DAVID Y. IGE
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ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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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. 3250, Relating to Taxation

The Department of Taxation (Department) has concerns about S.B. 3250 in its current form and offers the following comments for your consideration.

S.B. 3250 imposes a dual-rate income tax surcharge on high-income individuals. The tax is equal to 5 percent of modified adjusted gross income over the following thresholds:

- $10 million for a joint filer;
- $7.5 million for a head of household filer;
- $5 million for a single or married filing separately filer, and
- $200,000 for an estate or trust.

In addition to the five percent surcharge, the bill imposes a 3 percent surcharge on income that exceeds the following thresholds:

- $25 million for a joint filer;
- $18.75 million for a head of household filer;
- $12.5 million for a single or married filing separately filer; and
- $500,000 for an estate or trust.

The bill imposes penalties for failure to file the required schedule with the Department. The bill also creates a wealth tax working group to develop a proposal for the taxation of wealth. S.B. 3250 is effective upon approval and applies to taxable years beginning after December 31, 2021.

First, the Department notes that the income tax surcharge is imposed at different rates at different income levels. As drafted, it is unclear whether the 5 percent surcharge rate applies only to income in excess $10 million and up to $25 million, with the 3 percent surcharge applicable to amounts above $25 million. Or, alternatively, if the five percent surcharge rate applies to all income in excess of $10 million, with the 3 percent surcharge applying in addition to the 5 percent surcharge for amounts exceeding $25 million. The Department recommends the bill be amended to make the mechanics of the surcharge clear.

Second, the Department notes that the desired result can be achieved by adding two additional income tax brackets with appropriate marginal rates. The marginal rates can be set so that the amount owed in tax would be comparable to a separate surcharge.

Third, the bill imposes the penalties under Hawaii Revised Statutes (HRS) section 231-39. These penalties are already applicable to all amounts owed under Title 14, HRS, and the Department has extensive experience administering them. Thus, these penalties already apply to the proposed surcharge. As currently written subsection (c) could be interpreted to provide for alternative application of penalties. To prevent any ambiguity, the Department strongly suggests that the first sentence of subsection (c) of the bill be amended to read as follows:

(c) The penalties provided by section 231-39 shall apply.

Fourth, the second sentence of subsection (c) adds a new penalty for failure to file the required schedule. The new penalty is equal to 10 percent of the total surcharge and tax due. The Department notes that this is a harsh penalty; it applies to the total amount of surcharge and tax due, with no offset for any surcharge or tax paid prior to the due date of the return or schedule.[1] In this way, the penalty is similar to the general excise tax county surcharge penalty. The Department suggests amending this penalty to be based on the amount underpaid. By adopting the Department's suggestion, taxpayers who pay the proper amount of tax, but fail to file the schedule will not be penalized. Under these circumstances, the fact that the taxpayer paid the proper amount supports the taxpayer's intent to comply.

Fifth, the Department notes that the proposed wealth tax working group includes as one of its members the chair of the Tax Review Commission. This position will be vacant by the time this proposal may become law. The Tax Review Commission is appointed every five years and must submit a report to the Hawaii State Legislature prior to the second regular legislative session after its formation. The Tax Review Commission dissolves by operation of law upon the adjournment sine die of the legislative session to which its report is submitted. The Tax Review Commission submitted its report prior to the current legislative session. Therefore, by the time this proposal may be signed into law, the position of chair of the Tax Review Commission will not exist. The Department recommends reconsidering the designated members of the proposed working group.

Finally, if the proposal to impose an income tax surcharge is moved forward, the Department requests the effective date be delayed and be made applicable to taxable years beginning after December 31, 2022. The proposed surcharge will require significant changes to the forms, instructions, and the computer system.

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

[1] The failure to file penalty under HRS §231-39 does allow such an offset.

HAWAI'I
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 3250 Relating to Taxation

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 an income tax surcharge on high-income individuals, estates, and trusts. 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

ITEP

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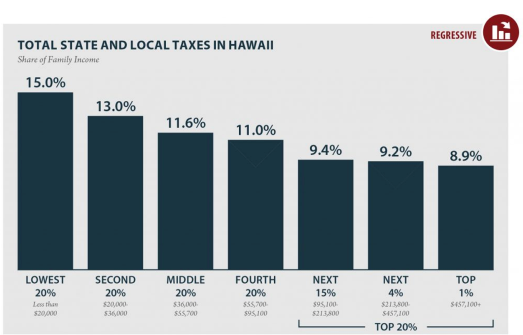

Hawaii Bankers Association

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

Testimony on SB 3250 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 to become wealthy. Unlike SB 3182, this bill would create a surcharge on income which can be as high as 5%. In other words, the highest income tax rate would be 11% plus 5% or a 16% income tax rate. That would mean a combined federal and state income tax rate of 47% and instead of urging our kamaaina kids to come home to Hawai`i and work remotely from Hawai`i, we are moving counter clockwise.

Thank you for the opportunity to submit this testimony in opposition to SB 3250. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161

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: SB3250 — RELATING TO TAXATION

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on SB3250, which would establish an income tax surcharge on individuals making more than $5 million a year or estates and trusts with more than $200,000 in annual income.

Though the language of the bill labels this a "surcharge," it would be more accurate to call this an income tax hike for certain individuals, estates and trusts.

If enacted, this bill will add 5% to the income tax rate of single filers making over $5 million and joint filers, over $10 million. The "surcharge" will go to 3% for single filers making more than $12.5 million and joint filers making more than $25 million. For estates and trusts, the additional 5% applies at more than $200,000 in income and will 3% at $500,000.

This income tax hike would give Hawaii the highest income-tax rate in the country. It would also hasten the departure of high-income individuals to states with lower tax rates.

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. Along 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 just isn't so that this tax hike is necessary in order 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 hikes outlined in this bill might only apply to wealthy individuals, estates and trusts, they will have a negative effect on Hawaii residents as a whole. The tax increases proposed here are likely to drive away business and discourage investment, which would add 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 hike 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. The reality is that 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]

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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.

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 by changing residence — is unlikely to provide much benefit to the rest of Hawaii's residents.

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

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

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

SUBJECT: INCOME, MISCELLANEOUS, Surcharge on High-Income Individuals, Estates, and Trusts; Working Group to Study Wealth Tax

BILL NUMBER: SB 3250

INTRODUCED BY: DECOITE, CHANG, GABBARD, INOUYE, LEE, MISALUCHA, RHOADS, Keith-Agaran, Nishihara, San Buenaventura

EXECUTIVE SUMMARY: Establishes an income tax surcharge on high-income individuals, estates, and trusts. Establishes a working group within the Department of Taxation to develop a proposal for a state wealth tax.

SYNOPSIS: Part I of the bill adds a new section to chapter 235 to establish an income tax surcharge on high-income individuals such that the top individual income tax rate will go from 11% to 19%.

Part II of the bill establishes a working group to develop a state wealth tax.

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

STAFF COMMENTS: We question the need to establish ourselves as the national leader in individual tax rates. If this bill is adopted, Hawaii would soundly trounce California, which now holds the national crown with a 13.3% tax rate.

It should be remembered that the people with the highest incomes pay the most taxes. The same people can easily get on a plane and move somewhere else if the tax heat is turned up enough. We already see this phenomenon happening in the general population; Hawaii in the most recent census dropped 0.7% of its total population.

On the technical side, we recommend elimination of subsections (c), which imposes a draconian penalty for failure to file a schedule that now doesn't exist, and (d), which requires fiscal filers to close their years at the end of the calendar year and file partial year tax returns. Those provisions may have been necessary for the county surcharge tax when first adopted, but are not necessary here.

Digested: 2/2/2022