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TESTIMONY OF THE CHAIRPERSON OF THE BOARD OF LAND AND NATURAL RESOURCES

On Senate Bill 2816 Senate Draft 1 – Relating To Intra-County Ferry Service

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

February 21, 2008

Senate Bill 2816 Senate Draft 1 proposes to provide priority assignment of mooring space in Maalaea Small Boat Harbor for any new ferry operating from Maalaea Small Boat Harbor to Lahaina Small Boat Harbor, and provide an exemption from the fuel tax for fuel purchases for the ferry service. The Department of Land and Natural Resources (Department) comments are limited to SECTION 2 of this bill as it pertains to assigning priority mooring space in Maalaea Small Boat Harbor to any intra-county ferry service, and defers to the Department of Taxation for comment on the portion of the bill that pertains to exemption from the fuel tax for fuel purchase for the ferry service. The Department does not support SECTION 2.

The Department's Division of Boating and Ocean Recreation (DOBOR) has had conversations with the current ferry service operator and has explained that once the ferry improvements are completed at the Maalaea Small Boat Harbor, they will reassess whether additional mooring space is available at the end of the mole where the current ferry terminal is located. Should mooring space be available, DOBOR would be willing to offer mooring at the ferry terminal for authorized ferry vessels. A concern DOBOR has is that if they are required to provide mooring space for all ferry operators, then existing tenants of the Harbor may have to be asked to vacate in order to accommodate the additional vessels.

Also, due to ongoing construction, vessels are being relocated throughout the Harbor and this will continue until construction is completed resulting in very limited mooring space. When mooring space does become available, it is offered to the first qualified applicant on the wait list according to the Department's administrative rules. Currently, applicants on the wait list for the Maalaea Small Boat Harbor have been waiting for over ten years for mooring space. As such, the Department feels that giving preferential treatment to a new commercial operation would not be fair to those who have been on the wait list for years.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, Exempt intra-county ferry service

BILL NUMBER: SB 2816, SD-1

INTRODUCED BY: Senate Committee on Transportation and International Affairs

BRIEF SUMMARY: Amends HRS section 243-4 to provide that the fuel tax shall not be imposed on the sale of liquid fuel used by an intra-county ferry service that serves a county with a population of less than 500,000 residents and includes at least three islands inhabited by permanent residents.

Makes a nontax amendment that directs the department of land and natural resources to assign priority mooring space to any intra-county ferry service as delineated.

The amendments made to HRS section 243-4 by this act shall not be repealed when that section is repealed and reenacted on December 31, 2009 by Act 103, SLH 2007.

EFFECTIVE DATE: July 1, 2008

STAFF COMMENTS: While this measure proposes a fuel tax exemption on fuel sold to an intra-island ferry operating between Lanai and Maui, it is questionable whether the proposed exemption alone will reduce the price of its operations to make it possible to operate on a regular basis. On the other hand, one has to question the precedent this proposal sets and begs a response for other intra-island modes of transportation.

Digested 2/20/08

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SENATE COMMITTEE ON WAYS & MEANS

TESTIMONY REGARDING DECISION MAKING AGENDA FOR FEBRUARY 21, 2008

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 21, 2008
TIME: 9:30AM
ROOM: 211

Contained in this testimony are the Department of Taxation's (Department) comments on the Senate Committee on Ways & Means' decision-making agenda for February 21, 2008. Because each measure is before the Committee for decision-making only, the Department's comments are in summary fashion for your convenience—

I. SB 2829, SD 1, RELATING TO TAXATION (SSTP)

This bill provides implementing legislation for the Streamlined Sales & Use Tax Agreement (SSUTA).

The Department takes **no position on the merits of the SSUTA** and stands on its prior testimony submitted to the Committee on Economic Development & Taxation. However, the Department **opposes the redirection** of general excise tax receipts from the general fund to a special fund. The Department points out the following comments:

Delayed Effective Date—The delayed effective date of the bill is appreciated, but the delay may not be long enough to allow these changes to be fully integrated into the computer systems of the Department. A longer delayed effective date would give time for practitioners and businesses to adjust to these changes. Given the challenges the Department would face integrating such large, wholesale changes into its operations, longer than two years may be more realistic of a time frame. The delayed effective date would also provide time to obtain approval from the National SSTP Governing Board to assure that Hawaii's amendments conform to the SSUTA. This is very important since Hawaii's general excise tax is not a sales tax.

Frequent Changes to the SSUTA Will Require Legislative Action—The legislature needs to be aware that the SSUTA is not a static document. It has undergone substantial and frequent changes since it was adopted on November 12, 2002. It has been amended 11 times.[1] Each change requires member States to possibly amend its law in order to remain in conformity with the SSUTA.

Revenue Impact—The bill would increase revenues by about $10 million annually. However, joining the SSUTA would entail start-up costs and annual recurring costs. The Department is presently re-examining SSTP implementation costs. The expansion of the GET exemption for blind, deaf, and disabled taxpayers would cost about $500,000 annually.

II. SB 2838, SD 1, RELATING TO TAXATION (ELECTRONIC REFUND DEPOSIT)

This legislation requires the Department to implement necessary procedures to allow e-filing taxpayers to request a direct deposit of refunds to up to three accounts. The Department has **concerns** with this legislation and provides the following comments—

Bill Must Allow Deposit Only Into Certain Accounts—The Department requests that the bill be amended to allow an electronic deposit into only those bank accounts that receive an electronic refund request at the federal level. The amendments made to this measure based upon comments by the Department rely heavily upon federal electronic tax information. If a taxpayer is allowed to insert different accounts than those provided to the IRS, this legislation could have a much greater impact on Department resources and could cost much more to implement.

Appropriation—An appropriation to finance the computer and form costs associated with this measure is necessary. At this time, the Department requests an appropriation in the amount of $89,000 to carry out the purposes of this proposal.

III. SB 2819, SD 1, RELATING TO INTRA-COUNTY FERRY SERVICE (Fuel Tax Exemption)

This legislation exempts sales of fuel to an intra-county ferry service from the fuel tax. The Department takes **no position** on this legislation and offers the following comment for technical correctness

Inappropriate Statutory Placement— The current mechanics of this bill are counterintuitive and it does not make sense to include an exemption section within the assessment section of the license tax. The Department still believes that an exemption for an intra-county ferry service should be included within the current exemption section provided at HRS § 243-7.

Revenue Estimate—The Department's updated revenue estimate provided to the Committee on Economic Development & Taxation was not incorporated into its committee report, which was cited as $13,500. This legislation will result in no impact to general fund. Highway fund annual revenue will be decreased by $21,200, starting FY2009.

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[1] November 19, 2003, November 16, 2004, April 16, 2005, October 1, 2005, January 13, 2006, April 18, 2006, August 30, 2006, December 14, 2006, June 23, 2007, September 20, 2007, and December 12, 2007

IV. SB 2816, SD 1, RELATING TO TAXATION (Foreign Trade Zone Exemption)

This legislation exempts fuel purchased from a Foreign Trade Zone by a common carrier that flies interisland from the general excise and use taxes.

The Department takes **no position** on this measure and offers one comment—

Definition of "Interstate Air Transportation"—For consistency throughout the proposal, this term should be defined as: **"Interstate air transportation" includes the transportation of passengers or property by aircraft between two points in the State."**

Revenue Impact— 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.

110 million gallons of fuel was sold on Oahu in FY2007. From previous estimates, it was found that approximately 55% of this was of non-exempt fuel. GE revenue from fuel was calculated to be (110 million gallons) * (55% non-exempt) * ($2.00 / gallon) * (4.00% excise tax rate) = $4.8 million. This was inflated for the relevant fiscal years.

V. SB 3149, SD 2, RELATING TO HIGHWAYS (Requires GET Deposit)

This legislation, among other things, requires a deposit of general excise tax revenues generated from the manufacture and sale of fuels to be deposited to the highway fund. The Department has **strong concerns** with this legislation.

GET Redirect—The Department is always cautious about policy that redirects general excise tax revenue away from the general fund and into specific special funds. The Department is concerned because the general excise tax represents over one-half of the State's overall operating revenue stream. The Department strongly prefers that a direct appropriation be the means for funding this program so that the amount may be budgeted and prioritized just as any other program.

Administrative Issues—The Department also points out that tracking the specific fuel revenues as contemplated by this measure is likely unworkable. The Department does not track the gross proceeds of sales of fuel to the extent requested in this measure. The Department would need an appropriation for computer and form enhancements, as well as additional time, in order to capture the data requested in this measure.

Revenue Estimate—This legislation will result in the following general fund losses:

- **FY2009 (loss): $36.8 million**
- **FY2010 (loss): $78.0 million**

- **FY2011 (loss): $79.1 million**

The taxable gallonage from fiscal year 2007 was used to derive the excise tax receipts derived from the selling of these fuels. Note that gasoline was mostly subject to the GE exemption for alcohol-based fuels, and that oil and gas refining has a special GE exemption for multiple refineries in multi-step refining processes. The revenue impact of each fuel was calculated by:

(Gallons sold in FY07) * [(Avg retail price) * (Retail GE {4% or 0%}) + (Avg wholesale price) * (Wholesale GE)]. The impacts of the individual fuels were summed to get the total revenue impact.

For FY 2010 / FY 2011, the repeal of the GE exemption for ethanol-blended fuels was added to the total.

VI. SB 2455, SD 1, RELATING TO RENEWABLE ENERGY TECHNOLOGIES (Extends Credit to Hydrogen)

This legislation extends the current Renewable Energy Technologies Income Tax Credit to include hydrogen energy systems. The Department has **no additional comments** on this measure.

This bill's revenue estimate is estimated to be minimal. There is no marketed product known that would provide power via hydrogen for residential or commercial use. This leaves commercial R&D as the only probable user of the credit. However previous department rulings regarding this credit dictate that "all additions adding to an existing system shall be treated as one installation" (TIR 07-02). This minimizes the impact due to the $35,000 limit. With the further consideration that the device must be powered by a renewable energy source, the number of adopters would probably be very low, if any.

VII. SB 2623, RELATING TO RENEWABLE ENERGY TECHNOLOGIES (Extends Credit to Solar)

This legislation amends the current Renewable Energy Technologies Income Tax Credit, by adding a new definition for "solar electric energy systems." The Department **does not like this additional definition** and prefers that a definition in this credit focus on what is put into a machine rather than an approach based upon what the machine creates.

Based upon the Department's estimates, this legislation will not have an impact on the general fund.

VIII. SB 2764, SD 2, RELATING TO ETHANOL FACILITY TAX CREDIT (Removes Caps)

This legislation provides the Ethanol Facilities Tax Credit to large and small refineries for the first 15 million gallons of ethanol produced and eliminates certain caps. The Department of Taxation (Department) takes **no position** on this legislation.

This legislation will currently result in an indeterminate revenue estimate because the credit caps are blank. The amount of revenue loss is dependent upon the change in the annual credit limit. This is currently unspecified.

IX. SB 2986 SD 1, RELATING TO REFUNDABLE RENEWABLE ENERGY TAX CREDIT (Makes Renewable Energy Technologies Tax Credit Refundable)

This measure amends the Renewable Energy Technologies Income Tax Credit by allowing the credit to be refundable for those that have little Hawaii taxable income. The Department of Taxation (Department) **strongly supports** this Lingle-Aiona Administration measure as a policy to encourage additional investment in renewable energy technologies.

Annual revenue loss is estimated to be $41,000, starting in fiscal year 2009.

X. SB 3215, SD 2, RELATING TO BIODIESEL (Biodiesel Production Incentives)

This legislation, among other things, provides tax incentives for biodiesel production facilities. The Department of Taxation (Department) provides **comments** on this legislation.

Income Tax Exemption—The Department notes that the income tax exemption is vague. It is unclear whether the tax exemption applies to 100% of income derived from the processing of oil seed produced in the State or to 100% of all income from any facility that processes any amount of oil seed produced in the State.

Revenue Impact—Due to the blanks, this bill will result in an indeterminate revenue loss.