

SB 2155

HMSA



Blue Cross
Blue Shield
of Hawaii

An Independent Licensee of the Blue Cross and Blue Shield Association

February 1, 2008

The Honorable David Ige, Chair
The Honorable Lorraine Inouye, Chair

Senate Committees on Health and Intergovernmental and Military Affairs

Re: SB 2155 -- Relating to General Excise Taxation

Dear Chair Ige, Chair Inouye and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in support of SB 2155 which would exempt from the general excise tax amounts received by managed care support contractors as reimbursements of costs or advances made pursuant to a contract for the administration of the federal TriCare program.

This measure would clarify that any amounts received by a managed care support contractor for reimbursements of costs made by the contractor, made pursuant to the contract with the federal government for the administration of the TriCare program, are exempt from the Hawaii General Excise Tax. It seems, at this time, it is unclear as to whether or not TriCare reimbursements are indeed subject to the GET.

SB 2155 would clear up any confusion on this issue and bring Hawaii in line with every other state in the U.S. (except Texas), that has put this exemption into law. This exemption will truly support the continued availability and strength of the TriCare program and ensure that it is able to provide coverage to the approximately 150,000 current and former military personnel and their family members who reside in Hawaii.

Thank you for the opportunity to provide testimony on SB 2155.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Diesman".

Jennifer Diesman
Director, Government Relations

L E G I S L A T I V E

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, Exempt reimbursements for TRICARE program

BILL NUMBER: SB 2155; HB 2306 (Identical)

INTRODUCED BY: SB by Baker and 1 Democrat; HB by Caldwell and 1 Democrat

BRIEF SUMMARY: Amends HRS section 237-24.75 to clarify that amounts received by a managed care support coordinator of the TRICARE program established under the 10 United States Code chapter 55 for reimbursement of costs or advances made pursuant to a contract with the United States shall be exempt from general excise taxation.

EFFECTIVE DATE: July 1, 2008

STAFF COMMENTS: The TRICARE program was established by the U.S. Department of Defense (DOD) as the managed care component of the Military Health Care system to augment the health care services provided to DOD personnel at military treatment facilities. TRICARE contracts with third-party administrators (managed care support contractors) to establish and maintain networks of TRICARE-authorized civilian health care providers. These managed care support contractors make advances to health care providers for the services they provide to TRICARE beneficiaries and are reimbursed by the DOD for the amounts of such advances.

This measure clarifies that amounts received by the managed care support coordinators as reimbursements from the DOD for advances they made on behalf of the DOD for TRICARE program purposes are not taxable under Hawaii's general excise tax law.

While an understanding of HRS section 237-20 which delineates the cost reimbursement provision under the general excise tax law appears to dictate that such reimbursements are not taxable unless the person making the advance receives additional monetary consideration for the services provided, the adoption of this measure may be unnecessary.

On the other hand, if the third party administrator receives a fee for handling these reimbursements, then it runs into the ban that HRS 237-20 imposes where the fee taints the entire amount received from the DOD. Hawaii law has already set precedent, providing that amounts received as reimbursements for wages, salaries and benefits of hotel workers paid by a hotel operator on behalf of the hotel owner are exempt as are reimbursements made on behalf of the city for the operations of the city's bus system by a third party operator even though additional consideration is received in both cases. It should be noted that the fee paid to the third party administrator would continue to be subject to the general excise tax as the fee is gross income to the third party administrator.

Digested 2/01/08

LATE TESTIMONY

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January 31, 2008

TO: Senator David Y. Ige
Chair, Committee on Health
Hawaii State Capitol, Room 215

Senator Lorraine R. Inouye
Chair, Committee on Intergovernmental and Military Affairs
Hawaii State Capitol, Room 201

Via Email: testimony@capitol.hawaii.gov

FROM: Chris Pablo
RE: S.B. NO. 2155 – Relating to General Excise Tax
Hearing on Friday, February 1, 2008 at 2:30 p.m.

Dear Chairs Ige and Inouye and Members of the Committees on Health and Intergovernmental and Military Affairs:

I am Chris Pablo testifying on behalf of TriWest Healthcare Alliance Inc. ("TriWest"), a Delaware corporation headquartered in Phoenix, Arizona. **TriWest supports S.B. 2155.**

TriWest is one of several regional third-party administrators of a cost-effective, high quality network of health care providers for the nation's active and retired uniformed service members and their families, under a federal government program known as "TRICARE" and formerly known as "CHAMPUS."

What is TRICARE? The Federal Government has established a managed health care program for members of the uniformed services and certain dependents. It was created in the early 1990s to supplement the existing military health care delivery system and provide health care services for active duty military personnel, military retirees, and their families (collectively, the "Beneficiaries") by utilizing civilian health care providers.

In Hawaii, the Beneficiaries have access to the military health care facilities, such as the Tripler Army Medical Center and to health care clinics on military bases through the state. In addition, the Beneficiaries have access to medical services through the network of community health care providers that has been created by TriWest.

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TRICARE receives its funding as part of the annual defense appropriations budget. It is administered by the TRICARE Management Activity ("TMA"), which is part of the United States Department of Defense ("DoD"), Office of the Assistant Secretary of Defense (Health Affairs).

What is TriWest? In the health care industry, TriWest's business would be characterized as a "third-party administrator." TriWest, known as a "managed care support contractor" in the applicable Federal laws and regulations, is a disbursing agent for the Federal Government in the western states, including Hawaii. Its job is to receive claims and invoices from health care providers, and then pay those claims according to the amounts and guidelines set by the Government ("reimbursement"). The Government then reimburses TriWest for the amounts paid, and also pays TriWest an **administrative fee** for its services. This is best illustrated in the attached powerpoint slide.

TriWest pays Hawaii General Excise Tax on the amounts it receives from TRICARE as compensation for its services as *managed care contractor*, but it does not pay tax on the reimbursement amounts. In prior discussion with representatives of the Department of Taxation, there was some concern that the reimbursement amounts might be taxable. If they are taxable, the costs for health care of uniformed service members would increase significantly. TriWest is asking the Department of Taxation for formal clarification of this issue, and is concurrently asking the Legislature for similar relief.

What is the purpose of SB 2155? The purpose of SB 2155 is to make clear that the amounts received by TriWest from TRICARE as "reimbursements" are exempt from the imposition of the General Excise Tax by amending Section 237-24.75 by adding a new subsection (3). The proposed amendment reads, as follows:

"Amounts received by a managed care support contractor of the TRICARE program that is established under 10 United States Code Chapter 55 (as currently enacted or hereafter amended) for reimbursement of costs or advances made pursuant to a contract with the United States; and"

Amendment to S.B. 2155 requested. We request a technical, but non-substantive amendment to the above quoted language to conform to the recommendation in the *Legislative Drafting Manual, Ninth Edition*, LRB. The language "(as currently enacted or hereafter amended)" was used to address the possibility of future amendments to 10 USC Chapter 55 and to avoid the necessity of amending HRS to insert the citation to the amended applicable federal statute. Substituting the current language with the words "as amended" should accomplish this objective. The proposed amendment should now read:

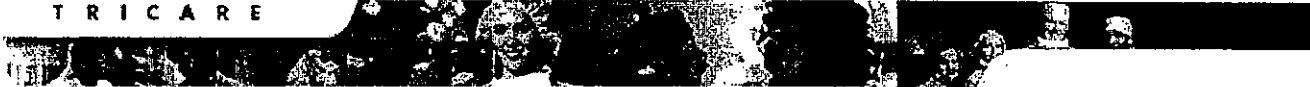
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“Amounts received by a managed care support contractor of the TRICARE program that is established under 10 United States Code chapter 55 *as amended* for reimbursement of costs or advances made pursuant to a contract with the United States; and”

We urge your passage of S.B. 2155 with our proposed technical and non-substantive amendment.
We thank you for the opportunity to testify in support of S.B. 2155.



US Department of Defense
Military Health System



REIMBURSEMENT

*For Medical Services
Provided to
Hawaii-based TRICARE beneficiaries*

\$30 million/year

ADMINISTRATIVE FEES

*\$3.5 million/year
\$157,500 in GE Taxes/yr*



Network Health Care Providers

Medical services & supplies



Military personnel/dependents

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



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**SENATE COMMITTEE ON HEALTH AND
INTERGOVERNMENTAL & MILITARY AFFAIRS**

**TESTIMONY REGARDING SB 2155
RELATING TO GENERAL EXCISE TAX**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 1, 2008
TIME: 2:30PM
ROOM: 016

This legislation provides a general excise tax exemption for a managed care support contractor of the TRICARE program that is established under 10 United States Code chapter 55.

The Department of Taxation has no comments on this legislation.

This legislation will result in a revenue loss of approximately \$3.6 million for FY 2009 and thereafter.