

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
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TAXATION

TESTIMONY REGARDING SB 2913 RELATING TO TAXATION

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

DATE: FEBRUARY 12, 2008

TIME: 1:15PM

ROOM: 224

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 Committee on Transportation & International Affairs passed this measure unamended.

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.

To accomplish the intent of this legislation and to avoid any unnecessary confusion or lack of clarity, the definition of "interstate air transportation" should be amended as follows—

"Interstate air transportation" includes the transportation of passengers or property by aircraft between two points in the State."

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.

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.

Department of Taxation Testimony

SB 2913

February 12, 2008

Page 3 of 3

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 by CPI_U for the relevant fiscal years.



**The Chamber of
Commerce of Hawaii**
Since 1850

**Testimony to Senate Committee on Economic Development and Taxation
Hawaii State Capitol
Conference Room 224
415 South Beretania Street
Tuesday, February 12, 2008 at 1:15 pm**

SUBJECT: SENATE BILL 2913- RELATING TO TAXATION

Chair Fukunaga, Vice Chair Espero, and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I appreciate the opportunity to state The Chamber's strong support of Senate Bill No. 2913, relating to Taxation.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The measure, as received by your Committee, exempts from general excise and use taxes the fuel sold from a foreign-trade zone for intrastate air transportation by common carriers.

The Chamber, through its Tourism Committee, encourages a broad base of understanding, support and appreciation for the Tourism and Travel Industries within the business community, Legislature and the general public. The committee also supports visitor industry growth and improvement while working to enhance the visitor experience.

The Chamber understands the value and significance of the airline industry, especially our local carriers, who in addition to serving the travel needs for the people of Hawaii and beyond, has contributed significantly to the community. Any decline in the travel industry harms all businesses and the local economy. As a result, the Chamber wants to embrace and strengthen the commercial aviation sector.

This bill proposes to give fuel tax relief for intrastate air transportation by common carriers. The Chamber believes this is a relevant step in the right direction of giving aid to the industry. Airlines are facing serious challenges today, and exempting them from the general excise and use tax on aviation fuel will help to alleviate some financial burdens. Additionally, this measure provides a fair and balanced relief to the local carriers as well as is consistent with the federal law relating to interstate commerce.

In light of this, the Chamber of Commerce of Hawaii urges your support of Senate Bill 2913 relating to Taxation.

Thank you for the opportunity to express our views on this matter.

**TESTIMONY OF KEONI WAGNER ON BEHALF OF HAWAIIAN AIRLINES
IN SUPPORT OF S.B. NO. 2913, RELATING TO TAXATION**

February 12, 2008

To: Chairperson Carol Fukunaga and Members of the Senate Committee on Economic Development and Taxation:

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 S.B. No. 2913.

This bill provides an exemption from state general excise and use taxes on fuel purchased from a foreign trade zone (FTZ) and used for interisland air transportation 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 and respectfully request that legislation be passed to make this exemption more explicit.

Thank you for the opportunity to testify on this measure.

**Justification for Senate Bill No. 2913
Relating to Taxation**

The proposed bill exempts from the general excise tax and use tax, sales of aviation fuel from a foreign trade zone for use in interstate air transportation because it is preempted by federal law.

Title 49 U.S. Code, section 40116, prohibits a State or a political subdivision of a State from levying or collecting a tax on the sale of air transportation.

"(b) Prohibitions. - Except as provided in subsection (c) of this section and section 40117 of this title, *a State*, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title ***may not levy or collect a tax***, fee, head charge, or other charge on--

- (1) an individual traveling in air commerce;
- (2) the transportation of an individual traveling in air commerce;
- (3) ***the sale of air transportation***; or
- (4) the gross receipts from that air commerce or transportation."

49 USC Sec. 40116, section 40116, provides in subsection (c):

***"(c) Aircraft Taking Off or Landing in State.* - A State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or any activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight."**

Section 40116 applies to flights taking off and landing in a state in the continental U.S. Using this authority to charge the general excise tax and use tax to the interisland airlines and not the overseas airlines because the overseas airlines are considered "interstate" transportation discriminates against the interisland airlines, which under the Federal Aviation Act are also included in "interstate air transportation."

Title 49 U.S. Code, section 40102, defines "*interstate air transportation*" as follows:

- "(25) "interstate air transportation"** means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft-
- (A) between a *place* in -
 - (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;
 - (ii) ***Hawaii and another place in Hawaii through the airspace over a place outside Hawaii***;

- (iii) the District of Columbia and another place in the District of Columbia; or
 - (iv) a territory or possession of the United States and another place in the same territory or possession; and
- (B) when any part of the transportation is by aircraft."

The U.S. Court of Appeals, Ninth Circuit, in *Island Airlines, Inc. v. C.A.B.* (352 F.2d 735) held that:

"The high seas over which interisland flights flew while traveling among the various islands of Hawaii, were a "place" within statute defining jurisdiction of the Civil Aeronautics Board over interstate commerce as transportation between points in the same state over a foreign country or high seas as well as over another state."

The court cited that in the Hawaiian Statehood Act, the Congress did not establish the channels between the islands as being within the boundaries of the state. The boundaries of a state are determined by Congress, not by international law, and Congress in the Statehood Act said: "*The State of Hawaii shall consist of all islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act.*"

Senate Report 86-80 of the 86th Congress on the Hawaiian Statehood Act, on aviation matters, says:

"Hawaii presents a unique situation with respect to the impact of statehood on the federal regulation of air transportation between the main islands. ...most, if not all, of the interisland air transportation passes through airspace not a part of the territory. ...interstate air transportation, which is defined to include not only transportation between a place in a state and a place in any other state, but also transportation between places in the same state through the airspace over any place outside thereof... with the admission of Hawaii as a state, interisland air transportation will remain subject to the economic controls provided by the Federal Aviation Act including other applicable federal legislation, because that transportation, or most of it, while between places in the same state, will pass through airspace outside the state. In the other states, air transportation of this kind passing through airspace outside the state of slight volume in comparison with air transportation merely between places in the same state. ...the Committee wishes to make it clear that ...the provisions of the Federal Aviation Act and other applicable federal legislation to the State of Hawaii should continue in accordance with the definition of interstate air transportation as contained in that Act."

S.B. NO. 2913,

PROPOSED S.D. 1

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that a healthy inter-
2 island airline industry is vital to the State's economy.
3 Hawaii's inter-island airlines continue to face severe financial
4 challenges. Fuel costs in particular have skyrocketed and grown
5 volatile in recent years. In fact, for most airlines, the cost
6 of fuel has surpassed labor as the highest operating cost
7 factor.

8 Sales of fuel sold from a foreign-trade zone for use by
9 airlines traveling out-of-the-state are exempt from general
10 excise and use taxes. However, [~~intrastate~~] ***inter-island*** flights
11 are not exempt. To the extent that the Hawaii general excise and
12 use taxes [~~apply to intrastate flights, these taxes only~~
13 ~~exacerbate the problem for Hawaii airlines.~~] ***are being applied***
14 ***to inter-island flights, violates the Federal Aviation Act,***
15 ***which includes inter-island flights in the definition of "inter-***
16 ***state air transportation".***

17 The legislature finds that exempting common carriers from
18 the general excise and use taxes for sales of fuel from a

1 foreign trade zone for [~~intrastate~~] **inter-island** flights would
2 level the playing field and create a fairer market for all
3 airlines.

4 The purpose of this Act is to exempt common carriers from
5 the general excise and use taxes for fuel sold from a foreign
6 trade zone to common carriers for use in [~~intrastate~~] **inter-**
7 **island air** transportation.

8 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§237- Aviation fuel for air transportation. (a) This
12 chapter shall not apply to amounts received from the sales of
13 aviation fuel, as defined in section 243-1, categorized as
14 privileged foreign merchandise, non-privileged foreign
15 merchandise, domestic merchandise, or zone-restricted
16 merchandise, that is admitted into a foreign-trade zone and
17 purchased in a foreign-trade zone and is made directly to or is
18 used by a common carrier for consumption or use in air
19 transportation between two points in the State."

20 SECTION 3. Section 238-1, Hawaii Revised Statutes, is
21 amended by amending the definition of "use" to read:

____.B. NO. _____

1 "Use" (and any nounal, verbal, adjectival, adverbial, and
2 other equivalent form of the term) herein used interchangeably
3 means any use, whether the use is of such nature as to cause the
4 property, services, or contracting to be appreciably consumed or
5 not, or the keeping of the property or services for such use or
6 for sale, the exercise of any right or power over tangible or
7 intangible personal property incident to the ownership of that
8 property, and shall include control over tangible or intangible
9 property by a seller who is licensed or who should be licensed
10 under chapter 237, who directs the importation of the property
11 into the State for sale and delivery to a purchaser in the
12 State, liability and free on board (FOB) to the contrary
13 notwithstanding, regardless of where title passes, but the term
14 "use" shall not include:

- 15 (1) Temporary use of property, not of a perishable or
16 quickly consumable nature, where the property is
17 imported into the State for temporary use (not sale)
18 therein by the person importing the same and is not
19 intended to be, and is not, kept permanently in the
20 State. For example, without limiting the generality of
21 the foregoing language:

____.B. NO. _____

- 1 (A) In the case of a contractor importing permanent
- 2 equipment for the performance of a construction
- 3 contract, with intent to remove, and who does
- 4 remove, the equipment out of the State upon
- 5 completing the contract;
- 6 (B) In the case of moving picture films imported for
- 7 use in theaters in the State with intent or under
- 8 contract to transport the same out of the State
- 9 after completion of such use; and
- 10 (C) In the case of a transient visitor importing an
- 11 automobile or other belongings into the State to
- 12 be used by the transient visitor while therein
- 13 but which are to be used and are removed upon the
- 14 transient visitor's departure from the State;
- 15 (2) Use by the taxpayer of property acquired by the
- 16 taxpayer solely by way of gift;
- 17 (3) Use which is limited to the receipt of articles and
- 18 the return thereof, to the person from whom acquired,
- 19 immediately or within a reasonable time either after
- 20 temporary trial or without trial;
- 21 (4) Use of goods imported into the State by the owner of a
- 22 vessel or vessels engaged in interstate or foreign

____.B. NO. _____

1 commerce and held for and used only as ship stores for
2 the vessels;

3 (5) The use or keeping for use of household goods,
4 personal effects, and private automobiles imported
5 into the State for nonbusiness use by a person who:
6 (A) Acquired them in another state, territory,
7 district, or country;
8 (B) At the time of the acquisition was a bona fide
9 resident of another state, territory, district,
10 or country;
11 (C) Acquired the property for use outside the State;
12 and
13 (D) Made actual and substantial use thereof outside
14 this State;

15 provided that as to an article acquired less than
16 three months prior to the time of its importation into
17 the State it shall be presumed, until and unless
18 clearly proved to the contrary, that it was acquired
19 for use in the State and that its use outside the
20 State was not actual and substantial;

21 (6) The leasing or renting of any aircraft or the keeping
22 of any aircraft solely for leasing or renting to

____.B. NO. _____

- 1 lessees or renters using the aircraft for commercial
2 transportation of passengers and goods or the
3 acquisition or importation of any such aircraft or
4 aircraft engines by any lessee or renter engaged in
5 interstate air transportation. For purposes of this
6 paragraph, "leasing" includes all forms of lease,
7 regardless of whether the lease is an operating lease
8 or financing lease. The definition of "interstate air
9 transportation" is the same as in 49 U.S.C. 40102;
- 10 (7) The use of oceangoing vehicles for passenger or
11 passenger and goods transportation from one point to
12 another within the State as a public utility as
13 defined in chapter 269;
- 14 (8) The use of material, parts, or tools imported or
15 purchased by a person licensed under chapter 237 which
16 are used for aircraft service and maintenance, or the
17 construction of an aircraft service and maintenance
18 facility as those terms are defined in section 237-
19 24.9;
- 20 (9) The use of services or contracting imported for resale
21 where the contracting or services are for resale,

____.B. NO. _____

1 consumption, or use outside the State pursuant to
2 section 237-29.53(a);

3 (10) The use of contracting imported or purchased by a
4 contractor as defined in section 237-6 who is:

5 (A) Licensed under chapter 237;

6 (B) Engaged in business as a contractor; and

7 (C) Subject to the tax imposed under section 238-2.3;

8 [and]

9 (11) The use of property, services, or contracting imported
10 by foreign diplomats and consular officials who are
11 holding cards issued or authorized by the United
12 States Department of State granting them an exemption
13 from state taxes[-]

14 (12) The use of aviation fuel, as defined in section 243-1,
15 categorized as privileged foreign merchandise, non-
16 privileged foreign merchandise, domestic merchandise,
17 or zone-restricted merchandise, that is admitted into
18 a foreign-trade zone and is used by a common carrier
19 by air for consumption in air transportation between
20 two points in the State."

____.B. NO. _____

1 SECTION 4. This Act shall not be construed to imply that
2 any law prior to the effective date of this Act is inconsistent
3 with this Act.

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect on July 1, 2008.

7

8

9

INTRODUCED BY: _____

10



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

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

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.

Senator Fukunaga, Chair
Committee Economic Development and Taxation

RE: SB 2913 Relating to Taxation

Chair Fukunaga, Vice Chair Espero 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 SB 2913.

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 Senate Bill 2913. Thank you.

Sen. Carol Fukunaga, Chair
Sen. Will Espero, Vice-chair

Committee on Economic Development and Taxation
February 12, 2008, 1 PM

RE: SB 2913 Relating to Taxation

Chair Fukunaga, Vice-chair Espero 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

RE: Testimony in support of SB 2913 Relating to Taxation

I am Randall Cummings, an Aloha Airlines pilot, representing the Aloha Airlines Pilots' Union, testifying in strong support of SB 2913.

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.

I. Interisland airlines operate within 'interstate commerce' and therefore this bill is mandated by federal law:

The state department of taxation currently grants a G.E.T. exemption for fuel purchased within the Foreign Trade Zone for use on flights that leave the state. This exemption is provided in accordance with federal law mandates that State G.E.T. shall not interfere with the flow of interstate commerce. This very issue has been litigated before the U.S. Supreme Court. In the 1983 case of *Aloha Airlines v. Director of Taxation*, citation 464 U.S. 7 (1983), appellants Aloha Airlines and Hawaiian Airlines prevailed in their argument that Hawaii's G.E.T. on interisland airline tickets was in violation of Federal Law. Hawaii's GET on interisland tickets was found to be preempted by Federal Law and was therefore determined to be invalid in the U.S. Supreme Court.

It is abundantly clear that even though a flight may originate and terminate within the state of Hawaii, it is nonetheless within the economic umbrella of interstate commerce, and must be treated as such in every way. Indeed the only reason the federal government has the authority to regulate the airlines is because of the limited powers granted to the federal government by the U.S. Constitution's Interstate Commerce Clause. Conceptually one can easily see how air freight originating on the neighbor islands and then changing planes in Honolulu for out of state destinations does not suddenly become 'interstate commerce' the minute it changes planes in Honolulu. Passengers as well often change planes. Federal law does not discriminate between the part of the flight that happens within Hawaii and the part that leaves the state. We ask the legislature to provide guidance to the state department of taxation by enacting this law.

Extending the exemption to interstate airlines will allow the tax department to treat all airlines equally

It is inappropriate for a state government to provide benefits to one class of individuals and not to another without a policy basis for doing so. The law as it is being applied forces the tax department to make an artificial distinction between airlines, thus conferring benefits on some, while burdening others. Without a legitimate purpose for doing so, the law is both improper and unfair.

This tax exemption will assist in stabilizing the airlines, will benefit Hawaii's airlines' 7000 employees, and will benefit the communities that these airlines serve

Most airline costs are fixed costs and are difficult or impossible to reduce. These fixed costs include:

1. Fuel
2. Taxes and fees
3. Aircraft and equipment leases
4. Facility leases
5. Maintenance costs
6. Other miscellaneous expenses, such as food concessions, technical and I.T. services, etc.

The other major airline expense is labor. Because airlines have little 'wiggle room' with regards to these costs, they routinely turn to labor for cost concessions. Over the past few years Aloha's employees have endured a 20% pay cut. Hawaiian Airlines' employees have endured similar cuts. Hawaii Island Air had substantial layoffs. The tax exemption provided by this bill will help the airlines remain viable and will reduce the pressure on the airlines to ask for wage and benefit cuts of their employees by reducing the interisland airlines' fixed costs. It will also allow the airlines to continue to make generous charitable donations, both financial and in-kind.

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.



A I R L I N E S

Stephanie C. Ackerman
Senior Vice President
Public Relations and
Government Affairs
P.O. Box 30028
Honolulu Hawaii 96820
Facsimile 808 836-0303
Telephone 808 539-5972

February 8, 2008

Senator Carol Fukunaga, Chair
Senator Will Espero, Vice-chair

Committee on Economic Development and Taxation
Tuesday, February 12, 2008

RE: SB 2913 Relating to Taxation

Chair Fukunaga, Vice Chair Espero 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 SB 2913.

In the past we have urged lawmakers to act on this matter to remedy an inequity in current state law that places an undue tax burden on Hawaii-based interisland carriers.

The existing Statute (Section 212-8) grants a General Excise and Use tax exemption to airlines when they purchase jet fuel from the Hawaii Foreign Trade Zone for flying in interstate or foreign commerce. This is consistent with Federal law governing foreign trade zones and interstate commerce. However, the law is not being applied consistently and as a result, there is discrimination against Hawaii-based air carriers. Legislation is required to ensure that the Hawaii Department of Taxation applies the GET and use tax exemption when airlines purchase fuel from a foreign trade zone for use in interisland flying, which is regulated by Federal law as a form of interstate commerce.

The Commerce clause of the U.S. Constitution gives Congress sole power to regulate interstate commerce. The U.S. Court of Appeals, Ninth Circuit, has noted that the boundaries of states are determined by Congress, and in the case of Hawaii, the Statehood Act specifies that the channels between the islands of Hawaii are NOT within the boundaries of the state.



Furthermore, Title 49 U.S. Code, section 40102, defines "interstate air transportation" as "the transportation of passengers or property by aircraft as a common carrier for compensation... between Hawaii and another place in Hawaii through the airspace over a place outside Hawaii."

As we understand it, Federal law preempts the State from imposing GET on the sale of fuel from a foreign trade zone when the fuel is used in interstate commerce, which includes points within the State of Hawaii.

With that in mind, we return to the equity issue. We believe that ALL flights operated by common carriers must be considered interstate transportation; therefore the fuel tax exemption must apply to ALL of them.

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 locally based airlines. In this way, you will also be recognizing the vital role that interisland airlines play in the economy of our state by bridging our communities, and employing more than 6,500 Hawaii residents.

**TESTIMONY SUBMITTED BEFORE THE SENATE AT THE TWENTY-
FOURTH LEGISLATURE REGULAR SESSION OF 2008
Committee on Economic Development and Taxation
February 12, 2008**

Senate Bill 2913 Relating to Taxation

Chair Fukunaga, Vice Chair Espero and Members of the Committee:

My name is Jason Maga. I represent the Hawaii Fueling Facilities Corporation (HFFC), which works with the Department of Transportation and the Airlines Committee of Hawaii (ACH) on issues affecting all three parties. HFFC is comprised of 21 air carriers and owns the fueling systems at Honolulu, Kona and Hilo airports. HFFC is responsible for providing safe and reliable jet fuel facilities, supply and administration to each of these locations which allow the uninterrupted arrivals and departures of travelers to, from and within the State of Hawaii. I have been asked to present the following testimony in strong support on behalf of HFFC.

Since 1969, HFFC member airlines have worked closely with the Legislature to develop a partnership with the State of Hawaii in a way that is fair to all airlines serving the State. This partnership is vital to ensure that we are able to meet the demands of each airport's jet fuel requirements, which directly effects Hawaii's economy and the airlines.

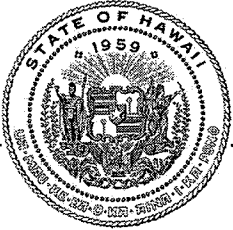
HFFC currently operates a Foreign-Trade Zone (FTZ) which is approved by United States Customs. One of the reasons this zone was established was to allow airlines the benefit to operate within the federal regulations and remain duty free. Under the current State tax laws, it seems that there is an unfair tax balance in favor of the airlines that operate flights outside of the State of Hawaii, but not to the airlines that provide inter-island flights, which are considered interstate commerce under federal law.

Accordingly, the HFFC member airlines strongly support Senate Bill 2913, which would allow the local Hawaii airlines to provide service to the people of Hawaii within a level playing field.

Thank you for the opportunity to comment on this important matter.

Sincerely,

Jason Maga
Area General Manager
HFFC



LINDA LINGLE
GOVERNOR
MARSHA WIENERT
TOURISM LIAISON

TOURISM LIAISON

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 586-2362
Fax: (808) 586-2370

Written statement of
MARSHA WIENERT
Tourism Liaison
Department of Business, Economic Development & Tourism
before the
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION
Tuesday, February 12, 2008
1:15 p.m.
State Capitol, Conference Room 224

in consideration of
SB 2913
RELATING TO TAXATION.

Chair Fukunaga and Members of the Senate Committee on Economic Development and Taxation.

The Department of Business, Economic Development and Tourism supports the intent of SB 2913, 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 SB 2913 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 SB 2913.



Hawaii Chapter
1451 South King Street, PH-504
Honolulu, Hawaii 96814
Tel: 808-973-2155
Interisland: 1-800-272-5240
Fax: 808-973-2160
Email: chernandez@marchofdimes.com

February 8, 2008

Senator Carol Fukunaga
Chair
Senate Committee on Economic Development and Taxation
State Capitol, Room 224

RE: SB 2913

Chair Fukunaga, Vice Chair Espero 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 SB 2913.

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 – March for Babies. 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 putting an Aloha Airlines team of employees who come out to support the walk and by donating tickets to our annual ball that we 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. Charities depend on our local businesses to support and fund our important work in the community. When business profits decline due to a slowing economy and increased costs, so does a company's ability to contribute to the organizations that help our community in time of need. 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 SB 2913. 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 Senate Bill 2913 to give our local airlines the same benefits already enjoyed by other airlines.

Thank you,

A handwritten signature in cursive script that reads "Carmella H." followed by a stylized flourish.

Carmella Hernandez
State Director
March of Dimes Hawaii Chapter

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

BILL NUMBER: SB 2913; HB 2860 (Identical)
1/30 TIA 4/31 EDB

INTRODUCED BY: SB by English, Inouye, Chun Oakland and 6 Democrats; HB by Souki, Herkes, Ito, Nishimoto, Yamane, Yamashita and 4 Democrats

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, 2008

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.

SB 2913; HB 2860 - Continued

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 appropriate placed 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 1/29/08