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
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To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director
Department of Taxation

Date: Friday, February 26, 2021
Time: 9:30 A.M.
Place: Via Videoconference, Hawaii State Capitol

Re: S.B. 358, S.D. 1, Relating to the College Savings Program

The Department of Taxation (Department) offers the following comments on S.B. 358, S.D. 1, for your consideration.

S.B. 358, S.D. 1, creates a deduction from income tax for contributions made to an account in the Hawaii College Savings Program within specific limits and circumstances. The deduction applies to taxable years beginning after December 31, 2020.

The Department first notes that this deduction would result in providing a double tax benefit as distributions from a qualified 529 plan are not subject to tax. From a tax policy perspective, the Department does not believe that it is appropriate to allow a double tax benefit as this measure proposes.

The Department notes that "qualified taxpayer" is defined as a Hawaii resident by this measure. Creating a tax benefit applicable to Hawaii residents, but not residents of other states who are subject to Hawaii income tax may violate the Constitution of the United States.

Finally, the Department suggests the following clarifying amendment to the new section 235-__(d):

(d) If the amount of the contribution to the qualified taxpayer's account in the H1529—Hawaii's college savings program exceeds the maximum deduction for the taxable year in which the contribution is made pursuant to subsection (a), the excess deduction may be used as a deduction against the qualified taxpayer's Hawaii adjusted gross income for up to four subsequent tax years, or until the excess deduction is exhausted[~~.~~], whichever occurs first.

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

DAVID Y. IGE
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAIʻI
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
PRINCESS VICTORIA KAMĀMALU BUILDING
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAIʻI 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543

February 26, 2021

The Honorable Senator Donovan M. Dela Cruz, Chair
Senate Committee on Ways and Means
The Thirty-First Legislature
State Capitol
State of Hawaiʻi
Honolulu, Hawaiʻi 96813

Dear Senator Donovan Dela Cruz and Members of the Committee:

SUBJECT: SB0358 SD1 – Relating to the College Savings Program

The State Council on Developmental Disabilities **SUPPORTS SB0358 SD1,** which will establish a state income tax deduction for eligible contributions to the Hawaiʻi college savings program.

The Council respectfully requests that the Hawaiʻi Achieving a Better Life Experience (ABLE) Act be added into this measure. The Able Act was signed into law by President Obama in 2014. Governor David Ige signed into law Hawaiʻi ABLE Savings Program or known as Act 206, SLH 2015. These accounts allow for individuals with disabilities to open special accounts which allows them to save up to $100,000.00 without risking their eligibility for Social Security and Medicaid coverage.

ABLE accounts can only be used to pay for education, housing, transportation, employment training, and health services. The ABLE account was created out of the HI529 and is compatible with the proposed college saving program in this measure. The Council suggests replacing “Hawaii’s college savings program” to “Hawaii’s College and ABLE Savings Program”.

The inclusion of the ABLE account within this measure will broaden its reach to include persons with disabilities within the sphere of tax deductions. Allowing for more people with disabilities to apply and know of ABLE accounts as well as enhance the educational opportunities of the disability community.

Thank you for the opportunity to submit testimony **supporting SB0358 SD1.**

Sincerely,

Daintry Bartoldus

Daintry Bartoldus
Executive Administrator

DAVID Y. IGE
GOVERNOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAI'I EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAI'I
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAI'I 96810-0150

CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 358, S.D.1

February 26, 2021
9:30 A.M.
Via Videoconference

RELATING TO THE COLLEGE SAVINGS PROGRAM

Senate Bill No. 358, S.D. 1, proposes to provide for an annual state income tax deduction of $4,000 per individual or $8,000 for a married couple filing jointly, against taxable income, for contributions made to the state of Hawai'i's college savings plan (HI529 Hawai'i's College Savings Program) established under section 529 of the Internal Revenue Code (commonly known as 529 college savings plans).

The Department provides comments and appreciates the intent of the bill to encourage and provide incentives for individuals and families to save and invest funds for higher education.

In 2002, the State of Hawaii legislature established the state's 529 college savings program pursuant to Chapter 256 Hawaii Revised Statutes. Administered by the Department of Budget & Finance, "HI529 Hawaii's College Savings Program" exists to assist and encourage families to set aside funds for future college and higher education expenses. As of December 2020 HI529 program information available, if all

Hawai'i-based account owners contributed the maximum deduction for a single state tax-filer at the maximum tax rate, the potential revenue loss would be about $1.5 million annually. This amount could increase as the income tax deduction would incentivize residents to contribute to their HI529 accounts.

The Department also provides the following comments:

1. On page 4 of the bill, Section 2 amending the applicable HRS chapter 235, part (c) should be amended (underlined) to read: "Rollovers from <u>another state's college savings program</u> into <u>the HI529-Hawai'i's</u> college savings program, shall not be considered as contributions eligible for the tax deduction under this section."
2. On page 5 of the bill, within the definition of "Qualified taxpayer", the limit on adjusted gross income has yet to be determined.

In closing, the Department recognizes that a tax deduction would provide a significant incentive to Hawai'i families to save for college. Thank you for your consideration of our comments.

WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021

ON THE FOLLOWING MEASURE:
S.B. NO. 0358, S.D. 1, RELATING TO THE COLLEGE SAVINGS PROGRAM.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Friday, February 26, 2021 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 211, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Tammy Kaneshiro,
Deputy Attorney General, at (808) 586-1470)

Chair Donovan M. Dela Cruz and Members of the Committee:

The Department of the Attorney General has concerns regarding this bill and provides the following comments.

The bill's preamble states, in pertinent part, "[t]he legislature further finds that most other states offer a state tax deduction or credit for contributions to state college savings programs as an incentive for their residents to participate." See page 1, lines 14-17. The preamble goes on to state, "[t]he legislature therefore finds that, as the cost of higher education continues to rise, it is appropriate for the State to provide a similar incentive to Hawaii taxpayers to participate in the HI529 Program, thus helping Hawaii families save for college instead of taking out educational loans." See page 1, line 17, through page 2, line 4. The bill therefore establishes "a state income tax deduction for Hawaii residents making contributions into the HI529 Program." See page 2, lines 5-7.

The deduction for contributions into the HI529 Program is available to resident taxpayers, but not to nonresident taxpayers. More specifically, a "qualified taxpayer" eligible to claim the HI529 Program deduction is defined, in part, as "a resident of the State who is an individual taxpayer or a married couple filing separate returns . . . [.]" See page 5, lines 17-18. Therefore, the deduction for contributions into the HI529 Program will be available to a resident of the State who is an individual taxpayer or a married couple filing separate returns, but it will not be available to nonresident taxpayers for no other reason than they are nonresidents.

As such, this bill may be subject to challenge under the Privileges and Immunities Clause of the United States Constitution. "The Privileges and Immunities Clause, U.S. Const., Art. IV, § 2, provides that the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states." Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 290 (1998) (internal brackets and quotation marks omitted). "One right thereby secured is the right of a citizen of any State to 'remove to and carry on business in another without being subjected in property or person to taxes more onerous than the citizens of the latter State are subjected to.'" Id. at 296 (quoting Shaffer v. Carter, 252 U.S. 37, 56 (1920)). A court's determination as to whether a state taxing law violates the Privileges and Immunities Clause "must depend not upon any mere question of form, construction, or definition, but upon the practical operation and effect of the tax imposed." Id. (quoting Shaffer, 252 U.S. at 55). The Clause requires "substantial equality of treatment" for resident and nonresident taxpayers, such that "[w]here nonresidents are subject to different treatment, there must be 'reasonable grounds for . . . diversity of treatment.'" Id. at 297-98 (quoting Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 79 (1920)). Thus, "the Privileges and Immunities Clause bars 'discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states.'" Id. at 298 (quoting Toomer v. Witsell, 334 U.S. 385, 396 (1948)).

Here, there is no apparent "substantial reason" or "reasonable grounds" for treating resident and nonresident taxpayers differently with respect to the subject tax deduction. As such, we respectfully ask that the Privileges and Immunities concern be addressed. We recommend replacing "Hawaii residents" with "Hawaii taxpayers" from the preamble so that the bill therefore establishes a state income tax deduction for Hawaii taxpayers making contributions into the HI529 Program. See page 2, line 6. Additionally, we recommend removing the word "resident of the State who is" from the definition of "qualified taxpayer" in section 2. See page 5, line 17. Specifically, with respect to the HI529 Program deduction, on page 5, line 17, through page 6, line 2, the definition of “qualified taxpayer” should read as follows:

> “Qualified taxpayer” means [~~a resident of the State who is~~] an individual taxpayer or married couple filing separate returns each with an adjusted gross income of less than $ ______ or a married couple filing a joint return, head of household, or surviving spouse with an adjusted gross income of less than $ _____ .

These changes to the preamble and the definition of a “qualified taxpayer” would address the possible Privileges and Immunities challenges.

Thank you for the opportunity to express our concern.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Deduct contributions to HI529 college savings program

BILL NUMBER: SB 358, SD1

INTRODUCED BY: Senate Committee on Higher Education

EXECUTIVE SUMMARY: Establishes a state income tax deduction for eligible contributions made by residents of the State into the HI529-Hawaii's College Savings Program. Applies to taxable years beginning after 12/31/2020.

SYNOPSIS: Adds a new section to chapter 235, HRS, to allow a deduction for a contribution to an account established in the Hawaii college savings program under chapter 256, HRS.

The amount deductible is not to exceed $4,000 ($8,000 for married taxpayers filing a joint return, heads of household, or surviving spouses). Only amounts contributed within the taxable year count; if a contribution is mailed in, it counts if it is postmarked within the taxable year.

The deduction is "above the line," meaning that it is deducted when computing the taxpayer's Hawaii adjusted gross income, unlike most itemized deductions.

The deduction is not allowed for a contribution that is rolled over from another state's college savings program.

If the amount of the deduction exceeds the taxpayer's taxable income, the excess may be used as a deduction in subsequent taxable years until exhausted.

Provides for recapture of the deduction if the taxpayer makes a nonqualified withdrawal from the program.

Makes conforming amendments.

EFFECTIVE DATE: This Act, upon its approval, shall apply to taxable years beginning after December 31, 2020.

STAFF COMMENTS: The Hawaii college savings program under chapter 256, HRS, is a college savings program intended to qualify under section 529, IRC.

Under the IRC, contributions to a 529 plan are not deductible, but the monies in the plan can earn income tax-free and will not be taxed when the money is taken out to pay for college.

Hawaii income tax law conforms to IRC section 529, with minor modifications such as a withdrawal is nonqualified for Hawaii purposes if it is used to purchase software. See section 235-2.4(ii), HRS, which decouples from IRC section 529(e)(3)(A)(iii).

According to savingforcollege.com,[1] over 30 states currently offer a full or partial tax deduction or credit for 529 plan contributions. Hawaii offers none of those incentives.

Digested 2/24/2021

[1] https://www.savingforcollege.com/intro-to-529s/name-the-top-7-benefits-of-529-plans

SIA
HAWAII
Securities Industry Association of Hawaii

February 25, 2021

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

RE: SB 358, Relating to the College Saving Program. SUPPORT AS ORIGINALLY INTENDED, WITHOUT AMENDMENTS.

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Ways and Means Committee:

The Securities Industry Association of Hawaii (SIAH) was formed over 20 years ago to foster communication among securities firms, regulators, and the legislature. Our members are the managers of major firms in the state.

The SIAH is very pleased to see the proposal to allow for a state tax deduction for contributions to **all** 529 plans.

1. **The benefits of a college education are well documented.** There have been numerous studies that show that college graduates are healthier, have higher incomes, pay more taxes,, and are less likely to rely on public assistance.
2. **A tax deduction will give that little extra push to make frequent and regular contributions.** The ability to choose from a wide variety of plans also allows for investors to work with an advisor or go direct to the plan sponsor.
3. **Saving before college is much better than paying off a loan later.** The power of putting money aside to grow can be shown by one study that found that $105 per month for 18 years is far better than paying off a loan at $424 per month for 10 years after college.

The SIAH is please to strongly support the bill as originally intended and without amendments. Please call me with any questions.at 808-625-2596

Sincerely,

Tony Goodrum
President

sifma®

Invested in America

February 25, 2021

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

RE: S.B. 358, Relating to the College Savings Program. SUPPORT AS ORIGINALLY INTENDED, WITHOUT AMENDMENTS

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Senate Ways and Means Committee:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is a national trade association representing over 350 large, medium and small broker-dealers, investment banks and asset managers, many of whom have a strong presence in Hawaii. In fact, more than 16,000 people in the state work in the finance and insurance industries, 1,000 of them work at securities firms, and 5 broker-dealer main offices call Hawaii home.

SIFMA strongly supports S.B. 358, as ORIGINALLY INTENDED WITHOUT AMENDMENTS. The legislation would have allowed Hawaii residents to deduct contributions to <u>any</u> qualifying 529 plan from their gross income for state income tax purposes. We believe the original bill properly encourages college savings, appropriately provides investors with various 529 savings options, and helps ensure an educated population for years to come. We hope the legislature will take the following points into account and amend the legislation to return it to its original form:

- **<u>A College Education Benefits Hawaii</u>**. The benefits of a college education are well-documented. A 2019 College Board [report] concluded, among other things, that college graduates have substantially higher median incomes, pay more taxes, have lower unemployment rates, and are healthier and more involved in their communities.[2] Among its findings, in 2018:

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.
[2] College Board, "Education Pays 2016."

- Median earnings of full-time workers with bachelor's degrees were 61% higher than those with only a high school diploma.

- Four-year college graduates paid on average 82% more in taxes than high school graduates. Those with professional degrees paid more than three times as much in taxes.

- The unemployment rate for individuals age 25 and older with at least a bachelor's degree has consistently been about half the unemployment rate for high school graduates.

- Over the course of a lifetime, and accounting for the costs of obtaining a degree, individuals with a bachelor's degree earn about $400,000 more than individuals with just a high school diploma.

- **College Tuition Costs are Increasing Faster than Inflation**. College costs have outpaced inflation nearly every year since the early 1980s[3] – sometimes reaching as high as 9.5% above the rate of inflation. In the last 5 years, tuition and fees have risen by about 7% for a public four-year program and 10% at private non-profit four-year programs, adjusted for inflation.[4] In the last ten years, college costs at both public and private institutions have risen more than 25%.

- **529 College Savings Plans are One of the Best Ways to Pay for College**. Many entities, including Kiplinger's and savingforcollege.com, believe that 529 plans are one of the best college savings vehicles. These plans are appealing because they encourage ongoing savings, earnings on these plans are free from federal and state taxes, and in some states, contributions are deductible for state income tax purposes.

- **An Upfront State Tax Deduction for All Qualified 529 Plans Will Further Incentivize Hawaiians to Save**. An upfront state tax deduction for 529 contributions will encourage Hawaii residents to save early and often for future college expenses. It is important, however, that the deduction apply to all qualified 529 plans and not just the state-sponsored plan. S.B. 358 AS ORIGINALLY INTENDED WITHOUT AMENDMENTS does this. The bill as amended does not.

  There are a lot of factors to consider when choosing the right 529 plan. This includes the investor's risk tolerance, the fees charged, the plan's past performance, the ability to work with a trusted adviser, and any number of other considerations. A tax deduction for just the state-sponsored plan effectively limits investor choice by making the driving factor where the deduction is available rather than which 529 plan best suits the college saver's overall needs.

  A state tax deduction for contributions to all qualified 529 plans provides additional benefits. Among other things, it:

  - Allows savers to work with financial advisors to save through a 529 plan;
  - Ensures that all Hawaii savers receive the same tax treatment;
  - Encourages new Hawaii residents to continue contributing to their existing 529 plans; and
  - Allows savers to work with a single financial institution on their lifetime savings goals.

[3] Bloomberg Business, "College Tuition in the U.S. Again Rises Faster Than Inflation." Nov. 2014.
[4] College Board, "Tuition and Fees and Room and Board Over Time, 1988-89 to 2018-19, Selected Years."

- **Tax Deductions for Contributions to Any Qualified 529 Plan Has Been Successful in Other States**. Arizona, Arkansas, Kansas, Minnesota, Missouri, Montana and Pennsylvania all currently provide a state tax deduction for contributions to any qualified 529 plan. Arizona implemented its deduction and found it so successful that the state subsequently more than doubled the deduction's limit to further spur education-related savings. Minnesota – the most recent state to adopt a tax deduction of any type for 529 college savings plans – chose to apply that deduction to all qualified plans in 2017.

For the reasons laid out above, SIFMA strongly supports SB 358 AS ORIGINALLY INTENDED WITHOUT AMENDMENTS. We encourage you to amend the bill to return it to its original language.

We appreciate your willingness to receive our comments. If you have any questions, please contact me at kchamberlain@sifma.org or 202-962-7411.

Sincerely,

Kim Chamberlain

Kim Chamberlain
Managing Director & Associate General Counsel
SIFMA

LATE

SB-358-SD-1
Submitted on: 2/25/2021 10:13:56 AM
Testimony for WAM on 2/26/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chancy Hopper	Individual	Support	No

Comments:

Support