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LATE

THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

Hearing January 31, 2008
Testimony on S.B. 2349
(Relating to Exemptions from General Excise Tax)

Chair Chun Oakland, Vice-Chair Ihara, members of the Committee:

This bill provides for an exemption for Assistive Technology* ("AT") devices from the Hawaii's General Excise Tax ("GET"). As an individual who is a user of assistive technology devices for work and activities of daily living and as an advocate for persons with disabilities, who use assistive technology I am acutely aware of the cost of technology to the individual user. Often the devices are not covered by insurance, and if there is coverage it is likely to be minimal. If there is coverage of any sort, replacement and wear and tear are not taken into consideration by the insurer, not the rapid advances in technology. AT for the average person is hard to come by and more often than not is not obtainable. In order to close this gap in access, this proposal for exception from the general excise tax would make it possible for more individuals to benefit from products that will significantly improve their quality of life as well as opportunities for employment. We all know individuals and see people who use AT. Wheelchairs, scooters, hearing aids, augmentative communication devices are not a luxury, but a necessity for persons with disabilities. Conditions once considered limiting are no longer so due to the advances in technology. All of these devices are subjected to the GET and there for another barrier to access is in place.

I strongly support this bill because:


1. It makes the AT devices more affordable because the GET will not be added to the cost.
2. More individuals with disabilities and heretofore debilitating conditions have the potential for productive lives.
3. Adding tax to an item that will significantly improve an individuals quality of life and in many cases allow full participation in the workplace, community and home prevents access to an individual to live up to his/her full potential.

LATE

4. In some instances it eliminates the unfairness that is caused when the entire amount of the GET is passed onto the consumer. The tax, as a percentage of what is paid by the consumer is often much higher than 4%. For example, if the cost of an assistive device is \$100, the tax is \$4.00 making the total cost \$104.00. If an insurance company pays \$80.00, the consumer pays \$24.00 because the tax will be part of their share of \$20.00. The consumers cost is increased by 20% because the consumer bears the full burden of the General Excise Tax. This can often make AT unaffordable.
5. For most individuals, it is substantially certain that there is no double tax benefit. Individuals can only deduct the amount that exceeds 7½ of their Adjusted Gross Income from their income tax. Very few taxpayers, especially individuals who have the highest rate of unemployment reach this threshold.

Thank you for the opportunity to testify.

Sincerely,



Barbara fischlowitz-Leong
Retired Executive Director
Assistive Technology Resource Centers of Hawaii

¹ Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Assistive technology service means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. 29 U.S.C. § 3002

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
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LATE

SENATE COMMITTEE ON HUMAN SERVICES & PUBLIC HOUSING

**TESTIMONY REGARDING SB 2349
RELATING TO EXEMPTION FROM THE GENERAL EXCISE TAX**

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

DATE: JANUARY 31, 2008

TIME: 1:30PM

ROOM: 016

This legislation seeks to extend an existing general excise tax exemption for prescription drugs and prosthetic devices to include "assistive" devices. This legislation specifically defines assistive devices.

The Department of Taxation (Department) supports the intent of this measure; however has concerns regarding its administration and revenue impact. The Department also strongly recommends that the Committee consider the fiscal priority of the Administration by hearing SB 3117, which provides a refundable income tax credit for costs incurred in retrofitting a home for the elderly or disabled.

I. THIS LEGISLATION WILL CLARIFY THE CURRENT LAW.

For several years, the Department and taxpayers have been at odds over the application of the existing exemption for prosthetic devices. The Department generally interprets prosthetic devices as a mechanical substitute for a body part. However, taxpayers routinely attempt to claim other devices, such as wheelchairs and hearing aids, that one could argue are prosthetics, at least indirectly. Differences in interpreting statutes such as this lead to disputes. This legislation, on the other hand, will clarify existing law by specifically extending the current exemption to include assistive devices, which are defined as mobility, listening, and speaking devices that assist a person's senses.

II. TECHNICAL COMMENTS ON THIS LEGISLATION

ADMINISTRATIVE DIFFICULTY—The Department points out that this legislation will have an impact on the administration of the general excise tax for both the Department and taxpayers because an additional complexity of what proceeds are exempt or not will need to be determined on

tax forms, as well as determined by small business staff. Businesses may have to invest in training to advise personnel of another exempt sale, which does add business complexity.

DEMONSTRATOR—The Department is unclear by what is meant by a "demonstrator" contained in the exemption. The term should be removed or defined.

"ACCEPTING TRANSFER OF"—The Department is likewise concerned with the term "accepts transfer of." The general excise tax applies to gross proceeds. This necessarily presupposes a sale and income generated by one party to another. This language should be eliminated and the exemption should only apply to purchases.

ADDITION OF DOCTOR & DIRECTOR COST REQUIREMENT—The Department is always concerned about abuse. The Department suggests that the definitions be amended to eliminate the phrase "including but not limited to" because this allows for interpretation by taxpayers that could well exceed reasonableness. As an alternative, the Department suggests setting forth those specific devices that will only qualify, plus require that only those that are disabled qualify and add two additional exemptions where ordered by a doctor pursuant to prescription or other authority or by the Director of Taxation. Such language should read:

Assistive devices means the following devices for the benefit of a person with a disability:

- (A) Manual wheelchairs, motorized wheelchairs, motorized scooters, and motorized scooters, and other devices that enhance the mobility of a disabled person;
- (B) Hearing devices, telephone communication devices for the deaf, assistive listening devices;
- (C) Voice synthesized computer modules, optical scanners, talking software, braille printers;
- (D) Any other device that enables a person with a disability to communicate, see, hear, speak, manipulate the person's environment, move, or maneuver, determined to be necessary for medical purposes by a medical doctor licensed to practice in the State. The director of taxation may require verification by a person's medical doctor in order to ascertain the validity of any such costs;
- (E) Any other costs approved by the director of taxation

III. REVENUE ESTIMATE.

The Department is very concerned about this legislation's revenue estimate, which could be substantial.

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subject: general excise, medical care
folder: 08-040
date: 1-29-2008

January 29, 2008

TITLE: S.B. 2349, Relating to Exemption from General Excise Tax

PROPOSAL: Makes revenue derived from the sale of "assistive devices" exempt from general excise tax. Assistive devices are devices used to assist a person in connection with a life activity, for example wheelchairs, hearing aids, etc.

REVENUE IMPACT:

- **FY2009 (loss): \$497,000**
- **FY2010 (loss): \$1.1 million**

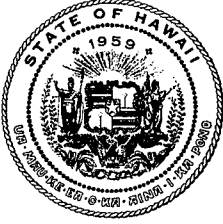
METHODOLOGY:

The "durable medical products" expenditures for the State of Hawaii was obtained from CMS. It is estimated that 15% of durable medical products will qualify for the exemption. The 2004 data was inflated using the annual expenditure growth rate of 7.9% to FY2009 and FY2010.

DISCUSSION:

The exemption as written is very specific. The qualifying product must be bought from a hospital, health care facility, licensed practitioner, etc. This makes most things ineligible. For example, simple eyeglasses from Lenscrafters (which counts under the CMS definition of durable medical products, and in the bill's definition of an assistive device) would not qualify for the exemption as it's not bought from a qualified source.

If the law is interpreted more liberally than as written, then the revenue impact will be much higher.



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

January 31, 2008

LATE

TESTIMONY TO THE SENATE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

Senate Bill 2349 - Relating to Exemptions from General Excise Tax

The Disability and Communication Access Board (DCAB) supports Senate Bill 2349 Relating to an Exemption from the General Excise Tax.

It is our understanding that this tax is paid by the vendor to the State of Hawaii, but may be passed on to the consumer in the sale of the equipment. This bill would provide an exemption from the general excise tax for assistive devices such as wheelchairs, walkers, canes, crutches, and speech synthesizers. The statute already provides an exemption for prosthetic devices, thus establishing a precedent for this bill.

Assistive devices or assistive technology covers a wide spectrum of items for people with disabilities to enable them to live more independently in the community. The rapid advances in technology have provided more access to consumers with devices to enhance mobility, communication, hearing, etc. For many people, a piece of assistive technology provides the equivalent freedom and independence as a prosthetic device. While technology has increased the potential use of the items, financial costs have constrained the actual use. Reimbursement from third party payers, if at all, most often does not cover the tax on the item.

We defer to the Department of Taxation on the revenue loss estimates for the bill. We also assume that rules will need to be promulgated to clarify the type of devices or technology that qualify and the nature of a practitioner who sells the devices.

Respectfully submitted,

PATRICIA M. NIELSEN
Chairperson
Legislative Committee

FRANCINE WAI
Executive Director

THE SENATE
TWENTY-FOURTH LEGISLATURE 2008
STATE OF HAWAII

LATE

TO: THE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING
FROM: PAUL TOMIYASU, Deaf Individual
DATE: 1/31/08

REGARDING: **SB BILL 2049**³, EXEMPTS FROM THE GENERAL EXCISE TAX,
AMOUNTS RECEIVED FOR SELLING ASSISTIVE DEVICES.
DEFINES ASSISTIVE DEVICES.

I am in favor of this measure. I think that we pay too much for what we need to live, so if the Vendor gets a break then I get a break in cost. It's a great idea except for the part that says, an additional cost may be added to my policy for exemption of these devices, so are we getting a break or is it just going around from one pocket to mine? I know you don't manage that end of the insurance and policy makers, but that is the impression I gather when reading the bill. (It is a matter of fact and must be inclusive in these types of bills)

Thank you,

LATE TESTIMONY

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III. REVENUE ESTIMATE.

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TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempt assistive devices

BILL NUMBER: SB 2349; HB 2304 (Identical)

INTRODUCED BY: SB by Chun Oakland; HB by Caldwell

BRIEF SUMMARY: Amends HRS section 237-24.3 to provide that amounts received from the sale of assistive devices shall be exempt from the general excise tax.

Defines "assistive device" as any device that is used to assist a person in connection with a life activity such as mobility, vision, hearing, speech, communication, maneuvering, and manipulation of a person's environment. Further enumerates the assistive devices covered in the measure.

The amendments made to HRS section 237-24.3 by this act shall not be repealed when this section is reenacted by Act 239, SLH 2007.

EFFECTIVE DATE: Upon approval; applicable to gross proceeds received after December 31, 2008

STAFF COMMENTS: It should be remembered that the general excise tax is a tax imposed for the privilege of doing business in Hawaii. The tax is measured against the gross proceeds received by a business as a result of providing goods or services to a customer. While this measure proposes to exempt the sale of assistive devices from the general excise tax, it would grant a tax preference for those selling such devices while other taxpayers would remain subject to the tax. Generally tax relief is granted to alleviate an undue burden on the taxpayer based on that taxpayer's ability to pay the tax. This proposed exemption would grant relief to taxpayers without regard to their ability to pay the tax.

But then again, state lawmakers manage to ignore the fact that providing exemptions based on age or disability is a waste of precious resources as the cost of granting that exemption means the tax on all other products sold and on all other consumers must remain high. The perfect example is how any disabled person is allowed to park in metered stalls or public parking for free even though his Jaguar is no different from the Jaguar driven by a person without a disability.

Granting this exemption merely insures that such sales of assistive devices are assured another 4% or 4.5% margin of profit since the tax will not have to be paid. It also makes the erroneous assumption that the cost of the savings will be passed on and not folded into the selling price of the goods. Exemptions like this erode the tax base which runs counter to good tax policy. Even the National Conference on State Legislatures cautions that: "Tax deductions, credits and exemptions shift tax burdens from a favored set of taxpayers to less favored taxpayers."

Digested 1/30/08