

# LATE TESTIMONY

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## SENATE COMMITTEE ON TRANSPORTATION & INTERNATIONAL AFFAIRS

### TESTIMONY REGARDING SB 2913 RELATING TO TAXATION

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**  
**DATE: JANUARY 30, 2008**  
**TIME: 2:45PM**  
**ROOM: 224**

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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 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.

**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.**

After considering recent additional information regarding aviation fuel sale data, 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.



A I R L I N E S

## LATE TESTIMONY

January 29, 2008

Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice-chair

Committee on Transportation and International Affairs  
Wednesday, January 30, 2008, 2:45 PM

### RE: SB 2913 Relating to Taxation

Chair English, Vice Chair Gabbard 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.

The existing Statute (Section 212-8) currently grants a General Excise and Use Tax exemption to common carriers in interstate or foreign commerce when they purchase jet fuel from a foreign trade zone (FTZ). This is consistent with Federal law governing foreign trade zones and interstate commerce. However, the Hawaii Department of Taxation has asked us to seek clarification of the law to determine that inter-island flights should also be exempted because they are regulated as interstate commerce under federal law.

Even before the Hawaii Statehood Act, it was clearly the Federal government's intention to regulate inter-island flying as interstate commerce because of the vast expanse of ocean between the islands. This is evidenced in the Aviation Matters section of the U.S. Senate's Report on the Statehood Act.

We believe that when Hawaii lawmakers created the exemption for FTZ purchases they did not intend to punish locally based airlines by singling out their fuel purchases for tax purposes. However, the law is not being applied consistently and legislative action is required to remedy the discriminatory practice against Hawaii-based air carriers, who like out-of-state carriers, are engaged in interstate commerce even when flying inter-island.

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 the exemption of fuel for inter-island flights. In this way, you will also be recognizing the vital role that Hawaii's airlines play in the economy of our state by bridging our communities, and employing more than 6,500 Hawaii residents.

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