

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TAXATION

**TESTIMONY REGARDING HB 1755 HD 1
RELATING TO THE GENERAL EXCISE TAX**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: JANUARY 29, 2008
TIME: 1:15PM
ROOM: 224

This bill clarifies the definition of a wholesale transaction in relation to transactions involving a service business when the context is a service-to-service transaction.

This measure is a carry-over measure referred to this committee during the 2007 legislative session.

The House Committee on Economic Development & Business Concerns amended the bill by defecting the effective date.

The House Committee on Finance passed this measure unamended.

The House of Representatives passed this measure on third reading.

The Department of Taxation (Department) **takes no position** on this legislation.

The purpose of this bill is to clarify that the service of furnishing goods or services in connection with performing a warranty obligation on behalf of a manufacturer is considered to be a wholesale service-to-service transaction for purposes of the 0.5% wholesale general excise tax rate.

It is the Department's position that this legislation will greatly assist with clarifying any confusion that may presently exist with regard to the taxation of warranty service work performed on behalf of the manufacturer of tangible personal property.

The Department points out the bill's defective effective date. This legislation will result in a revenue loss of approximately \$2.8 million per year, assuming the bill became effective immediately.

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Subject: General Excise Tax/Motor Vehicles
Folder: 07-040
Date: 01/24/2008

January 24, 2008

TITLE: H.B. 1755, H.D. 1, RELATING TO THE GENERAL EXCISE TAX

PROPOSAL: The original bill clarifies that the reduced General Excise Tax (GET) rate of 0.5% for wholesale sales of services would apply to tangible personal property and services that dealers provide in fulfillment of warranty obligations of the manufacturer. The bill would take effect upon approval.

The revised bill takes effect on July 1, 2034.


REVENUE IMPACT: The revised bill will not affect tax revenues within the budget window. The original bill could cost more than \$2.8 million annually in lost GET revenues.

METHODOLOGY: According to a report in Wards Auto World published in October of 2005, warranty claims cost car manufacturers about \$14 billion annually. Other industries also offer manufacturer warranties, such as computers and home appliances, but cars probably account for the great bulk of the warranty work. Adding 15% to the figure for auto warranty work to account for all other industries and for growth since 2005, using Hawaii's share of U.S. GDP to get the State's share of total warranty work, and multiplying by 3.5% to get the difference in GET at the wholesale and retail levels (4% - 0.5%) the estimated GET revenue loss is \$14 billion $\times 1.15 \times 0.005 \times 0.035 = \2.82 million.

DISCUSSION: The dealer does not resell the warranty work to the customer after it is performed, so the amounts the dealer receives from the manufacturer typically are considered retail sales under the GET. However, the customer has already paid for the warranty work, either in the original price of the car or by buying warranty protection, so treating the dealer's reimbursement by the manufacturer as an intermediate sale is consistent with the intent of the reduced GET provided for wholesale sales.



Hawaii Automobile Dealers' Association

An outline map of the state of Hawaii is positioned behind the title, with the islands of the main chain and the two smaller islands to the north.

Wayne De Luz, President
Dave Rolf, Executive Director

Testimony in Support of HB1755
Relating to the General Excise Tax
Presented to the Senate Committee on Economic Development and Taxation
At the public hearing scheduled for 1:15 p.m., Tuesday, January 29, 2008
in conference room 224

Submitted by David H. Rolf, for The Hawaii Automobile Dealers Association
Hawaii's franchised new car dealers

Chair Fukunaga and members of the committee:

Hawaii is the only remaining state which imposes a tax on warranty payments to a dealer to fulfill a manufacturer's warranty.

Other taxing jurisdictions like the state of New Mexico, which has a 3% excise tax, have eliminated the tax on warranty payments for their auto dealers, or, in the state of Washington's case, have de-pyramided the tax on warranty payments, to fulfill a manufacturer's warranty, down to the wholesale rate.

Hawaii auto dealers anticipating that ACT 71, Session Laws of Hawaii 1999, would do the same for Hawaii, have held on during recent difficult times. The full de-pyramiding schedule was to have phased down to .5% by January 1, 2006, but the Hawaii State Tax Department has indicated that additional language in the law needed to be added. HE 1755 will add this language. Calculations based on average costs show de-pyramiding to the wholesale rate creates a \$1.3 million difference.

With Hawaii being the only remaining state which has not repaired the situation, and with the current downturn in automobile sales, the tax has become a thorn in the foot of auto dealers. Now, with the auto recession having started here in late 2006, the situation has hobbled dealers at a very difficult time. Three auto dealerships have already closed.

HADA respectfully requests that legislators fast-track the solution (HB1755) by quickly hearing and passing the measure in the 2008 legislative session.

Respectfully submitted,
David H. Rolf
For the members of the Hawaii Automobile Dealers Association

Enclosures: Overview of ACT 71, Letter 1/04/08, Letter 1/08/08, Letter 1/09/08, Letter 1/23/08,
Closed Dealerships, New Mexico Statute.

**Overview Statement on ACT 71
Session Laws of Hawaii (1999)**

**Re: De-pyramiding GET to Wholesale Tax Rate on Business-to-Business
Transactions**

“Act 71 reduces the effect of the “pyramiding” of the general excise tax on certain sales of tangible personal property or services by treating those transactions similar to the wholesale sales of tangible personal property. The phase-in of the “wholesale” rate over seven years until a .5% rate is applicable on January 1, 2006.”

From Hawaii State Department of Taxation Form G-81



Hawaii Automobile Dealers' Association



Wrayne De Luz, President
Dave Rolf, Executive Director

January 4, 2008

The Honorable Carol Fukunaga
Chair, Senate Economic Development and Taxation Committee
Room 216 Hawaii State Capitol
Honolulu, Hawaii 96813

The Honorable Rosalyn H. Baker
Chair, Senate Ways and Means Committee
Room 210 Hawaii State Capitol
Honolulu, Hawaii 96813

Subj: Today's news in the *Wall Street Journal* bodes ill for the Hawaii auto industry too

Dear Senator Fukunaga and Senator Baker:

Today's *Wall Street Journal* story foretells a 1 million vehicle reduction in U.S. auto sales in 2008--a drop from 16.5 million vehicles sold in 2007 to a forecasted 15.5 million in 2008.

That coming 6.25% downturn compares to Hawaii's downturn this past year which has been even worse, with sales off about 12%. Only Maui, for the moment, has escaped the radical downturn, with sales flat at a -0.2%. Oahu dealers are down 15.1% so far in 2007 (data only available through the third quarter).

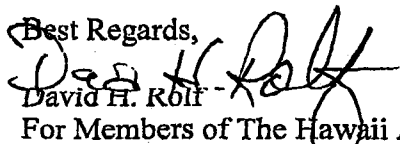
Auto dealers, hoping to survive next year, are asking for your assistance in quickly passing HB1755 -- which de-pyramids the tax on warranty, bringing Hawaii into alignment with the taxing laws in all other states.

The tax fairness is urgently needed by an ailing retail auto industry. As I indicated in an earlier correspondence the total difference in the de-pyramided tax is approximately \$1.3 million. While this may seem a small amount compared to the more than \$150 million the auto industry directs to state taxes, it still is an amount significant enough to save jobs in the industry and preserve the economic viability of some challenged businesses.

An early hearing and passage of HB1755 will do much to preserve this fragile industry.

Please do not hesitate to call if you have any questions.

Best Regards,


David H. Rolf

For Members of The Hawaii Automobile Dealers Association

Encl: Wall Street Journal Story



Hawaii Automobile Dealers' Association

Wayne Do Luz, President
Dave Rolf, Executive Director

January 8, 2008

The Honorable Carol Fukunaga
Chair, Senate Economic Development and Taxation Committee
Room 216 Hawaii State Capitol
Honolulu, Hawaii 96813

The Honorable Rosalyn H. Baker
Chair, Senate Ways and Means Committee
Room 210 Hawaii State Capitol
Honolulu, Hawaii 96813

Subj: De-pyramiding tax on warranty / request to fast-track HB 1755

Dear Senator Fukunaga and Senator Baker:

We've expressed our deep concerns about the fragile economy and the possibility of the loss of jobs if changes are not made in the tax code relating to the de-pyramiding of the tax on warranty payments.

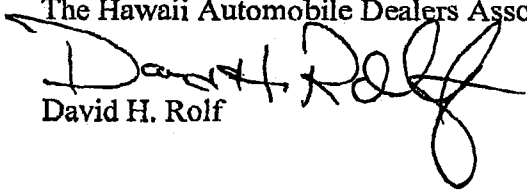
Already one Chevrolet dealership has closed on Maui and one large Chrysler dealership has closed on Oahu. A dealer on the Big Island reported yesterday that he was being forced to lay off employees.

The potential to avoid more layoffs lies in HB1755 which has passed the House and awaits approval in both your Senate committees.

HADA respectfully requests that you fast-track the legislation.

Please do not hesitate to call me at any time.

Best Regards
The Hawaii Automobile Dealers Association


David H. Rolf

HADA's January 9, 2008 Letter to Senators Fukunaga and Baker

January 9, 2008

The Honorable Carol Fukunaga
Chair, Senate Economic Development and Taxation Committee
Room 216 Hawaii State Capitol
Honolulu, Hawaii 96813

The Honorable Rosalyn H. Baker
Chair, Senate Ways and Means Committee
Room 210 Hawaii State Capitol
Honolulu, Hawaii 96813

Subj: Taxes on non-auto manufacturer warranties, we believe, are negligible

Dear Senator Fukunaga and Senator Baker:

The taxes on warranty payments to fulfill auto manufacturer warranties are approximately \$1.3 million.
Other taxes on new product warranties are negligible.

Most non-car manufacturer product warranties (copiers, computers, tv sets, etc) are extended service warranties and are not included in the language of HB1755—which only applies to warranties provided by the manufacturer of a new product. The small amount of tax on non-car products may not even total several hundred thousand dollars.

HB1755 is specific and only includes a de-pyramiding of the tax on “a dealer's furnishing of goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property;

Other taxing jurisdictions around the country with tax similar to Hawaii's GET, like New Mexico's GET and Washington State's Business and Operations tax, have eliminated the GET tax on warranties to fulfill a warranty obligation by the manufacturer, or have reduced the tax to the wholesale rate, thus removing or ameliorating the anomaly that is such a painful thorn, for auto dealers in particular.

We respectfully request you fast-track hearing the legislation and pass it through early in the session.
Please do not hesitate to call me at any time.

Best Regards,
The Hawaii Automobile Dealers Association

David H. Rolf



Hawaii Automobile Dealers' Association



Wayne De Luz, President
Dave Rolf, Executive Director

January 23, 2008

The Honorable Carol Fukunaga
Chair, Senate Economic Development
and Taxation Committee
Room 216 Hawaii State Capitol
Honolulu, Hawaii 96813

The Honorable Rosalyn H. Baker
Chair, Senate Ways and Means
Committee
Room 210, Hawaii State Capitol
Honolulu, Hawaii 96813

Subj: Deepening situation

Dear Senator Fukunaga and Senator Baker:

The situation is worsening. At Dealer Day at the Capitol last Thursday I heard several dealers on the rail outside room 325 discussing the difficult lay offs they've had to make the last few weeks. Orchid Isle Auto Center on the Big Island has laid off 9 employees, cutting back from 89 to 80. Aloha Kia, with dealerships on three islands, has laid off 20 employees, cutting back from 136 to 116. Servco officials said they have instituted a freeze on hiring.

Certainly something needs to be done to give some hope to businesses and shore up their operations. Quick action on the de-pyramiding of the tax on warranty will send a positive signal at a very difficult time for all of Hawaii's dealerships and will provide that hope that government is acting quickly.

Hawaii remains the only state in which legislators have not repaired the situation. We anticipated that Act 71, Session Laws of Hawaii 1999, with its phased reduction of the taxes to the wholesale rate by January 1, 2006, would have applied equally to the de-pyramiding of the tax on warranty payments, but, as you know, the Hawaii State Tax Department has now said that it will not act until additional language is added. HB1755, which has passed the House, and is a carry-over from the last session, needs quick action.

Senator Baker, I will bring additional data on the rapidly deteriorating situation for the auto industry and present it at our meeting at 2 p.m. today (Wed. January 23, 2008).

The industry needs your help and Senator Fukunaga's help with quick action on this problem right away. Auto sale numbers for 2007 will be released January 31. It is important that there be some hope.

Sincerely,
The Hawaii Automobile Dealers Association
Hawaii's franchised new car dealers

David H. Rolf



The Senate
State of Hawaii

STATE CAPITOL
HONOLULU, HAWAII 96813

1:55pm 3/28/05
Pass to
Exec. Committee
Dave R.

Memorandum

To: Senator Brian Taniguchi, Chair, Senate Committee on Ways and Means

From: *Lorraine K. Inouye*
Senator Lorraine K. Inouye, Chair, TGO Committee
Senator David Y Ige, Chair, IGA Committee *AD*

CC: TGO committee members
IGA committee members

Date: 03/24/05

Re: HB 1309

It was our intention to make a potentially important amendment to HB 1309, which the committees on Transportation and Governmental Affairs and Intergovernmental Affairs passed (with amendments) on Monday, March 21, 2005. HB 1309, RELATING TO TAXATION, authorizes counties to levy a county surcharge on State tax to fund public transportation systems in their respective counties; repeals transit capital development fund.



The additional proposed amendment would exempt auto dealers from paying the GET on warranty reimbursements made by the manufacturer. According to the testimony of the Hawaii Automobile Dealers Association, Hawaii is at present the only state that does not exempt its dealers from paying a tax on warranty reimbursements. This amendment would also apply to others who sell appliances, electronics, or other goods that are sold with warranties.

The new language to be added to the bill would read: "Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts."

I hope that the committee on Ways and Means will consider this amendment in its deliberations on HB 1309.

HP 1/00

DEALER/GM MEMBERS OF THE HAWAII AUTOMOBILE DEALERS ASSO

Name of Dealer	Dealer/GM	Tel. #	Fax	Address
Aloha Auto Group	Bill Van den Hurk	833-9000	833-3444	2841 N. Nimitz Hwy. Honolulu, HI 96819
Aloha Hyundai Nimitz	Howard Finley	833-9000	833-3444	2841 N. Nimitz Hwy. Honolulu, HI 96819
Aloha Kia Hilo	Howard Finley	808-935-3500	808-935-3539	226 Kanoelehua Ave Hilo, HI 96720
Aloha Kia Maui	Howard Finley	808-877-4545	808-877-7771	89 East Wakea Kahului, HI 96732
Aloha Kia Kona	Howard Finley	808-329-2276	808-329-2218	74-5035 Queen Kaahumanu Highway Kailua
Aloha Kia Waipahu	Dawe Glover	677-4500	678-3148	94-081 Farrington Hwy. Waipahu, HI 96797
Audi of Hawaii	Brad Nicolai	585-6600	585-6611	1069 S. Beretania St. Honolulu, HI 96814
Big Island Honda Hilo	Jerry Cousin	808-961-5505	808-969-6865	124 Wivoolie St. Hilo, HI 96720
Big Island Honda Kona	Jerry Cousin	808-329-8101	808-329-1285	75-5608 Kuakini Hwy. Kailua-Kona, HI 96740
Big Island Toyota Hilo	Calvin Koga	808-329-8517	808-329-8610	175 Wivoolie St. Hilo, HI 96720
Big Island Toyota Kona	Paul Graffe	808-329-8517	808-329-9810	74-5504 Kalwi St. Kailua-Kona, HI 96740
BMW of Honolulu	Dennis Short	597-1225	592-0285	777 Kapiolani Blvd. Honolulu, HI 96813
BMW of Maui	Andrew Trumbo	808-877-4269	808-877-2998	410 Koloa Street Kahului, HI 96732
Cutter Management Co.	Nick Cutter	529-2000	529-2010	1100 Alakea St. PH2 Honolulu, HI 96813
Cutter Ala Moana Volkswagen/Mazda	Ron Wright	564-9100	564-9140	800 Ala Moana Blvd. Honolulu, HI 96813
Cutter Automotive Team	Clarence Ng	529-2816	529-2312	1100 Alakea St. PH2 Honolulu, HI 96813
Cutter Chevrolet	Brad Eisen	564-9050	564-9052	711 Ala Moana Blvd. Honolulu, HI 96813
Cutter Dodge (Dillingham)	Ben Afuna	564-9310	564-9311	735 Dillingham Blvd. Honolulu, HI 96817
Cutter Dodge (Pearl City)	Doug Sandlin	564-9640	564-9661	905 Kamehameha Hwy. Pearl City, HI 96782
Cutter Dodge/Jeep/Chrysler Waipahu	James Clark	564-9900	564-9920	94-149 Farrington Hwy. Waipahu, HI 96797
Cutter Ford Isuzu Aiea	Patrick Ah You	564-9210	564-9212	98-015 Kamehameha Hwy. Aiea, HI 96701
Cutter Ford Waipahu	Patrick Ah You	564-9740	564-9212	94-177 Farrington Hwy. Waipahu, HI 96797
Cutter Management Co.	Herman Jones	529-2000	529-2010	1100 Alakea St. PH2 Honolulu, HI 96813
Cutter of Maui	Gary Cline	808-442-9600	808-442-9920	25 S. Kahului Beach Rd. Kahului, HI 96732
Cutter Mazda of Waipahu	Melfred Ramos	564-9501	564-9520	94-135 Farrington Hwy. Waipahu, HI 96797
Cutter Pontiac, Buick, GMC	Melfred Ramos	564-9500	564-9520	94-119 Farrington Hwy. Waipahu, HI 96797
Ferrari of Hawaii	Brad Nicolai	585-6600	585-6611	1069 S. Beretania St. Honolulu, HI 96814
Hawaii Automotive Group	Fletcher Jones III	592-5600	592-5610	818 Kapiolani Blvd. Honolulu, HI 96813
Hawaii Automotive Retailing Gro	Inder Dosanjh	836-7007	834-6231	2901 N. Nimitz Hwy. Honolulu, HI 96819
Hawaii Mitsubishi	Andrew Lee	488-0610	485-2679	98-075 Kam Hwy. Aiea, HI 96701
Hilo (Kona) Mazda Subaru	Wayne De Luz	808-961-4411	808-961-0018	1 Kea St. Hilo, HI 96720
Honda Windward	Morrie Stoebner	247-8544	247-5840	45-671 Kamehameha Hwy. Kaneohe, HI 96744
Honolulu Ford	Dave Chun	532-1700	532-1411	1370 N. King St. Honolulu, HI 96817
Island Chevrolet - Hilo	John Schute	808-933-4600	808-933-6607	1177 Kilauea Ave. Hilo, HI 96720
Island Chevrolet - Kona	Alan Clark/John Schute	808-933-4610	808-933-6617	75-5570 Kuakini Hwy. Kailua-Kona, HI 96740
Island Dodge	Roy Kitagawa	808-877-0031	808-871-7805	110 S. Hana Hwy. Kahului, HI 96732
Island Honda	Anne Oishi	808-873-8081	808-873-6777	110 S. Hana Hwy. Kahului, HI 96732
Jackson Auto Group	Jack Jackson	836-2441	838-6153/40-1578	2945 N. Nimitz Hwy. Honolulu, HI 96819
Jackson Volvo	Russell Wong	521-5151	834-5413	704 Ala Moana Blvd. Honolulu, HI 96813
Jaguar of Honolulu	Garry Brechin	592-5100	592-5111	818 Kapiolani Blvd. Honolulu, HI 96813
JN Automotive Group	Joe Nicolai	831-2500	831-2594	2999 N. Nimitz Hwy. Honolulu, HI 96819
JN Lotus	Joe Nicolai	831-2500	831-2594	2999 N. Nimitz Hwy. Honolulu, HI 96819
Kamaaina Motors	Brian Kitagawa	808-935-3741	808-969-4712	P.O. Box 4789 Hilo, HI 96720
Kauai Toyota	Todd Grant	564-1900	808-245-7831	4337 Rice Street Kahului, HI 96766
King Auto Center	Charlie King	808-245-4788	808-245-6722	4330 Kukui Grove St. Lihue, HI 96766
King Infiniti of Honolulu	Robert Ramirez	836-0848	836-5532	2845 Kilihaui St. Honolulu, HI 96819
King Windward Nissan	Ron Hansen	235-6433	247-6543	45-588 Kamehameha Hwy. Kaneohe, HI 96744
Kitagawa & Company (Nissan)	Brian Kitagawa	808-935-3741		400 East Kawili St. Hilo, HI 96740
Kona Auto Center	John Kitagawa	808-320-4408	808-329-7199	76-6353 Kuakini Hwy. Kailua-Kona, HI 96740
Kona Mazda Subaru	Wayne De Luz	808-328-5274	808-334-9014	75-5793 Kuakini Hwy. Kailua-Kona, HI 96740
Kona Volkswagen & Hyundai	Hessy Ahokovi	808-334-0004	808-331-2476	75-5633 Palani Rd. Kailua-Kona, HI 96740
Kuhio Motors	Dan Mackey p./Mike Koppel gm.	808-245-6731	808-245-3436	3033 Aukele St. Kahului, HI 96766
Lamborghini of Hawaii	Brad Nicolai	585-6600	585-6611	1069 S. Beretania St. Honolulu, HI 96814
Lotus of Hawaii	Brad Nicolai	585-6600	585-6611	1069 S. Beretania St. Honolulu, HI 96814
Land Rover of Honolulu	Garry Brechin	592-7400	592-5111	730 Ala Moana Blvd. Honolulu, HI 96813
Maserati of Hawaii	Brad Nicolai	585-6600	585-6611	1069 S. Beretania St. Honolulu, HI 96814
Maui Scion	Damien Farias	808-877-2781	808-877-0484	320 Hana Hwy. Kahului, HI 96732
Maui Toyota Scion	Damien Farias	808-877-2781	808-871-2851	320 Hana Hwy. Kahului, HI 96732

CLOSED

CLOSED

Mercedes Benz of Honolulu	Fletcher Jones III	592-5600	592-5619	818 Kapiolani Blvd. Honolulu, HI 96813
Mini of Hawaii	Dennis Short	597-1225	592-0285	777 Kapiolani Blvd. Honolulu, HI 96813
Mid-Pac Auto Center	James Hanley	808-245-3673	808-246-1040	3050 Hoolako St. Lihue, HI 96766
New City Nissan	John Uekawa	524-9111	540-3292	900 Ala Moana Blvd. Honolulu, HI 96814
Orchid Isle Auto Center	Joe Hanley	808-935-1191	808-935-5960	1030 Kanoelehua Ave. Hilo, HI 96720
Pfueger Acura	Owen Phillips	942-4555	941-7263	1450 S. Beretania St. Honolulu, HI 96814
Pfueger Auto Group	Alan Pfueger/Charlie Wor	592-4500	592-4411	1234 S. Beretania St. Honolulu, HI 96814
Pfueger Honda	Kevin Kempel/Alan Pfueg	528-7200	536-2820	777 Ala Moana Blvd. Honolulu, HI 96814
Pfueger Subaru	Dante Buan	671-5115	676-1915	94-223 Farrington Hwy. Waipahu, HI 96797
Porche of Hawaii	Garry Brechin	591-1911	592-5111	730 Ala Moana Blvd. Honolulu, HI 96813
Saab Hawaii	Johanna Mason	735-2488	734-1083	3030 Waiialae Ave. Honolulu, HI 96816
Saturn of Honolulu	Ernest Guajardo	836-7007	834-6234	2901 N. Nimitz Hwy. Honolulu, HI 96819
Servco Auto Honolulu	Dennis Tengan	564-1100	564-2847	2850 Pukoloa St. Ste 200 Honolulu, HI 96819
Servco Auto Windward	Roderick Saunders	564-1400	564-1487	45-655 Kam. Hwy. Kaneohe, HI 96744
Servco Lexus Honolulu	Alan Young	564-1201	521-5302	650 Kapiolani Blvd. Honolulu, HI 96813
Servco Lexus Maui	John Kakazu	808-877-4411	808-877-3457	445 Kele St. Kahului, HI 96732
Servco Pacific Inc.	Eric Fukunaga	564-2332	564-2830	2850-A Pukoloa St. Honolulu, HI 96819
Servco Scion	Dan Hirota	564-2400	564-2423	2850 Pukoloa St. Ste 101 Honolulu, HI 96819
Servco Subaru	Dan Hirota	687-7600	687-7609	2850 Pukoloa St. Ste 104 Honolulu, HI 96819
Tony Group	Stan Masamitsu	680-7190(5)	483-5443	94-1299 Ka Uka Blvd. Waipahu, HI 96797
Tony Honda	Steve Schaper	680-7385	488-8803	94-1299 Ka Uka Blvd. Waipahu, HI 96797
Tony Hyundai	Allan Cappela - Sales if ne	679-3417	483-5443	94-1299 Ka Uka Blvd. Waipahu, HI 96797
Tony Nissan	Larry Moody	680-7150 ext 71	676-1915	94-1299 Ka Uka Blvd. Waipahu, HI 96797
Tony Volkswagen	Wesley Amor	680-7170	483-8655	94-1299 Ka Uka Blvd. Waipahu, HI 96797
Valley Isle Motors	Jim Falk	808-877-3673	808-877-8320	221 Puunene Ave. Kahului, HI 96732
Servco Auto Leeward	Keith Nakamura	564-1000	564-1037	94-729 Farrington Hwy Waipahu, HI 96797
Windward Dodge/Crysler/Jeep	Trey VeDova/Don Mann	233-6000	233-6070	46-177 Kahuhipa St. Kaneohe, HI 96744
Windward Ford	Mike McKenna/Mark Caliri	266-7000	262-4413	725 Kailua Rd. Kailua, HI 96734
Windward Mazda	Mike McKenna/Mark Caliri	266-8000	266-8021/262-7289	749 Kailua Rd. Kailua, HI 96734

CLOSED

TRD-ACC-DIST-A

New Mexico
383
from Duane Spitzer

5058272586

GROSS RECEIPTS AND COMPENSATING TAX

7-9-68

3.2.227.9 Refundable deposits.

A. Receipts from selling soft drinks include amounts received in the form of refundable deposits on bottles, cartons and cases.

B. The amount of deposits refunded to purchasers of soft drinks may be deducted from gross receipts or governmental gross receipts under Section 7-9-67 NMSA 1978. [3/9/72, 11/20/72, 9/20/74, 7/20/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.9 NMAC - Rn. 3 NMAC 2.67.9 & A. 6/14/01]

3.2.227.10 General examples.

A. The deduction for refunds and allowances made to buyers is applicable to taxpayers reporting gross receipts or governmental gross receipts on either a cash or an accrual basis, but the deduction for uncollectible accounts is available only to taxpayers who report gross receipts or governmental gross receipts on an accrual basis. The transaction or transactions which gave rise to either the refund or allowance or to the amount written off the books as an uncollectible account must have originally been subject to the gross receipts tax or governmental gross receipts tax.

B. *Example 1:* C operates an appliance store. C sells D an air conditioner for \$200. D returns the air conditioner and C credits D's account with \$150. C may deduct \$150 from gross receipts. However, C must include the remaining \$50 in gross receipts.

C. *Example 2:* A buys goods for \$100. A sells them for \$25. A wishes to deduct the loss from gross receipts. The loss may not be deducted. A must pay tax on the \$25 or the fair market value of the item sold, whichever is greater.

D. *Example 3:* X is an accrual basis taxpayer. Y buys a suit from X but does not pay for it. X reports the receipts from the sale on X's return. X then discovers that X cannot collect the sales price of the suit. X may take the deduction upon proper proof of the bad debt. This rule, however, would not apply if X had never reported the receipts from the sale.

E. *Example 4:* U is a university bookstore which reports governmental gross receipts on an accrual basis. U sells books and other materials to a student on account, reporting governmental gross receipts in the month of sale. The student

subsequently leaves the university without fully settling the account. Because the receipts from the sale had already been reported, U may take the deduction upon proper proof of the bad debt. [9/29/67, 12/5/69, 9/9/72, 11/20/72, 9/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.10 NMAC - Rn. 3 NMAC 2.67.10, 6/14/01]

3.2.227.11 Sale of repossessed property.

A person reporting gross receipts or governmental gross receipts on an accrual basis is entitled to deduct amounts written off the books as an uncollectible debt for the amount credited to the buyer from whom the property was repossessed. Receipts from a subsequent sale of the same property are subject to the gross receipts tax or governmental gross receipts. [7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96; 3.2.227.11 NMAC - Rn. 3 NMAC 2.67.11, 6/14/01]

3.2.227.12 Returned checks and credit card reversals.

A. When a check is received, deposited, dishonored and returned, and not subsequently honored within the same reporting period, the taxpayer has no gross receipts with respect to the check. If the check is received within one reporting period, gross receipts are reported with respect to that check for that period and the check is dishonored, returned and not subsequently honored in a subsequent reporting period, the taxpayer may claim a deduction under Section 7-9-67 NMSA 1978 for the amount of the returned check for the period in which the check was dishonored.

B. When a credit card charge is reversed within the same reporting period, the taxpayer has no gross receipts with respect to the charge. If the credit card charge is made within one reporting period, gross receipts are reported with respect to that charge for the period and the charge is reversed in a subsequent reporting period, the taxpayer may claim a deduction under Section 7-9-67 NMSA 1978 for the amount of the reversed credit card charge for the period in which the reversal occurred. [10/15/96; 3.2.227.12 NMAC - Rn. 3 NMAC 2.67.12 & A, 6/14/01]

7-9-68. Deduction: gross receipts tax; warranty obligations.

Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts.

History: 1967 Comp., § 72-14A-14.25, enacted by Laws 1969, ch. 144, § 60.

New Mexico
statute



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REGULATIONS

3.2.228.8 Warranty subcontractor.

If a dealer subcontracts with another person (subcontractor) to fulfill the dealer's warranty obligation of the manufacturer of the property, the receipts of the subcontractor may not be deducted pursuant to Section 7-9-68 NMSA 1978. The subcontractor is not the dealer of record. [3/16/79, 6/18/79, 4/7/82, 5/1/84, 1/2/86, 11/26/90, 11/15/96; 3.2.228.8 NMAC - Rn. 3 NMAC 2.68.8 & A. 6/14/01]

3.2.228.9 Warranty obligations: general examples.

A. A person authorized by the manufacturer to repair tangible personal property under the warranty of the manufacturer is a "dealer" for the purposes of Section 7-9-68 NMSA 1978. The person therefore may deduct receipts received directly from the manufacturer for parts and labor necessary to fulfill the manufacturer's warranty obligation. Receipts of the dealer which are received from any person other than the manufacturer may not be deducted under the provisions of Section 7-9-68 NMSA 1978.

B. Example 1: X, a washing machine company, offers a five-year warranty against defective parts (only) in all washing machines it manufactures and sells. C, who bought a washing machine manufactured by X, engages D, a dealer for X, to replace a defective part within the warranty period. D undertakes the repair and bills X for the parts used and C for the labor involved. X pays D for the parts and C pays D for the labor. D may deduct the receipts from X under Section 7-9-68 NMSA 1978 but D may not deduct under Section 7-9-68 NMSA 1978 the receipts derived from C for the labor charges not covered under the manufacturer's warranty.

C. Example 2: Y, a manufacturer of televisions, authorizes R, a television repair service, to repair televisions manufactured by Y under Y's warranty. R receives payment from Y to cover both parts and labor necessary to repair televisions manufactured by Y which are covered by Y's warranty. R may deduct the receipts from Y for fulfilling Y's warranty obligation. [5/25/80, 11/26/90, 11/15/96; 3.2.228.9 NMAC - Rn. 3 NMAC 2.68.9 & A. 6/14/01]

3.2.228.10 Service contract and manufacturer's warranty distinguished.

A manufacturer's warranty may be distinguished from an automotive service contract, as that term is defined in Subsection C of Section 3.2.1.15 NMAC, on which the manufacturer is the promisor by the characterization used by the manufacturer so long as no separate charge is made to the ultimate customer for a manufacturer's undertaking characterized as a warranty. [9/20/89, 11/26/90, 11/15/96; 3.2.228.10 NMAC - Rn. 3 NMAC 2.68.10 & A. 6/14/01]

3.2.228.11 Receipts from co-payments/ deductibles under warranties.

The dealer's receipts from the "co-payment" or "deductible" amount paid to the dealer by the purchaser as required by some manufacturers' warranties are gross receipts and not deductible from gross receipts under Section 7-9-68 NMSA 1978 since the receipts from the purchaser are not receipts from furnishing goods or services to fulfill the manufacturer's obligation. The manufacturer's obligation under such a warranty is limited to the charge for the goods and services minus the required co-payment or deductible. [6/20/89, 11/26/90, 11/15/96; 3.2.228.11 NMAC - Rn. 3 NMAC 2.68.11 & A. 6/14/01]

7-9-69. Deduction: gross receipts tax; administrative and accounting services.

A. Receipts of a corporation or an affiliate for administrative, managerial, accounting and customer services performed by it for the corporation or an affiliate upon a nonprofit or cost basis and receipts from the corporation or an affiliate for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis may be deducted from gross receipts.

B. For the purposes of this section, "an affiliate" means a corporation or a limited partnership that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation or limited partnership. For purposes of this subsection, "control" means ownership of stock in a corporation or of an interest in a limited partnership that:

(1) represents at least fifty percent of the total voting power of that corporation or limited partnership; and

New Mexico's Tax Rees.

Note: N.M. has a 3% Gross Receipts tax like our excise tax.



January 28, 2008

The Honorable Carol Fukunaga

Chair, Senate Economic Development and Taxation Committee

Room 216 Hawaii State Capitol

Honolulu, Hawaii 96813

The Honorable Rosalyn H. Baker

Chair, Senate Ways and Means Committee

Room 210 Hawaii State Capitol

Honolulu, Hawaii 96813

Re: Testimony in support of HB 1755

Dear Senator Fukunaga and Senator Baker,

This legislation, HB 1755, is very important to our industry. Dave Rolf has put forth current economic data that supports the need for the passage of this bill. It has been a challenge for auto dealers to put forth a tax for which we receive no reimbursement from the vehicle manufacturers. We, (Hawaii Auto Dealers) are doing our best to continue to provide important warranty services to our customers here in Hawaii. Your support would be welcomed.

Sincerely,

Ron Hansen,
VP, COO, King Auto Group

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

- SUBJECT:** GENERAL EXCISE, Reduced rate for warranty obligations
- BILL NUMBER:** SB 1976; HB 1755, HD-1 (Similar)
- INTRODUCED BY:** SB by Hanabusa by request; HB by House Committee on Economic Development and Business Concerns
- BRIEF SUMMARY:** Amends HRS section 237-4 to provide that the furnishing of goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property shall be taxed at the 0.5% rate.
- EFFECTIVE DATE:** SB - Upon Approval; HB - July 1, 2034

STAFF COMMENTS: This measure proposes to provide that the 0.5% general excise tax rate shall be applicable to dealers who furnish goods or services to the purchaser of tangible personal property to fulfill the manufacturer's warranty obligations.

If, in fact, the dealer is providing goods and services as part of a manufacturer's warranty obligation to the purchaser of the tangible personal property, one must ask the question: to whom then are the goods and services being sold, for example, in the case of the warranty work done on an automobile such as replacing a faulty brake mounting. The dealer takes a part from his stock which was originally purchased from the manufacturer and installs the brake mounting in Mr. Aloha's car which was purchased from the dealer. The part used in the warranty work was originally purchased by the dealer to fix any car whether or not under warranty and was taxed at the 0.5% rate because it was assumed that it was to be sold to a customer. But in this case it was used in warranty covered work and is reimbursed by the manufacturer, so that is a wash. However, the services to install the brake mounting are sold not to the customer but to the manufacturer. The manufacturer is billed for that service but the manufacturer does not "resell" that service as that was the promise made under the warranty. Thus, the services are provided to the manufacturer who in this case is the consumer for which a 4% (4.5%) general excise tax is due. The idea of depyramiding was to avoid having the same transaction taxed twice at the 4% rate. In this case, there is no resale of the service as the manufacturer is not "reselling" the service of installing the brake mounting to Mr. Aloha.

While the testimony provided by the department of taxation estimated that the adoption of this measure would result in a reduction in revenues by \$2.8 million, it is questionable if that estimate includes both the goods and the services or just covers the services provided as opposed to the replacement parts. One would assume that the parts are those that are manufactured by the manufacturer and are not being purchased from a third part vendor. If, in fact, the replacement part is being purchased from a third party vendor, then the purchase by the dealer making the warranty repair should be tax at 0.5% and then the entire charge by the dealer to the manufacturer should be taxed at the 4%.

Digested 4/16/07