TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023

ON THE FOLLOWING MEASURE:
S.B. NO. 925, RELATING TO A WEALTH ASSET TAX.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 2, 2023 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Tammy Kaneshiro, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments.

The bill establishes a wealth tax of one percent of the state net worth in excess of $20,000,000 for each individual taxpayer who holds more than $20,000,000 in assets in the State. A taxpayer's state net worth shall include the aggregate value of various enumerated assets, including real property pursuant to section -3(b)(1), on page 2, line 12, of the bill.

The bill raises a novel issue under section 3 of article VIII of the Constitution of the State of Hawaii, which provides:

> The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and *except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties*, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions.

(Emphasis added.)

Existing case law does not provide a clear answer to the question of whether a tax on net worth, where calculating net worth requires consideration of the taxpayer's assets, which includes real property among other assets, necessarily constitutes a "taxation of real property" within the meaning of article VIII, section 3.

To insulate the bill from challenge on this novel question, this Committee could consider adding a severability clause to the end of the bill. The Department suggests the following language:

> Every provision in this Act and every application of each provision in this Act is severable from each other. If any application of any provision in this Act to any person or group of persons or circumstances is determined by any court to be invalid, the remainder of this Act and the application of the Act's provisions to all other persons and circumstances shall not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court determines to be invalid or unenforceable, leaving the valid applications in force, because it is the legislature's intent that all valid applications shall remain in force.

Another possible option would be to delete the "real property" line item on page 2, line 12, in an abundance of caution.

Thank you for the opportunity to offer these comments.

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR OF TAXATION

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAIʻI
DEPARTMENT OF TAXATION
Ka ʻOihana ʻAuhau
P.O. BOX 259
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TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:
S.B. No. 925, Relating to a Wealth Asset Tax

BEFORE THE:
Senate Committee on Judiciary

DATE: Thursday, February 2, 2023
TIME: 10:00 a.m.
LOCATION: State Capitol, Room 16

Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 925 for your consideration.

S.B. 925 creates a new chapter in Hawaii Revised Statutes, (HRS), which establishes a wealth asset tax equal to one per cent of an individual taxpayer's statewide net worth in excess of $20,000,000. The bill is effective upon approval and applies to taxable years beginning after December 31, 2023.

The Department notes that many details regarding administration of the tax have been omitted from the bill, including the types of debts that will be considered in determining net worth, methods that must be used for valuation of assets, time periods for which valuation of assets shall occur, methods for allocation and apportionment, withholding requirements, reporting requirements, limitations periods, and audit and assessment provisions. The Department recommends that the bill be amended to add the necessary details to implement and administer the tax, as many of these provisions will require policy decisions and will be difficult to promulgate as administrative rules.

In the alternative, the Department suggests that a working group be convened to develop and recommend a detailed tax proposal.

Finally, the Department requests that the bill be amended to apply to taxable years beginning after December 31, 2024 to allow the Department sufficient time to promulgate administrative rules, create new forms, and make the necessary system changes.

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

HAWAI'I
AMERICANS FOR DEMOCRATIC ACTION

OFFICERS
John Bickel, President
Alan Burdick, Vice President
Doug Pyle, Secretary

DIRECTORS
Melodie Aduja
Keola Akana
Juliet Begley
Stephanie Fitzpatrick
Jan Lubin
Shannon Matson
Jenny Nomura
Stephen O'Harrow
Bill South
Michael Vernon

MAILING ADDRESS
P.O. Box 23404
Honolulu
Hawaii 96823

January 30, 2023

TO: Chair Rhoads and Members of the Judiciary Committee

RE: SB 925 Relating to a Wealth Asset Tax

Support for a Hearing on Feb. 3

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.

Americans for Democratic Action Hawaii supports this bill as it would create a wealth asset tax of one per cent of the state net worth of each individual taxpayer who holds $20,000,000 or more in assets in the State. A study by the Institute on Taxation and Economic Policy found that the poorest residents in Hawaiʻi pay 68 percent more in taxes as a portion of their income compared with the state's wealthiest residents. Our tax structure is regressive. This would help.

Thank you for your consideration.

Sincerely,

John Bickel, President

GRASSROOT INSTITUTE OF HAWAII

Feb. 2, 2023
10 a.m.
Conference Room 016 and Videoconference

To: Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

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

RE: SB925 — 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 SB925, which would establish a wealth asset tax of "1% on the state net worth of each individual taxpayer who holds $20 million or more in assets in the state."

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

The intention of this bill might be noble, but its practical effects would leave much to be desired. Wealth taxes are difficult to administer and can cause economic damage.

To the first point, the state Department of Taxation would have to figure out how to accurately estimate the entire net worth of wealthy individuals on a year-to-year basis, at a cost yet to be determined. How much money would the department need to hire appraisers and accountants to estimate the tax burden of such individuals?

The bill also seems to assume that those who would be taxed will do nothing in response. In fact, such a tax likely would incentivize those same individuals to adopt creative accounting strategies aimed at lowering their net worths, so they could avoid having to pay the tax.

To the second point — about potential economic damage — a wealth asset tax also could encourage high net worth individuals to move their assets out of Hawaii to states that don't have such a tax, which in turn would reduce business investment in Hawaii and curb job growth.

A study of European wealth taxes in the 1980s and 1990s discovered that such taxes "dampen economic growth." And out of 13 European countries that employed wealth taxes before the turn of the century, only three still have them. The other 10 abandoned them because of their high administrative costs, inefficiency and economic harm.[1] [2]

Tax increases in general are not a good idea for Hawaii's economy, especially not now when it already has one of the highest tax burdens in the nation.[3] Hawaii's population has been suffering a net decline for each of the past six years, with the state's high cost of living and lack of employment opportunities being among the most cited reasons.[4]

Other issues to consider as you deliberate on this measure include the fact that:

>> Hawaii is predicted to enter an economic slowdown later this year.[5] Tax hikes might only exacerbate this slowdown, since entrepreneurs will be less likely to want to invest their capital — or "wealth assets," as the case may be.[6]

>> Hawaii has a progressive income tax that taxes high-income earners at 11%, second only to California at 13.3%.[7] Hawaii's top 1% already pays 24.9% of all income taxes in the state.[8]

>> Hawaii's continuing population decline leaves remaining residents with a higher tax burden. Many residents leaving Hawaii move to states without income taxes. Washington, Nevada, Texas and

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[1] Jared Walczak, "Wealth Tax Proposals Are Back as States Take Aim at Investment," Tax Foundation, Jan. 17, 2023; Allison Scharger and Beth Akers, "Issues 2020: What's Wrong with a Wealth Tax," Manhattan Institute, Oct. 8, 2020.
[2] Asa Hansson, "Is the wealth tax harmful to economic growth?" World Tax Journal, 2010.
[3] Jared Walczak and Erica York, "State and Local Tax Burdens, Calendar Year 2022," Tax Foundation, April 7, 2022.
[4] Maria Wood, "Where People from Hawaii Are Moving to the Most," 24/7 Wall Street, Jan. 23, 2022.
[5] Annalisa Burgos, "Experts: Hawaii's economy poised to slow down 'significantly,' but stop short of recession," Hawaii News Now, Jan. 22, 2023.
[6] Aaron Hedlund, "How Do Taxes Affect Entrepreneurship, Innovation, and Productivity?" Center for Growth and Opportunity at Utah State University, Dec. 23, 2019; Ergete Ferede, "The Effects on Entrepreneurship of Increasing Provincial Top Personal Income Tax Rates in Canada," Fraser Institute, July 10, 2018; Robert Carroll, Douglas Holtz-Eakin, Mark Rider and Harvey S. Rosen, "Personal Income Taxes and the Growth of Small Firms," National Bureau of Economic Research, October 2000.
[7] Timothy Vermeer and Katherine Loughead, "State Individual Income Tax Rates and Brackets for 2022," Tax Foundation, Feb. 15, 2022.
[8] "Hawaii Individual Income Tax Statistics," Hawaii Department of Taxation report for Tax Year 2020, Sept. 29, 2022, Table 13A.

Florida — four of the top five destinations for Hawaii residents moving to the mainland — do not have income taxes.[9]

>> State lawmakers increased taxes and fees substantially following the Great Recession of 2007-2008,[10] despite a windfall in revenues from an economic boom over the past decade. Taxes and fees ballooned on motor vehicles, transient accommodations, estates, fuel, food, wealthy incomes, property, parking and businesses.

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 wealthy, lawmakers should focus on lowering the cost of living, such as by reducing income taxes, exempting medical services from the general excise tax, lowering fees and reducing regulations that limit opportunities and stifle economic growth.

Thank you for the opportunity to testify.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii

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[9] Katherine Loughead, "How Do Taxes Affect Interstate Migration?" Tax Foundation, Oct. 11, 2022.
[10] "Tax Acts (by Year)," Tax Foundation of Hawaii, accessed Jan. 30, 2023.

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

SUBJECT: MISCELLANEOUS, New Wealth Asset Tax

BILL NUMBER: SB 925, HB 1190

INTRODUCED BY: SB by RHOADS, CHANG; HB by PERRUSO, AMATO, GANADEN, HUSSEY-BURDICK, KAPELA, POEPOE

EXECUTIVE SUMMARY: Establishes a wealth asset tax of one per cent of the state net worth of each individual taxpayer who holds $20,000,000 or more in assets in the State.

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 state net worth of each individual taxpayer who holds $20,000,000 or more in assets in the State; provided that the individual taxpayer’s net worth shall be based on the individual’s assets, not joint assets, and a married individual shall file a separate return; provided further that if the taxpayer pays a wealth asset tax on the same asset in a different state, the amount paid to the other state shall be subtracted from the state tax liability.

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

(l) Real Property

(2) Stock in any publicly and privately traded C-corporation

(3) Stock in any S-corporation

(4) Interests in any partnership

(5) Interests in any private equity or hedge fund

(6) Interests in any other noncorporate business

(7) Bonds and interest-bearing savings accounts

(8) Cash and deposits

(9) Farm assets

(10) Interest in mutual funds or index funds

(11) Put and call options on securities

(l2) Futures contracts

(l3) Art and collectables

(l4) Financial assets held offshore

(15) Pension funds

(l6) Debts owed to the taxpayer

(l7) Other assets

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: Upon Approval, applicable to taxable years beginning after December 31, 2023.

STAFF COMMENTS: The national Tax Foundation (no relation to our organization) recently published a comment on wealth tax proposals that this year are being proposed in CA, CT, HI, IL, MD, NY, and WA. Its commentary, at https://taxfoundation.org/state-wealth-tax-proposals/, is republished here for the Committee's information.

Wealth Tax Proposals Are Back as States Take Aim at Investment

January 17, 2023

Jared Walczak

Wealth taxes are back in a big way.

In a coordinated effort, lawmakers in seven states that collectively house about 60 percent of the nation's wealth—California, Connecticut, Hawaii, Illinois, Maryland, New York, and Washington—are introducing wealth tax legislation on Thursday.

The campaign is part of a broader national focus on new taxes on investment, entrepreneurship, and wealth. For instance, a pending proposal in New York would yield a nearly 30 percent tax on wealthy New York City residents' capital gains income, about 50 percent higher than the 20 percent federal tax on long-term capital gains. Elsewhere, lower estate tax thresholds would impose the tax on the upper middle class and not just the very wealthy—including the small businesses and farms policymakers have long worked to protect from estate taxes to avoid forcing them to break up to pay the tax. And the wealth taxes themselves would vary across the seven states, partly due to differing state constitutional constraints.

Not that constitutions will always stand in the way of legislative proposals. A wealth tax is transparently in conflict with Washington's state constitution, but that has not stymied prior proposals and it isn't standing in the way of a new effort to be unveiled on Thursday. California proposals have tended to include exit taxes—designed to continue to tax those who respond by leaving the state—that implicate a host of federal constitutional provisions, a reality that has provoked little consternation among supporters. And most prior proposals would tax *worldwide* net worth for state residents, with all the constitutional questions that raises.

The constant across all seven states, or wherever such taxes are proposed: wealth taxes are economically destructive, their base is almost impossible to measure accurately, and they create perverse incentives and promote costly avoidance strategies. Very few taxpayers would *remit* wealth taxes—but many more would pay the price.

Proponents sometimes argue that wealth taxes are small and that the rich can afford them. But because the rates are on net worth—not on income—they cut deeply into investment returns, to the detriment of the broader economy. Average taxpayers may not care if the ultra-wealthy have lower net worths. But they will certainly care if innovation slows and investments decline.

We are not accustomed to thinking about taxes in terms of stocks (accumulated wealth) rather than flows (income streams). To most people, it's not intuitive how a wealth tax rate compares to something we better understand, like income tax rates.

Imagine a $50 million investment, held for 10 years and earning a 10 percent nominal annual rate of return in a 3 percent annual inflation environment. Without a wealth tax, that investment would yield $46.5 million in investment returns, in current dollars, after 10 years. With a 1 percent wealth tax, it would yield $37.3 million. The wealth tax would wipe out nearly 20 percent of the gains. If the gains were realized at the end of 10 years, a 1 percent wealth tax would have reduced gains by as much as the 20 percent federal capital gains tax.

In current dollars (valued at the start, not the end, of the investment period), that 1 percent annual wealth tax becomes a 14.5 percent effective tax on net income ($6.3 million of $43.6 million in pre-tax gains). But because each year there was less principal to invest than there would have been absent the annual tax, another $2.9 million is forgone not as tax revenue but as investment gains that never materialized. The result: a 1 percent wealth tax erodes 19.8 percent of the investment income.

If prior efforts are any indication, some of these proposals (like Washington's) will have a base of fairly liquid, publicly traded investments, for which there is a known market value. But others, potentially including California's, would tax *all* assets of the wealthy, many of which lack a known market value. This could include tangible assets, like artwork, as well as nonfinancial intangible assets, like trademarks or goodwill, which can be nearly impossible to value. Worst of all, it can include ownership stakes in closely held corporations and partnerships, which often defy evaluation.

A promising tech startup might briefly be valued at hundreds of millions of dollars but fold without ever turning a profit. Another might fly under the radar until suddenly acquired for billions of dollars. Owners of the former might face insurmountable wealth tax burdens on a hypothetical net worth that never generates actual income and ultimately vanishes, while owners of the latter might avoid any wealth tax on a company that presumably had significant value before a price tag was affixed by its acquisition.

Taxing wealth consisting of unrealized gains from publicly traded assets is relatively straightforward, since some portion of the shares could be sold in satisfaction of tax liability. (This would, of course, still have consequences for some wealthy investors who are trying to maintain a controlling interest, and conflicting treatment of capital gains at the federal and state levels would create confused incentives.) But with private business assets, the tax can be much more consequential: some portion of the company or its assets may have to be sold to pay taxes on gains that only exist on paper. The owners are asset rich but cash poor.

Even for the most public of public figures, net worth is not only difficult to assess, but also difficult to project. And wealth taxes are imposed regardless of whether there is any income at all, and regardless of whether net worth is increasing or decreasing.

In current dollars, Elon Musk lost $226 billion between November 2021 and December 2022. Sixty-two percent of his wealth frittered—not to say twittered—away. And he at least had investments to liquidate had he been required to pay wealth tax on the much higher November 2021 valuation. For many entrepreneurs in the earlier stage of their venture, not only might their net worth prove highly volatile (and difficult to assess), but they also may have few ways to generate the cash flow necessary to pay the tax.

At either end of that spectrum, of course, there is the prospect of exit: those subject to a wealth tax could decamp to another state, a move that is far easier at the state than the national level. In fact, the economic consequences—both from outmigration and lower economic activity—are so significant that even at the national level, most countries have abandoned any wealth taxes they once had.

Thirteen OECD countries have imposed wealth taxes since 1965, but the number dwindled to three—in Norway, Spain, and Switzerland—by 2022, with governments increasingly acknowledging the economic harms intrinsic to such taxes. However, Colombia's new left-wing government reinstituted a wealth tax for the start of the current calendar year. That is the only recent example for states to follow, amid a general trend of repudiation and repeal. (France has a tax on high-end real property, but no longer on other sources of wealth.)

From thirteen to four, at the *national* level, where exit is comparatively difficult. Yet seven states want to try this experiment in the United States?

California has previously considered an 0.4 percent state wealth tax, which proponents estimated would have raised about $7.5 billion a year—equal to 4.2 percent of state revenue at the time, and just under 1.1 percent of combined federal and state tax revenue from California, more than the tax share under three of the four *national* wealth taxes in OECD countries.

People will move. California knows people will move. Its response: an exit tax, and wealth taxes owed for years after leaving the state. This almost certainly runs afoul of the Commerce Clause of the U.S. Constitution and interferes with the constitutionally protected right of travel.

But that's where the economic illogic of wealth taxes leaves states: contemplating constitutionally dubious taxation of nonresidents to counter the simple reality that wealth taxes undercut investment and drive entrepreneurs and innovators out of state.

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Digested: 1/30/2023

SB-925
Submitted on: 1/31/2023 12:47:55 PM
Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Hunter Heaivilin	Individual	Support	Written Testimony Only

Comments:

As a concerned citizen and taxpayer, I fully support SB925 and the establishment of a wealth asset tax. We are facing unprecedented challenges in our state, including rising income inequality, unaffordable housing, and inadequate funding for critical public services such as education, healthcare, and infrastructure. It is only fair that those who have benefited the most from our state's prosperity, and those with considerable assets who have settled here, should contribute their fair share to help address these challenges.

The wealth asset tax proposed in SB925 is a modest step towards a more equitable and sustainable future. By requiring individuals with $20,000,000 or more in assets in the state to pay a one percent tax on their state net worth, we can raise significant revenue to fund important public services and address critical social and economic challenges. I urge the legislature to pass this bill and establish a wealth asset tax that is fair, sustainable, and equitable for all. The time has come for the wealthiest members of our society to step up and help build a brighter future for all of us.

SB-925
Submitted on: 1/30/2023 4:22:45 PM
Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

Unconstitutional!!!!!

SB-925
Submitted on: 1/31/2023 2:37:23 PM
Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Oppose	Written Testimony Only

Comments:

Wish I had $20 million, but I don't. Nowhere near rhat amount. However, this bill is overreach. The legislature has to stop nickle and diming us to death, coming up with more taxes, more ways to take our hard earned money. Enough is enough. If someone has those assets they earned it, or inherited it. Please kill this bill now.

SB-925
Submitted on: 1/31/2023 8:14:10 PM
Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

It’s time for the wealthiest among us to pay their fair share of taxes. When the super rich take unfair advantage of the many loopholes in the tax code, the rest of us are forced to pick up the tab. At the same time our public infrastructure, our schools, our natural resources and our housing ecosystem have all been chronically under-funded for years.

Instead of letting the rich get away with avoiding their fair share of taxes, while working families struggle and our state suffers, we should ask multi-millionaires to pay more on their extreme wealth to help fund the future our keiki deserve.

LATE

SB-925
Submitted on: 2/1/2023 2:14:54 PM
Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Ingrid Peterson	Individual	Support	Written Testimony Only

Comments:

Aloha Committee Members!

I support this tax bill because it would help reduce income/asset inequality in our state. The funds could be well used for programs to help our residents survive and thrive in Hawaii Nei.

Mahalo,

Ingrid Peterson

LATE

SB-925
Submitted on: 2/1/2023 7:21:11 PM
Testimony for JDC on 2/2/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Individual	Support	Written Testimony Only

Comments:

Chair Rhoads, Vice Chair Gabbard & Judiciary Committee Members:

I strongly support this measure.

Those with an abundance of material wealth can be reasonably expected to pay more to live in our state, which features a year-round tropical climate, beaches, rain forests, and the lowest effective property tax rates in the nation.

Mahalo for the opportunity to provide testimony.