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HJ 35 Tax Study

66th Montana Legislature

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TO: HJ 35 Study Committee Members

FROM: Jaret Coles, Staff Attorney

RE: Hawaii Treatment of Residential Property Owned by Residents and Nonresidents

DATE: March 5, 2020

This memorandum is a followup to a question raised during the January 13, 2020, HJ 35 subcommittee meeting. The question pertained to whether the State of Hawaii imposes property taxes differently on residents of the state vs. nonresidents.

As a matter of background, all property taxes in Hawaii are collected at the local government level. The Hawaii Constitution gives counties the "exclusive authority over real property taxation".¹ As such, each county has enacted its own tax. This results in different rates between all the counties and different classifications.

In 2016, the Tax Appeal Court of the State of Hawaii was asked to invalidate a City and County of Honolulu ("County") Residential A ("Res A") classification as unconstitutional.² At the time, the County had both a residential class and a Res A class. The Res A class was less desirable from a tax standpoint, since the rate of tax was higher. In order to receive the more favorable residential classification, a property needed a home exemption or it needed to have an assessed value of under \$1 million. The home exemption was available for "[r]eal property *owned and occupied as the owner's principal home*."³

¹ *Hawaii v. City & Cnty. of Honolulu*, 57 P.3d 433, 444 (2002).

² *In re Cole*, Case No. 1 T.X. 15-1-0243 (Haw. Tax App. Ct.); Cocke, *Judge Reverses Decision, Lets City's Property Tax Class for Non-residents Stand*, Honolulu Star Advertiser (Dec. 23, 2016).

³ Memorandum of Appellee in Opposition to Taxpayers' Motion for Summary Judgment ("Memorandum of Appellee"), pp. 1-2 (Oct. 7, 2016), *In re Cole*, Case No. 1 T.X. 15-1-0243 (Haw. Tax App. Ct.).

The taxpayer took issue with the exemption, reasoning that the unavailability of the exemption to nonresidents was unconstitutional under the United States Constitution's Commerce Clause, Equal Protection Clause, and the Privileges and Immunities Clause. Ultimately, the Tax Appeal Court held that the Res A classification was constitutional, and the County prevailed.⁴

As to the Commerce Clause, the County argued that residents and nonresidents are both subject to the Res A classification if the property is assessed at \$1 million or more.⁵ As to the Equal Protection Clause, the County argued that the classification had a rational basis and that the owner-occupied primary residences and residences that are not primary can be classified differently since they are used for different purposes.⁶ As to the Privileges and Immunities Clause, the taxpayer contended that the County was imposing a higher tax on nonresidents than it imposed upon residents.⁷ However, the County successfully argued that courts typically uphold homestead exemptions.⁸ Part of the reasoning is that the homestead statutes are not aimed directly at nonresidents since residents are treated the same way on second homes or homes that are not a primary residence.

In summary, the County classification and exemption is based on use of a property as a primary residence and not resident status. The exemption is not available to residents of the state of Hawaii on second homes or to residents for property other than a primary residence. This treatment is in line with other court opinions across the United States. As applied in the state of Montana, there are several property tax relief programs in existence that also rely on a person using a home as primary residence, including the: (1) Property Tax Assistance Program (PTAP)⁹, which helps citizens on a fixed or limited income by reducing the property tax rate on their home; (2) Montana Disabled Veterans (MDV)¹⁰ Assistance Program, which helps disabled veterans or their unmarried surviving spouses by reducing the property tax rate on their primary residence; and (3) Land Value Property Tax Assistance Program¹¹ for Residential Property, which helps residential property owners if the value of their land is disproportionately higher than the value of their primary residence or other buildings on their land and the land has been in their family for at least 30 years.¹²

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⁴ *See supra*, Cocke note 2.

⁵ Memorandum of Appellee, p. 13.

⁶ *Id.*, pp. 17-19.

⁷ *Id.*, p. 16.

⁸ *Id.*, pp. 16-17 (footnotes 82 & 84).

⁹ *See* sections 15-6-301 through 15-6-305, MCA.

¹⁰ *See* section 15-6-311, MCA.

¹¹ *See* section 15-6-240, MCA.

¹² A primary residence for PTAP and the MDV is defined in section 15-6-301, MCA, as a dwelling "in which a taxpayer can demonstrate the taxpayer lived for at least 7 months of the year for which benefits are claimed". The definition for primary residence on Land Value Property Tax Assistance Program is also 7 months. *See* section 15-6-240(7)(b), MCA.