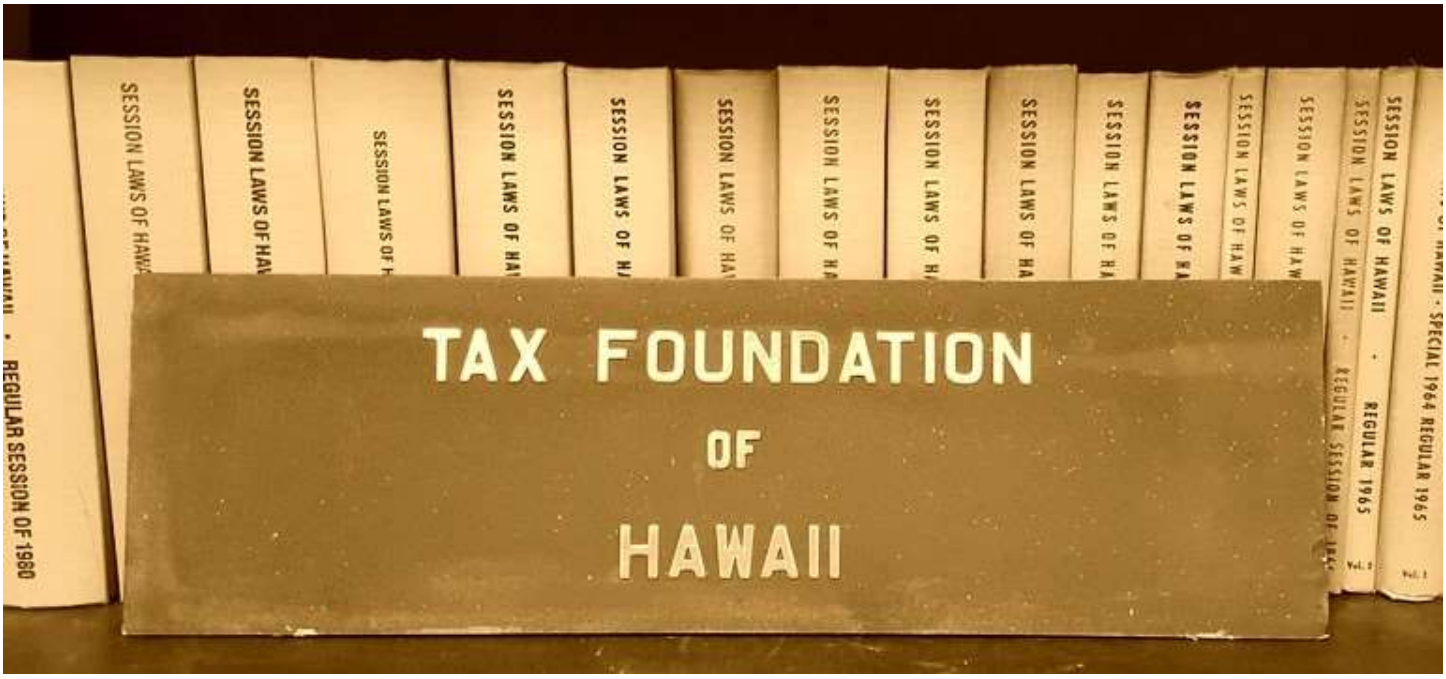

TAX FOUNDATION OF HAWAII

2018 Annual Activity Report

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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.

2018 Review

We at the Tax Foundation of Hawaii wanted to thank you for your support this year. We wanted to draw your attention to one BIG thing we could accomplish this year thanks to your support.

Skim Lawsuit Decided – Taxpayers Still Win!

Since 2007, under a little-noticed provision in the laws, the State was happily pocketing 10% *off the top* from its collections of the Oahu rail surcharge. They said that the money was to pay for the State's costs of administering and collecting the tax. But, although the Department of Taxation said that it cost them between $1 and $1.5 million a year to do that, the State raked away about **$25 million a year**! And *none* of it was directed to the Department doing the administering and collecting – every dime withheld went straight to the State General Fund. The Foundation filed suit in October 2015 to fix that. The lawsuit resulted in the State lowering the amount skimmed *from 10% to 1%* in the 2017 special session, a huge win for taxpayers. In March 2019, our supreme court ruled that "in 2005, it was uncertain what the potential burden of the surcharge's administration would be, and it was reasonable for the State to estimate administration costs at 10% of the surcharge's gross proceeds." The court's opinion terminated our lawsuit, and we in the Foundation weren't happy about that conclusion, but we decided to focus on the significance of the reduction in the skim that was already achieved for the State's

taxpayers. We believe that is key to remember that if the Foundation had not taken action, we, the already burdened citizens of Hawaii, still may be burdened with the excessive skim.

IN THE COURTS – Amicus Activity 2018

City & County of Honolulu vs. Ige

In the 2018 legislative session, the legislature passed SB 2922, which put on the November 2018 general election ballot a question, "Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?" A yes vote in the election will result in the legislature being granted the power to impose a surcharge on real property tax on "investment real property."

The City & County of Honolulu, later joined by the Counties of Hawaii, Maui, and Kauai, sued for an injunction seeking to kick the measure off the ballot, claiming that the ballot title is misleading and deceptive, the concept of "investment property" is too vague, and the measure was improperly passed at the Legislature. The Foundation filed papers supporting the counties' position, urging that the ballot initiative be found unconstitutional because it was asking the voters to approve a new tax without telling them that it was a new tax.

On October 19, 2018, the Hawaii Supreme Court issued an order invalidating the ballot measure and followed up with an opinion on December 20, 2018. The court found the ballot initiative likely to be confusing to voters and lacking in key information that voters should have been given.

In re Kaheawa Wind Power LLC

This case is about wind turbines mounted on high ground in Maui. The County assessed real property tax on the value of the turbines, contending that they were improvements to land. The Tax Appeal Court and the Intermediate Court of Appeals concluded that the turbines were machinery that was not taxable under Maui's real property tax. Not to be outdone, the Maui county government then amended its ordinance defining real property for tax purposes to include wind turbines explicitly. The turbines were assessed again, and the principal dispute this time is whether the Maui county government had the right to do that. The Hawaii Tax Appeal Court held that it did not have that right because it had authority to tax real property only. Maui County appealed.

The Foundation filed an amicus brief supporting the taxpayers' position. We believe that there is real danger lurking in the background: If Maui County wins, what's to stop a county from amending its real property ordinance to include other big machines, or industrial cooking equipment, or MRI scanners, or anything else that a business or individual might own?

This appeal is now pending before the Supreme Court of Hawaii. Oral argument was held on December 18, 2018.

Ocean Resort Villas VOA vs. Maui

In this case, two sizeable timeshare projects sued the County of Maui in circuit court on Maui, seeking invalidation of the "Time Share" real property tax classification in the Maui ordinances. The County retaliated by back assessing the taxpayers for more than $10 million, and giving them only 30 days to come up with the money! The circuit court essentially threw the book at the counties for doing that, and then invalidated the classification for good measure.

The Foundation's amicus brief adopted the position of neither party. The three main issues presented are (1) whether the case is in the right court, (2) whether the retaliatory back assessment was legal, and (3) whether the Time Share classification is invalid. We agreed with the county that the ordinance was valid, but our brief supported the taxpayer on the other two issues.

The case is pending before the Supreme Court of Hawaii and is now on hold while the parties are pursuing appellate mediation.

Walden vs. Hi'ilei Aloha, LLC

This case was brought by Andrew Walden, the publisher of *Hawaii Free Press*, against Hi'ilei Aloha LLC, Ho'okele Pono LLC, and Hi'ipaka LLC, limited liability companies that are each wholly owned by the Office of Hawaiian Affairs (OHA) and are managed by members of OHA's management term. Walden, taking the position that the LLCs are basically government agencies, sought to compel the entities to produce financial records such as their check registers. The entities counter that they are not government agencies under the laws mandating disclosure of government records, but are instead independent tax-exempt entities.

The Foundation filed an amicus brief arguing that agencies cannot be allowed to subvert transparency requirements, essentially hiding financial information from the Legislature and the public, by simply creating new and wholly owned and controlled entities.

On June 25, 2019, Circuit Court Judge Crabtree recognized the LLCs as subject to the public records law and ordered the LLCs to disclose the records requested. OHA's new CEO stated that OHA would not appeal the order and would produce the records.

FOUNDATION ACTIVITIES -2018

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

The Foundation is engaged in several other organizations within the community to network, align, and share information. Participation includes attending meetings, collaborating on media projects, and bringing awareness to issues facing Hawaii taxpayers. The following organizations are partnered and aligned with the Foundation through membership, fundraising, providing of grants, and networking:

- Hawaii State Bar Association Tax Section
- Hawaii Society of CPAs
- National Association of Tax Professionals
- Honolulu Japanese Chamber of Commerce Government Affairs Committee
- The Grassroot Institute of Hawaii Calabash Meetings
- National Tax Foundation State Working Group
- HANO
- Aloha United Way
- Hawaii Association of Trade Executives

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 (247)

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, split up by committee:

State Senate (142)

- Commerce & Consumer Protection (30)
- Economic Development & Technology (20)
- Education (4)
- Government Operations (3)
- Hawaiian Affairs (1)
- Housing (7)
- Human Services (3)
- Judiciary & Labor (11)
- Public Safety, Intergovernmental & Military Affairs (12)
- Transportation (10)
- Water & Land (3)
- Ways and Means (38)

State House of Representatives (105)

- Agriculture (11)
- Consumer Protection and Commerce (10)
- Economic Development and Business (10)
- Education (3)
- Energy & Environmental Protection (4)
- Finance (35)
- Health (1)
- Higher Education (2)
- Housing (9)
- Human Services (1)
- Judiciary (3)
- Labor & Public Employment (1)
- Ocean, Marine Resources, & Hawaiian Affairs (1)
- Tourism (5)
- Transportation (5)
- Veterans, Military and International Affairs, & Culture and the Arts (1)
- Water & Land (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 (52)

The Foundation president authors commentaries that highlight issues of current interest within the Hawaii community. The articles are featured not only on our website but statewide through press outlets such as: ***Civil Beat, Hawaii Free Press, Maui News, The Hawaii Reporter, The Garden Island,*** and ***West Hawaii Today***. Some of the topics covered during the past year were:

- **Trump Tax Effects on Hawaii**
  - Trump Tax Part I (January 14, 2018)
  - Trump Tax Part II (January 21, 2018)

- **Updates from the 2018 Legislative Session**
  - Mighty Morphin Power Bills (April 22, 2018)
  - By The Way, Could We Have $50 Million More (March 4, 2018)
  - Groundhog Day in the Hawaii Senate (March 11, 2018)

- **Use of Special Funds to Bypass Legislative Oversight**
  - No, Killing A Special Fund Doesn't Kill People (December 30, 2018)

- **State Tax Issues**
  - The Value of A Refundable Credit (February 4, 2018)
  - A Penny for Education (February 25, 2018)
  - It's Not Easy Bein' An Employer (July 1, 2018)
  - Guess Which Agency Can Impose State Tax? (September 30, 2018)
  - Do We Really Have a Spending Ceiling? (October 21, 2018)

- **The Controversial "Con-Am" Proposed Ballot Measure**
  - Say It's A Tax (September 23, 2018)
  - Take-Aways From the "Con-Am" Argument (October 29, 2018)

Media Appearances (35)

The Foundation President was featured in 40 different newscasts, radio shows, articles, and interviews. Additionally, the Foundation is often quoted in the Honolulu Star-Advertiser and by the major network radio and television stations. Media outlets regularly featuring President Yamachika include: Civil Beat; Hawaii News Now; KHON-TV; KAAH-TV (Trinity Broadcasting); KITV; KHPR Public Radio Interviews; Hawaiian Christian Coalition TV Broadcast; Honolulu Star Advertiser; Hawaii Free Press; 808 State Update with Duke Aiona (AM 940); Insights on PBS; Pacific Business News; Maui News; West Hawaii Today.

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 September 7 to a sell-out crowd at the Plaza Club in downtown Honolulu. President Tom Yamachika participated in a far-reaching policy discussion with Dr. Keli'i Akina, OHA Trustee and President of the Grassroot Institute of Hawaii; and Gavin Thornton, Co-Executive Director of the Hawaii Appleseed Center for Law and Economic Justice. The discussion was moderated by Daryl Huff of Hawaii News Now.

Legislative Workshops (4)

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.

Tax Foundation of Hawaii

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Manoj Samaranayake	**Michael J. O'Malley**	**Lon K. Okada**	**Ronald I. Heller**

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