

STAND. COM. REP. NO. 1419

Honolulu, Hawaii

March 23, 2007

RE: S.B. No. 1034
S.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred S.B. No. 1034, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose of this bill is to maintain fairness within Hawaii's airline industry and to keep the State's inter-island airline industry healthy and competitive by exempting the fuel sold to common carriers for intrastate air transportation from the general excise tax (GET) and use tax.

The Department of Business, Economic Development, and Tourism, Aircraft Service International Group, Hawaii Chapter of the March of Dimes, Aloha Airlines, The Chamber of Commerce of Hawaii, Plumbers and Fitters Union Local 675, Hawaiian Airlines, Aloha Airlines Pilots' Union, Transport Workers Union, and International Association of Machinists and Aerospace Workers District 141 testified in support of this bill. The Department of Taxation (DOTAX) and Tax Foundation of Hawaii submitted comments.

Current law grants a GET and use tax exemption to airlines when they purchase jet fuel from a Hawaii Foreign Trade Zone (FTZ) for use in interstate or foreign commerce. However, DOTAX has taken the position that inter-island flights are not interstate commerce and, therefore, airlines that purchase fuel from the FTZ for use in inter-island flights do not qualify for the tax exemption. While inter-island flights do not travel between

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States, a court challenge in 1983 appears to support the position that inter-island flights do constitute interstate commerce. The decision of the United States Supreme Court in *Aloha Airlines, Inc. v. Director of Taxation of Hawaii*, 464 U.S. 7, 104 S.Ct. 291 (1983) found that the State of Hawaii could not tax gross receipts of Aloha Airlines because taxing of airlines was forbidden under federal statute. In its decision, the Supreme Court found that federal law provided Congress with "clear...authority to regulate state taxation of air transportation in interstate commerce." Thus, it appears that inter-island air carriers should qualify for the GET and use tax exemption if they purchase fuel from the FTZ and use the fuel for inter-island flights.

While your Committee understands the concerns raised by DoTAX that the provision of this exemption may result in \$8.6 million of lost revenue each year and that this exemption is misplaced in statute, the issue of applying taxes fairly among Hawaii's air carriers deserves further consideration. The fiscal impact of this bill on the general revenues of the State are beyond the purview of this Committee, and your Committee respectfully requests the Committee on Finance to examine this matter further.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1034, S.D. 2, and recommends that it be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,



JOSEPH M. SOUKI, Chair



