

TAX FOUNDATION OF HAWAII 2014 ACTIVITY REPORT

Mission & Vision Statement

Mission Statement

To promote and encourage efficiency and economy in Hawaii governments through unbiased, non-political studies and surveys of a factual nature, making available and disseminating such information and data by publications, reports, talks, the radio and television.

Vision Statement

We envision a government of the State of Hawaii where its public is adequately informed about state and county government finances, and its policymakers about the consequences of their proposals - so that government is efficient and economical, and its tax system is fair and equitable.

Overview

The primary focus of the Tax Foundation still remains Hawaii's tax and public finance issues and thus much of the staff's time is occupied in dealing with proposed legislation that will shape the financing infrastructure of the state.

LEGISLATIVE ARENA

It is here that the Foundation puts in much of its efforts to educate and inform. Since it is lawmakers who shape the policies of the state, informing these policymakers of the tenets of good tax policy is key to creating a fair and well-balanced system of taxes and other revenues.

Here are some examples of incidents that actually took place in the 2014 legislative session.

Despite End Run by DOTAX, Boards of Review Retain Jurisdiction

In the 2014 legislative session, the Department of Taxation proposed a bill that would have significantly changed the structure of how tax disputes are appealed. Currently, two independent bodies hear and resolve such disputes, the Board of Review and the Tax Appeal Court. Among other things, the bill would have marginalized the Board of Review by restricting its jurisdiction to disputes of less than \$25,000.

The bill was introduced in both the House and Senate. Both bodies referred the bill to their respective judiciary and money committees. But neither judiciary committee held a hearing on the bill. A few days before the deadline for each body to complete action on its own bills and send them to the other body, an inquiry came in to us about this bill. It was already well past the deadline for the bill to be in its final committee and seemed to be dead. “No,” the caller replied, “I heard that there’s an effort under way to get House Judiciary to waive jurisdiction.” With that, our alarm bells went off because that meant there would be action on this bill and it would be fast.

Sure enough, on the next morning we noticed that in the House the bill was re-referred to skip Judiciary and to go straight to Finance, meaning that the bill was in its final committee and was no longer dead. It would have to be heard immediately to make the next deadline, however. We prepared written testimony that morning. And, just as Tom got back from his lunch meeting, Randy jumped out of his office. “We got the e-mailed hearing notice. House Finance is hearing the bill in 20 minutes!” Tom had just enough time to run down to the Capitol while the Foundation staff alerted the practitioners who had brought the issue to us.

At the Finance hearing, the first testifier called was the Tax Foundation, which was surprising because usually the state agencies are called first. It turned out that the only written testimony the committee received was ours. We had concerns about the bill. In 2013, for example, a law was passed to expand the number of Boards of Review to handle their backlog of cases, and we suggested that this new law be given time to work before stripping the Boards of jurisdiction. The Department of Taxation was at the hearing and testified next in strong support of the bill (to be expected, given that it was their bill), but given that the Department probably had orchestrated the bill’s resurrection, surprisingly had no written testimony in hand. Tax practitioners were then called, and they testified in opposition. Soon afterward, at the decisionmaking portion of the hearing, the Finance chair remarked that she thought the bill needed more work and deferred it, effectively killing the bill.

It’s easy to see what could have happened if there were no Tax Foundation. The bill would have been heard on about 20 minutes’ notice and there probably would have been no testifiers except for the Department of Taxation.

Destination Clubs: Someone Is Listening!

At the Tax Foundation of Hawaii, we submit comments on hundreds of legislative bills. Most of them don’t make it all the way through the process, and wind up on the cutting room floor. More often than not, we are glad the bill wound up in the round file. But we usually can’t take credit for a bill’s demise.

Once in a while, we run into stories like this one, however.

House Bill 1900 dealt with a recently developed business called a “destination club.” People don’t buy timeshare intervals, they buy shares in the club. They can then cash in the

points that their shares earn to stay at a destination of their choice, including several choices within Hawaii.

Some alert people at the Tax Department saw this and said that these are accommodations for tourists, so the club had better be paying the transient accommodations tax, or TAT. The destination clubs disagreed and the fighting started.

Actually, there is no plain and simple way to apply the TAT to destination clubs. Our TAT taxes two things: 9.25% of gross receipts for transient accommodations, and 7.25% of the fair value of occupancy in a timeshare. Destination club members pay for their ownership interest in the club, not for transient accommodations; furthermore, a recent Intermediate Court of Appeals case ruled that such clubs aren't timeshares. Meanwhile, the clubs and the Department had been fighting but came up with a settlement of their litigation. We aren't sure what the settlement terms were, but they were due to expire soon. Hence, HB 1900 which was supposed to be the vehicle for a legislative fix.

The solution proposed by that bill, however, looked a bit unusual. The bill proposed a tax rate of 7%, which then would be applied to 30% of the destination club's income properly apportioned to Hawaii. That raised a few questions. First, the tax rate was entirely new. Why not pick one of the tax rates already in the law? Second, how would you calculate "proper apportionment?" "Apportionment" means that you apply a mathematical formula to an entity's income earned in more than one place in order to come up with a particular state's share of that income to tax. There are a number of formulas available in the income tax law, and one available from the general excise tax law, but the TAT law doesn't contain any. Which brings up the third question, namely, why do we tax only 30% of the apportioned amount? Usually a state expects to tax all of the income that is properly apportioned to it.

As the bill was going through the legislative process, different stakeholders proposed different solutions. The Department of Taxation proposed to tax all of the properly apportioned income under the 9.25% TAT rate. The destination club lobbyists were fighting to save their original formula. And then we proposed a solution as well: pick this activity up under the 7.25% tax rate, because although we might have disputes about proper apportionment, we definitely know how many room nights are occupied. At the hearing on this bill before the Senate Tourism Committee, the committee chair recommended that the bill be amended to adopt the amendments proposed by the Foundation. That became HB 1900, Senate Draft 1. The Senate Ways and Means Committee passed the draft without further amendments.

That bill is not going to become law this year. The House didn't agree to the Senate amendments, and the bill did not survive the conference process. Nevertheless, it does demonstrate that people are listening to what we have to say.

FOUNDATION ACTIVITIES -2014

The Foundation's mission to improve state and local tax systems and foster a positive Hawaii economic climate is accomplished through participation in the legislative process as a nonpartisan organization and through community groups and organizations. This participation

allows the Foundation to disseminate its researched views and also allows the staff to monitor the economic and social pulse of key policymakers in the private sector and in government and the community at large.

Community Participation (287)

Committee Meetings (3)

- Hawaii State Bar Association Tax Section Meeting
- Honolulu Japanese Chamber of Commerce Government Affairs Committee
- The Grassroot Institute of Hawaii - Think Tank on REITs

Public Hearings and Meetings

The Foundation is often called upon to participate in public forums as a means of sharing its research and analyses of current public finance issues as part of its mission to improve equity and efficiency in the tax system. Although some may think otherwise, the Foundation is strictly prohibited by its charter from engaging in lobbying activities on behalf of specific interest groups. The Foundation takes extraordinary steps to convey to the public the information it has gathered so that better decisions can be made.

State Government

Legislative Hearings (284)

The Foundation's role in the legislative hearing process is to provide an independent and unbiased viewpoint on tax and other public finance legislation. Given the breadth and reach of state government in Hawaii, much of the Foundation's activity is weighted toward monitoring the state legislature and executive branch. The Foundation is often the only private sector representative at legislative hearings dominated by representatives from government agencies.

County government legislative activities are also monitored by the Foundation. However, with most taxing authority concentrated at the state level and given that Hawaii is an island state, the Foundation has, for the most part, limited its monitoring activity of county governments to real property taxes. The Foundation responds to all requests by county policymakers for its research and viewpoints on local government issues.

Below is the number of tax measures in which the Foundation presented testimony, either in oral and/or written format:

- **State Senate (146)**
 - Committee on Agriculture (5)
 - Commerce & Consumer Protection (6)
 - Economic Development, Government Operations & Housing (9)
 - Education (1)
 - Energy & Environment (10)
 - Hawaiian Affairs (1)

- Health (4)
- Human Services (14)
- Judiciary & Labor (2)
- Public Safety, Intergovernmental and Military Affairs (5)
- Tourism (10)
- Transportation and International Affairs (5)
- Water and Land (3)
- Ways and Means (71)

- **State House of Representatives (135)**
 - Committee on Agriculture (1)
 - Consumer Protection and Commerce (4)
 - Economic Development and Business (10)
 - Education (1)
 - Energy & Environmental Protection (8)
 - Finance (65)
 - Health (3)
 - Higher Education (1)
 - Housing (5)
 - Human Services (7)
 - Judiciary (2)
 - Labor & Public Employment (1)
 - Ocean, Marine Resources & Hawaiian Affairs (2)
 - Public Safety (2)
 - Tourism (9)
 - Transportation (6)
 - Veterans, Military and International Affairs & Culture and the Arts (2)
 - Water & Land (6)

- **State Department of Taxation**
 - Hearing on Proposed Administrative Rules (3)

Publications

Legislative Tax Bill Service

The TAX BILL SERVICE provides summaries of all tax legislation introduced during the legislative session. The Foundation also includes an executive summary and brief comments on the impact each measure may have on the tax system, with the primary focus being on fairness and administrative concerns. The publication is provided to supporting members, subscribers, lawmakers, administrators and the media.

Weekly Commentary

The Foundation president authors commentaries that highlight issues of current interest within the Hawaii community. Some of the topics covered during the past year were:

- Coverage of pending U.S. Supreme Court cases
 - End Run Around Nexus (Dec. 8, 2014)
 - The Tax Credit that Should Not Die (Nov. 30, 2014)
 - Who’s the Boss, Anyway? (Nov. 23, 2014)
- Coverage of National State Tax Rankings
 - The 2015 State Business Tax Climate Index (Nov. 17, 2014)
 - The Second Most Unfair Tax System? Really? (Sept. 28, 2014)
 - Winner and Still Champ! Oh, No! (July 6, 2014)
- Significant State Policy Issues
 - State-Provided Targeted Benefits: Help or Harm? (Sept. 7, 2014)
 - REIT – A New Kind of Tax Shelter? (Aug. 31, 2014)
 - Would You Be Shocked? (July 13, 2014)
 - Do You Know the Meaning of “Temporary?” (Apr. 27, 2014)

The commentaries are published weekly by *Civil Beat*, *Hawaii Free Press*, *Maui News*, the *West Hawaii Today*, the *Hawaii Reporter*, and the *Garden Isle News*. They are also made available on the Foundation’s web site.

Media

The Foundation president is an often quoted source in the media, highlighting the Foundation’s analysis and knowledge base in tax and public finance issues. The Foundation is often quoted in the Honolulu Star-Advertiser and by the major network radio and television stations. The staff also participated in the form of talk shows or news interviews on the following radio and television program broadcasts: Hawaii News Now (1), KHON-TV (1), KAAH-TV Trinity Broadcasting (1), KHPR Public Radio Interviews (2).

Internet Site

The Foundation entirely revamped its web site - <http://www.tfhawaii.org> - with new information to help the public keep abreast of the Tax Foundation of Hawaii’s activities and mission. The new site, which launched in August 2014, is based on open-source publicly available software and is responsive to the device viewing it, which means that it is more accessible to those accessing the site by way of smart phones and tablet devices, as well as desktop and laptop computers. The site provides a low-cost method to distribute the Foundation’s findings and other information across the state and nation. The Foundation’s weekly column, which is carried in a number of media outlets, is also posted on its web site.

Presentations (35)

Speeches and Talks (16)

- Hawaii Society of Enrolled Agents
- Hawaii Economic Association - Increasing Economic Prosperity Through GDP Growth Seminar
- Hawaii Employers Council Legislative Wrap-Up
- Hawaii Kai Republican Women's Breakfast Meeting
- Hawaii Society of CPAs
- Hawaii Society of CPAs - Legislative Update
- HICOMP Legislative Update
- Honolulu Sunrise Rotary
- Honolulu Sunset Rotary
- Increasing Economic Prosperity Through GDP Growth Workshop -Panelist
- National Association of Tax Professionals State Conference
- Rotary Club of Metropolitan Honolulu (2)
- Small Business Hawaii Annual Business Conference
- Tax Executives Institute
- The Grassroot Institute of Hawaii

Organizational Meetings (14)

The Foundation maintains membership and plays a direct role in the activities of several community groups and organizations. In other cases, staff attends meetings to gather information and to monitor activities of decision makers in the community. In 2014, the Foundation President was named Vice Chair of a panel convened by the City & County of Honolulu to study and make recommendations on its real property tax system.

City & County of Honolulu Real Property Tax Advisory Commission (8)

Hawaii Association of Trade Executives (6)

Membership Luncheon (1)

The membership luncheon provides members of the Foundation a chance to gather and hear a speaker of note in the community. During the past year, the Foundation held its annual membership luncheon on August 27. Mr. Russell Hata, CEO of the major food distributor Y. Hata & Co., was the guest speaker. On that date, both Governor Neil Abercrombie and Mayor Kirk Caldwell issued proclamations congratulating the Foundation on its 60 years of service to Hawaii and its people.

Legislative Workshops (3)

Responding to requests for updates of tax and public finance legislation moving through the legislative maze, the Foundation has been providing educational workshops during the session to keep those who do not have the time to monitor the session up to date. Held at key times during the legislative process, these workshops inform interested individuals about which

proposals are progressing through the process. In addition, the Foundation partners with the Hawaii Employers Council to also update participants about key labor related proposals wending their way through the legislature.

Educational Workshops (1)

The Foundation realized there are many areas of interest to the general public, legislators and their staff personnel. It was decided to focus on a few issues that would offer information of interest to a broad cross section of Hawaii's people and seminars were held assist in helping disseminating knowledge in these specific areas. The Foundation held one such workshop in 2014.

- Navigating the Capitol Seminar

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2014

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