

L E G I S L A T I V E

TAXBILLSERVICE TESTIMONY

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, USE, Exempt Foreign Trade Zone aviation fuel

BILL NUMBER: HB 2860, HD-1

INTRODUCED BY: House Committee on Economic Development and Business Concerns

BRIEF SUMMARY: Amends HRS section 212-8 relating to the Foreign Trade Zone exemption from taxes to provide that sales of aviation fuel categorized as privileged foreign merchandise, non-privileged foreign merchandise, domestic merchandise, or zone-restricted merchandise that is admitted into a Foreign Trade Zone as delineated by Congress that are made directly to or used by any common carrier for consumption or use in interstate air transportation, shall be exempt from the state's general excise and use tax laws.

Defines "aviation fuel" and "interstate air transportation" for purposes of the measure.

EFFECTIVE DATE: July 1, 2034

STAFF COMMENTS: Currently aviation fuel is imported and stored in Hawaii Fueling Facilities Corporation (HFFC) storage tanks. HFFC was established in 1969 to provide fuel storage and distribution to its member airlines. On September 1, 1997, the HFFC began operating under the Foreign Trade Zone (FTZ) at the Honolulu International Airport. Fuel purchased from HFFC for use in aircraft of HFFC members is exempt from the imposition of the general excise, use, and fuel taxes since they are operating in the FTZ. When the fuel is then pumped through the HFFC's bonded fuel lines and provided to the aircraft, the fuel remains in interstate commerce and technically is outside the jurisdiction of the state and the imposition of state taxes. The current exemption from taxes for product within the FTZ but sold for consumption outside the state applies only when the consumption of such product occurs out of state where sales are made to any common carrier in interstate or foreign commerce.

The purpose clause notes that the rising cost of fuel has added to the challenges of the local airlines and that the cost of the general excise and use tax exacerbates these challenges. Exempting the fuel used for intrastate air transportation would help level the playing field and create a fairer market for all airlines. While the purpose clause alludes that it intends to exempt aviation fuel used in intrastate air transportation, as drafted, this proposal only addresses aviation fuel used in interstate air transportation and would extend the exemption from general excise and use taxes to only fuel that is consumed in interstate commerce. The definition of "interstate" has been part of the problem the local airlines have had with the department of taxation as the department does not interpret flights between the islands as "interstate" commerce. Thus, if the intent of this measure is to exempt fuel used by interisland carriers purchased from the Foreign Trade Zone, then reference should be made that the exemption applies for intrastate travel.

Further, because the intent is to address the impost of the general excise tax on aviation fuel drawn from a Foreign Trade Zone and used for intrastate travel, the exemption would be more appropriately placed

LATE TESTIMONY

HB 2860, HD-1 - Continued

within the general excise tax law rather than in the law pertaining to the Foreign Trade Zone. This would insure that the taxpayer knows what sort of transactions are exempt from the general excise tax and not necessarily because the fuel was a privilege product drawn from a Foreign Trade Zone.

If it is the intent of the measure to exempt aviation fuel used in intrastate air transportation, this measure as drafted, does not achieve that end.

Digested 2/08/08

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