



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2860, RELATING TO TAXATION.

**BEFORE THE:**

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS CONCERNS

**DATE:** Thursday, January 31, 2008 **TIME:** 8:30 AM

**LOCATION:** State Capitol Room 325  
*Deliver to: State Capitol, Room 316, 5 copies*

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Mary Bahng Yokota, Deputy Attorney General

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Chair Yamashita and Members of the Committee:

The Attorney General takes no position on this bill but brings to your attention that the bill does not appear to accomplish the expressed intent of the bill.

Section 2 (page 3, lines 4 and 10) of this bill exempts sales of aviation fuel sold from a foreign-trade zone to any common carrier for consumption or use in "interstate" air transportation from general excise and use tax.

The expressed purpose of this bill, however, is to exempt sales of fuel in foreign trade zone to common carriers for use in "intrastate" transportation from general excise and use tax.

Further, as recognized on page 1, lines 8 through 9, of the bill, sales of fuel sold from a foreign-trade zone for use by airlines traveling out-of-the-state are already exempt from general excise and use tax.

We recommend that the bill be amended to reflect the true intent of the bill.

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  
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## HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS CONCERNS

### TESTIMONY REGARDING HB 2860 RELATING TO TAXATION

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: JANUARY 31, 2008**

**TIME: 8:30AM**

**ROOM: 325**

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This bill would exempt aviation fuel purchased from a foreign trade zone from the state general excise and use taxes for fuel used in inter-island travel.

The Department of Taxation (Department) takes **no position** on this legislation; however **offers comments and the revenue impact.**

This bill amends the foreign trade zone law regarding the exemptions from taxation that are currently allowed. Presently, aviation fuel purchased in a foreign trade zone is exempt from state taxation for those flights that are bound for an out-of-state or foreign destination. Because these flights are considered within interstate or foreign commerce, taxation is exempt pursuant to federal law.

#### **I. SUBSTANTIVE COMMENTS.**

The Department offers the following comments—

**CURRENT BILL DRAFTING ACCOMPLISHES LITTLE**—The draft of this legislation currently maintains the status quo as written. This bill adds nothing other than an express definition of what is considered "interstate air transportation," which is defined as transportation by air between two places in Hawaii through a place outside Hawaii.

In general, court cases conclude that transportation from one point in a state through international territory and back to another point in the same state is not interstate commerce. Therefore, the Department could still interpret this current bill to preclude the exemption because an inter-island flight may not be flying sufficiently through a "place outside Hawaii." In short, this bill adds additional enforcement confusion because now disputes will arise between the Department and

airlines over whether flights are sufficiently "outside Hawaii" in order to receive the exemption. With court cases concluding that travel between points in the same state even through international territories is not interstate commerce, this legislation will compound the problem as written.

**FTZ EXEMPTION IS MISPLACED; EXEMPTION SHOULD BE IN HRS CHAPTERS 237 AND 238**—This exemption would more properly be included in Chapter 237 and 238, Hawaii Revised Statutes—not in the foreign trade zone law, because this law applies to those acts in foreign or interstate commerce. The provision in HRS § 212-8 is inappropriate because it overlays an element of intrastate commerce in a chapter solely reserved for interstate or foreign commerce. The Department believes that an exemption from the foreign trade zone in the general excise and use tax chapters is most logical.

The Department suggests that the exemption be placed in Chapters 237 and 238. For purposes of Chapter 237, the exemption could read:

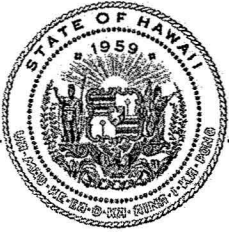
"Amounts received from sales of aviation fuel, as defined in section 243-1, categorized as privileged foreign merchandise, non-privileged foreign merchandise, domestic merchandise, or zone-restricted merchandise, that is admitted into a foreign-trade zone and purchased in a foreign-trade zone and is made directly to or is used by a common carrier for consumption or use in air transportation between two points in the State."

In short, the Department believes that an intrastate tax exemption has no business being placed in Chapter 212, which relates solely to foreign and interstate commerce.

## **II. REVENUE IMPACT.**

After considering recent additional information regarding aviation fuel sale data, it is the Department's position that this legislation will result in a revenue loss of approximately:

- \$5.1 million loss, FY2009.
- \$5.3 million loss, FY2010.
- \$5.5 million loss, FY2011.



LINDA LINGLE  
GOVERNOR  
MARSHA WIENERT  
TOURISM LIAISON

## TOURISM LIAISON

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Written statement of  
**MARSHA WIENERT**  
**Tourism Liaison**  
Department of Business, Economic Development & Tourism  
before the  
**HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS CONCERNS**  
Thursday, January 31, 2008  
8:30 a.m.  
State Capitol, Conference Room 325

in consideration of  
**HB 2860**  
**RELATING TO TAXATION.**

Chair Yamashita and Members of the House Committee on Economic Development and Business Concerns.

The Department of Business, Economic Development and Tourism supports the intent of HB 2860, which exempts from general excise and use taxes the fuel sold from a foreign trade zone for intrastate air transportation by common carriers.

In as much as we support the intent of HB 2860 and believe that the intrastate carriers should have the same exemptions in general excise and use taxes as airlines traveling out-of-state, we are concerned about the cost implications generated by this proposal.

Thank you for the opportunity to comment on HB 2860.

**TESTIMONY OF KEONI WAGNER ON BEHALF OF HAWAIIAN AIRLINES  
IN SUPPORT OF THE INTENT OF H.B. NO. 2860, RELATING TO TAXATION**

January 31, 2008

To: Chairman Kyle T. Yamashita and Members of the House Committee on Economic Development and Business Concerns:

My name is Keoni Wagner and I am the Vice President for Public Affairs for Hawaiian Airlines presenting this testimony on behalf of Hawaiian Airlines in support of the intent of H.B. No. 2860.

This bill is similar to the original bill which was submitted during the 2007 legislative session to provide an exemption where an airline uplifts (purchases) fuel from a foreign trade zone (FTZ) and operates the flight for interisland travel between points within the State of Hawaii. The current statute provides an exemption for fuel sold from an FTZ to an airline which is flying in interstate commerce, that is, between states and in particular between Hawaii and the mainland. We continue to believe that this same exemption should apply to interisland flights on the basis that under federal law interisland flights are defined as interstate commerce and would support legislation that makes this exemption more explicit.

Thank you for the opportunity to testify on this measure.



A I R L I N E S

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January 29, 2008

Representative Kyle Yamashita, Chair  
Representative Ryan Yamane, Vice-chair

Committee on Economic Development and Business Concerns  
Thursday, January 31 2008, 8:30 a.m.

**RE: HB 2860 Relating to Taxation**

Chair Yamashita, Vice Chair Yamane and Members of the Committee:

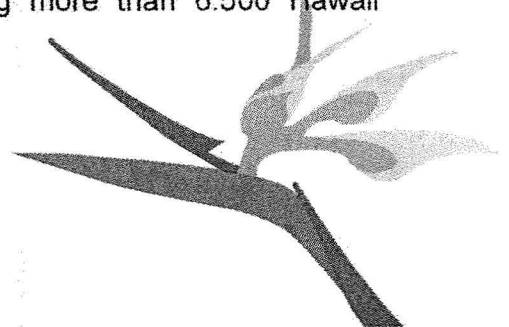
My name is Stephanie Ackerman and I am Senior Vice President, Public Relations and Government Affairs, for Aloha Airlines. Thank you for this opportunity to testify in strong support of HB2860.

The existing Statute (Section 212-8) currently grants a General Excise and Use Tax exemption to common carriers in interstate or foreign commerce when they purchase jet fuel from a foreign trade zone (FTZ). This is consistent with Federal law governing foreign trade zones and interstate commerce. However, the Hawaii Department of Taxation has asked us to seek clarification of the law to determine that inter-island flights should also be exempted because they are regulated as interstate commerce under federal law.

Even before the Hawaii Statehood Act, it was clearly the Federal government's intention to regulate inter-island flying as interstate commerce because of the vast expanse of ocean between the islands. This is evidenced in the Aviation Matters section of the U.S. Senate's Report on the Statehood Act.

We believe that when Hawaii lawmakers created the exemption for FTZ purchases they did not intend to punish locally based airlines by singling out their fuel purchases for tax purposes. However, the law is not being applied consistently and legislative action is required to remedy the discriminatory practice against Hawaii-based air carriers, who like out-of-state carriers, are engaged in interstate commerce even when flying inter-island.

We urge you to pass this bill to do what is fair, by clarifying and expanding the scope of the current GET exemption to include the exemption of fuel for inter-island flights. In this way, you will also be recognizing the vital role that Hawaii's airlines play in the economy of our state by bridging our communities, and employing more than 6,500 Hawaii residents.





*Hawaii Chapter*  
1451 South King Street, PH-504  
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January 30, 2008

The Honorable Kyle Yamashita  
Chair  
Committee on Economic Development & Business Concerns  
State Capitol, Room 325

RE: HB 2860

Chair English, Vice Chair Hooser and Members of the Committee:

My name is Carmella Hernandez and I am State Director of the Hawaii Chapter of the March of Dimes. I am testifying in support of HB 2860.

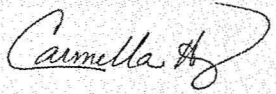
In 2006, the March of Dimes honored Aloha Airlines with the Franklin Delano Roosevelt Award for Distinguished Community Service. Aloha Airlines has long supported the March of Dimes and many other not-for-profit organizations in Hawaii in numerous ways. For example, when expectant mothers on the Neighbor Islands are in danger, and specialized medical treatment is not available where they live, Aloha provides air transportation to Oahu so they can get the care they need. There are many times when a baby is born premature on a Neighbor Island and needs to be flown to Honolulu to be cared for at Kapi'olani Medical Center's neonatal intensive care unit. Aloha provides tickets so that the parents can come to Honolulu and stay with their baby. Sadly, there are times for a variety of reasons that the mother cannot come to be with her baby. Aloha Airlines helps these babies by flying the mother's breast milk to Oahu for them. This may sound like a small thing, but to the health of these tiny babies, there is nothing better for them than having their mother's breast milk. Aloha has also donated tickets for Neighbor Island families that have children with cancer to bring them here to specialists at Kapi'olani for life saving treatment.

Aloha continues to provide free tickets to the March of Dimes staff and volunteers when we need to travel to the neighbor islands to set up our biggest fundraising event – WalkAmerica. A practice they have done for more than 15 years. And as an incentive for our walkers to raise money, Aloha Airlines donates tickets for us to give as prizes for each of our five walk sites top fundraisers. They also help us raise money by donating tickets to our annual ball that we can include in our auction. They do not often take credit for their community giving, but they keep on giving, in good times and bad. Their name says it all, they always have and will continue to show much Aloha for the people of Hawaii.

As I understand it, Aloha and other Hawaii-based carriers are asking Hawaii's lawmakers to remedy an inequity, by clarifying state law to extend a tax exemption that other airlines already have. If federal law does indeed regard them as interstate carriers, and if interstate carriers are exempt from GET on fuel purchases from the free trade zone at Honolulu Airport, then you should act swiftly to unburden Hawaii's airlines and secure those benefits for them.

Our inter-island airlines have been dedicated to serving Hawaii for decades. Without the reliable passenger and cargo service they provide, and the helping hand they offer to Hawaii's people, we would all be lost. Aloha Airlines is always ready to help when the need arises, as noted earlier – in good times and in bad - now its time for the Aloha State to help all our local airline companies by passing HB 2860. To help them is to help the communities we live in. I urge you to think of who we are and what we care about, and pass House Bill 2860 to give our local airlines the same benefits already enjoyed by other airlines.

Thank you,

A handwritten signature in cursive script that reads "Carmella Hernandez". The signature is written in black ink on a light-colored background.

Carmella Hernandez  
State Director  
March of Dimes Hawaii Chapter



Rep. Kyle T. Yamashita, Chair  
Rep. Glenn Wakai, Vice-chair

Committee on Economic Development and Business Concerns  
Thursday, January 31, 2008, 8:30 AM

**RE: HB 2860 Relating to Taxation**

Chair Yamashita, Vice-chair Wakai and Members of the Committee:

I am Kamuela Clemente, testifying on behalf of the Transport Workers Union, representing Dispatchers, Assistant Dispatchers and Crew Schedulers of Aloha Airlines.

We strongly support passage of SB2913, which exempts interisland carriers from the general excise tax and use tax on sales of aviation fuel from a foreign trade zone for use in interstate air transportation.

For one thing, the current law is unfair to our interisland carriers because they are common carriers in interstate commerce just like the overseas carriers that already take advantage of this exemption.

For another thing, we believe that interisland air transportation is interstate commerce under federal law and should be treated equally under the law.

Finally I urge you to act in support of the working people of Hawaii, including our Aloha Airlines employees, who are so committed to serving the communities of our State.

Mahalo Nui Loa,

Kamuela Clemente

Rep. Kyle T. Yamashita, Chair  
Rep. Glenn Wakai, Vice-chair

Committee on Economic Development and Business Concerns  
Thursday, January 31, 2008, 8:30 AM

**RE: HB 2860 Relating to Taxation**

Chair Yamashita, Vice Chair Wakai and Members of the Committee:

My name is Randy Kauhane and I am Assistant General Chairman of the International Association of Machinists and Aerospace Workers (IAM) District 141 for Aloha Airlines, Hawaiian Airlines, United Airlines and Philippine Airlines, testifying in strong support of HB 2860.

Our members are concerned that current tax law is not being applied fairly, depriving our local Hawaii-based airlines of tax advantages enjoyed by all other airlines flying from Hawaii.

It is not fair that airlines are granted General Excise and Use tax exemption when they purchase jet fuel from the Hawaii Foreign Trade Zone for flying out-of-state but airlines that fly within the State of Hawaii are denied this exemption. Under federal law, all common use carriers in the United States, including Hawaii's locally based airlines, are regulated by the same laws that govern interstate commerce.

Hawaii's airlines operate under the same federal regulations. It does not seem right that the state Taxation Department has chosen to treat some airlines one way and others another way, when we are all engaged in interstate commerce under federal law.

We urge you to pass House Bill 2860. Thank you.

Rep. Kyle T. Yamashita, Chair  
Rep. Glenn Wakai, Vice-chair

Committee on Economic Development and Business Concerns  
Thursday, January 31, 2008, 8:30 AM

**RE: HB 2860 Relating to Taxation**

Chair Yamashita, Vice Chair Wakai and Members of the Committee:

RE: Testimony in support of HB 2860 RELATING TO TAXATION

I am Randall Cummings, an Aloha Airlines pilot, representing the Aloha Airlines Pilots' Union, testifying in strong support of HB 2860.

**Bill summary**

Currently aviation fuel purchased in Hawaii's Foreign Trade Zone ("FTZ") for use on flights originating in Hawaii and terminating outside of Hawaii is exempt from state excise tax under Hawaii Revised Statutes section 212-8. This exemption is consistent with the purpose of the FTZ to facilitate international and interstate commerce. This bill proposes to extend that exemption to any aviation fuel sold in the FTZ for use on interisland flights. Hawaii's foreign trade zone was established under the provisions of 19 U.S.C. 81a-81u, 15 CFR 400, and 19 CFR part 146. While Hawaii's interisland airlines do not depart the state, they nonetheless are engaged in 'interstate commerce' for the purpose of federal regulations and federal law.

**Testimony in Support**

There are three strong reasons why this bill should be enacted into law:

First: legally, the exemption from excise tax on airline fuel to airlines leaving the state is based on their operation within 'interstate commerce' as it is applied to federally regulated airlines. Airlines that complete domestic flights within the state of Hawaii are also engaged in 'interstate commerce' as it is defined under federal law.

Second: As a matter of equity, the state department of taxation is in a situation where it must discriminate among Federally Regulated airlines based on whether their flights will terminate within the state or not. This results in some airlines receiving preferential treatment over others, without any legal or policy basis.

Third: As a matter of policy, it is good policy to reduce taxes on the interisland airlines, as the airlines provide a vital lifeline for our island state, and because higher costs resulting from the taxes have a dramatically negative impact on Airline employees and on charities supported by the local airlines.

This policy argument is especially true where the taxes being applied go in to the general fund and are not earmarked for aviation infrastructure.

**The reduction in interisland airlines' fixed costs that will result from this bill's tax exemption will benefit Hawaii's airline employees**

In the words of Southwest Airlines' former CEO Herb Kelleher, "an airline is made up of people, not airplanes." Any reduction in taxes, whether State or Federal will directly benefit the over 7,000 people who work for Hawaii's interisland airlines, as well as their families and dependents. It is the peculiar nature of the our industry that rising costs are seldom passed on to consumers, and as a result, the high cost of fuel and the heavy tax burden that air carriers shoulder are impacting the bottom line of our local airlines. As airline employees who have sacrificed so much, we urge you to act on this measure to help reduce fixed costs and ensure the stability and viability of Hawaii's interisland airlines.

**Public policy favors passage of this bill**

Hawaii's interisland airlines are a vital part of Hawaii's economy. They provide a vital service to our communities. The well-being of Hawaii's airline employees is vital to our airlines. The tax exemption provided by this bill will be good for these employees, it will be good for the interisland carriers, and it will be good for Hawaii. This is really about treating all airlines that serve our state fairly, and taking care of the employees who work for Hawaii's interisland airlines, which ultimately provides economic benefits for all of Hawaii. This is good public policy.