

AMERICAN PAYROLL ASSOCIATION

February 25 2019

Submitted by Electronic Mail

Senate Committees: Labor, Culture and Arts; Judiciary; Ways and Means

Re: Opposition to SB 243 – Relating to Payments of Child and Spousal Support - Tips

Dear Senators:

The American Payroll Association (APA) opposes SB 243, as written. Including tips above the tip credit reported to the employer when calculating the amount to withhold for a child support order or other garnishment is in conflict with federal law. These provisions are covered in the federal Consumer Credit Protection Act (CCPA) and interpretation of the CCPA by the U.S. Department of Labor (DOL) in [Fact Sheet #30](#): The Federal Wage Garnishment Law, Consumer Credit Protection Act's Title III (CCPA).

SB 243, as proposed, would amend Hawaii Revised Statutes §§ 571-52, 571-52.2, and 576-16E to read, “Income includes salaries, wages, including tips or gratuities paid directly to an individual by a customer of the employer and reported or declared to the employer....”

It is appropriate for the state to include tips in the definition of income when determining the amount of child support an individual is able to pay. However, it is not appropriate for the employer garnishee to include tips in the calculation of the amount to be withheld from the employee’s paycheck. According to the DOL, **tips given directly to employees by customers whether in cash or on a credit or debit card are not considered earnings for the purpose of determining disposable earnings for garnishments** (W-H Op. Ltr., WH-95, 12-15-70; DOL Fact Sheet #30).

The CCPA became law under Congress’ constitutional authority to regulate commerce. Specifically, CCPA § 303(c) states, “No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.” Section 306 follows with authority given to the DOL to interpret CCPA Title III. Section 307 offers states the ability to be more restrictive of garnishment limits, but not to interpret the law or be less restrictive.

The DOL has advised that the only amount of tips that are considered earnings subject to garnishment are amounts of tip credits necessary to reach the minimum wage. The language proposed in Hawaii SB 243 does not offer this restriction. Instead, the language in SB 243 is overly broad, capturing all tips paid to employees. Even if the bill language were interpreted to apply only to tips reported to the employer, federal law does not recognize these as earnings subject to garnishment.

Were SB 243 to be enacted, employers would be placed in an untenable position in which obeying state law would violate federal law, and obeying federal law would violate state law. Employers' recourse must be to rely on the direction of the DOL, which states in Fact Sheet #30, "If a state wage garnishment law differs from Title III, the law resulting in the lower amount of earnings being garnished must be observed."

APA recommends that the Hawaii Senate reconsider SB 243 and clarify that the amount of tips subject to garnishment is limited to that portion raising the employee's hourly wage to equal the federal or state minimum hourly wage (whichever is greater). Further, the Senate should clarify that tips earned in excess of the federal or state minimum wage are not subject to garnishment, regardless of whether they are paid in cash or charged to a credit or debit card.

The American Payroll Association

The APA is a nonprofit professional association representing more than 20,000 payroll professionals and the needs of their employers in the United States. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Relations Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

Sincerely,



Corrinne Flores
Chair, GRTF Subcommittee on
Child Support and Other Garnishments



William Dunn, CPP
Director of Government Relations

AMERICAN PAYROLL ASSOCIATION

Labor, Culture and Arts

Sen. Brian Taniguchi, Chair
Sen. Les Ihara, Jr., Vice Chair
Sen. Stanley Chang
Sen. Kurt Fevella
Sen. Mike Gabbard

Judiciary

Sen. Karl Rhoads, Chair
Sen. Glenn Wakai, Vice Chair
Sen. Kurt Fevella
Sen. Mike Gabbard
Sen. Donna Mercado Kim

Ways and Means

Sen. Donovan Dela Cruz,
Chair
Sen. Gilbert Keith-Agaran,
Vice Chair
Sen. J. Kalani English
Sen. Kurt Fevella
Sen. Breene Harimoto
Sen. Lorraine Inouye
Sen. Kaiali'I Kahele
Sen. Dru Mamo Kanuhe
Sen. Michelle Kidani
Sen. Sharon Morikawi
Sen. Gil Riviere
Sen. Maile Shimabukuro
Sen. Brian Taniguchi