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THE SENATE  
THE TWENTY-FOURTH LEGISLATURE  
REGULAR SESSION OF 2008

COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION

Hearing March 10, 2008  
Testimony on H.B. 2758 HD 2  
(RELATING TO HEALTH)

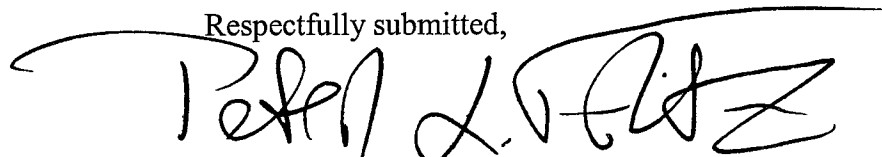
Chairs Ige and Chun-Oakland, Vice-Chairs Fukunaga and Ihara, members of the Committees:

My name is Peter Fritz. I am an attorney specializing in tax law and I was an Administrative Rules Specialist under Directors Kamikawa, Okamura and Kawafuchi. I am testifying as a concerned citizen. This bill provides for a deferral of the collection of General Excise Tax ("GET") for a "qualified hospital group". I am opposed to H.B. 2758 HD2 as it is currently drafted.

- (1) The bill, as presently drafted, may violate the Equal Protection and Commerce Clauses of the United States Constitution. The bill provides for the deferral of the collection of the GET for a qualified hospital group. However, the bill also provides on page 4, lines 8-10, that there is no deferral unless the Hawaii Physicians Group owns at least forty-nine percent of the qualified hospital group. In other words, only a qualified hospital group that is owned by the Hawaii Physicians Group can qualify for the deferral. All other qualified hospital groups will not qualify for the deferral. This restrictive language may violate the Equal Protection Clause of the United States Constitution because it benefits a single group. In addition, it may also violate the Commerce Clause of the United States Constitution because a company could not establish a qualified hospital group in Hawaii and qualify for the deferral of the GET unless it entered into an arrangement with the Hawaii Physicians Group. It may be possible to cure this defect by removing the specific reference to the Hawaii Physicians Group and using a generic reference such as a physicians group.
- (2) The bill needs provisions to account for the uncollected GET. The bill does not have any language that requires the uncollected GET to be used by the hospital to provide medical services to the community. Without such a requirement, the qualified hospital group could bonus out the funds, enter into "sweetheart" arrangements with members who own the qualified hospital group or use the money to reduce any financial obligations of the physicians group to the qualified hospital group. Should such transactions occur and the qualified hospital group declares bankruptcy, it may not be possible for the uncollected GET to be recovered.

Thank you for the opportunity to testify.

Respectfully submitted,



Peter L. Fritz