouse is now worth $18 million because the surviving spouse receives the estate tax-free.

Roth pension plans are slightly different because the tax is paid upfront and not deferred like a 401K. Pension monies paid by a defined benefit compensation plan that money is subject to income tax but cannot be part of your worldwide assets because the plan does not belong to you.

It is confusing that debt (except mortgages) is considered part of your worldwide assets because a debt is a liability and not an asset. That is a fundamental FASB rule.

Thank you for the opportunity to submit this testimony in opposition to SB 3182. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161

SB-3182
Submitted on: 1/31/2022 9:36:12 PM
Testimony for JDC on 2/4/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
lynne matusow	Individual	Oppose	No

Comments:

This hurts the little guy/gal as well as the wealhy. Some of the assets mentioned are not income producing, they do not pay any dividends or interest, yet you want to tax them. If you are talking financial investments, the value will rise and decline based on what in happening in the markets.

When COVID hit many saw a huge drop in assets, some going from several million to several hundred thousand. If assets go down will you give a tax refund? Bet not.

We are one of the highest taxed states in the nation. You should be reducing our taxes, not increasing them.

SHAME!!! Please defer permanently.

February 4, 2022
9:30 a.m.
Via Videoconference

To: Senate Committee on Judiciary
Sen. Karl Rhoads, Chair
Sen. Jarrett Keohokalole, Vice Chair

From: Grassroot Institute of Hawaii
Joe Kent, Executive Vice President

RE: SB3182 — RELATING TO A WEALTH ASSET TAX

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on SB3182, which would establish a wealth asset tax of 1% on all taxpayer assets, except for real property, with a value in excess of $20,000,000 for taxpayers filing jointly or $10,000,000 for all other taxpayers.

In this proposal, "assets" refer to the "worldwide net worth" of the taxpayer and includes items such as stock, business interests, stock and collectibles, business funds and more.

Whatever the intention behind this bill, it seems clear that its main effect will be to encourage creative accounting strategies that ensure one falls below the threshold for this tax. Alternatively, it may encourage wealthy individuals to simply leave Hawaii.

Hawaii already has the third-highest level of economic flight per capita in the nation. Researchers have noted an increasing trend in state-level economic migration over the past several years, notably from high-tax states to lower-tax states.

While the trend may start with high earners, it quickly grows to affect the state as a whole. WIth the high earners go more business opportunities and new enterprises, so professionals and middle-income families soon follow suit. In the meantime, the tax base shrinks, leaving fewer people to bear the burden of the state budget.

In effect, this bill will amplify this problem and accelerate economic flight from Hawaii.

It's not true that this tax hike is necessary to replenish state coffers. Hawaii is enjoying a budget surplus due to higher-than-expected revenues combined with an infusion of federal funds.

While the tax outlined in this bill only applies to wealthy individuals, it will have a negative effect on Hawaii residents as a whole. The tax proposed here is likely to drive away investors and job creators, thereby contributing to the unemployment problem and the lack of opportunity that has already led many residents to move elsewhere.

The minor and speculative increase in revenue that this tax may generate would be offset by the damage it would cause to the rest of the state's economy.

This proposal appears to ignore the reality of our state's budget surplus and the challenges that our businesses and residents have had to face over the past two years. There are myriad reasons we should be wary of implementing tax hikes. Here are just a few:

>> Hawaii residents are already among the most taxed in the country; the state has the second-highest overall tax burden in the U.S.

>> Hawaii cannot sustain a hike in taxes since its already-damaged economy was hit harder by the lockdowns than any other state in the nation.[1]

>> Hawaii's population reduction of 32,237 people since fiscal 2016[2] has left Hawaii's remaining taxpayers with a greater tax burden.

>> Hawaii has a progressive income tax that taxes high-income earners at 11%, second only to California at 13.3%.[3] Hawaii's top 1% already pays 23% of all income taxes in the state.[4]

The rationale for a tax on the wealthy is that such funds will be used in programs that help the less fortunate. However, a wealth tax — especially one that can be avoided — is unlikely to provide much benefit to the rest of Hawaii's residents.

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[1] Dave Segal, "Hawaii's unemployment rate hit nation-high 15% in September," Honolulu Star-Advertiser, Oct. 20, 2020.
[2] "Annual Estimates of the Resident Population for the United States, Regions, States, the District of Columbia and Puerto Rico: April 1, 2010 to July 1, 2020 (NST-EST2020)" U.S. Census Bureau, Population Division, December 2020. See also, "U.S. Census data," accessed Jan. 3, 2022.
[3] Katherine Loughead, "State Individual Income Tax Rates and Brackets for 2020," Tax Foundation, Feb. 4, 2020.
[4] "Hawaii Individual Income Tax Statistics," Hawaii Department of Taxation, December 2020, Table 13A.

If Hawaii lawmakers want to help working families, they should abandon their reliance on taxes as a public policy tool, which has only succeeded in establishing Hawaii as the state with the highest cost of living.

Instead of attempting to solve the state's economic problems through a tax on the "rich," lawmakers should focus on strategies to lower the cost of living, such as reducing income taxes, creating an exemption to the general excise tax for groceries and medical services, lowering fees and reducing regulations that limit opportunities and stifle economic growth.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii