

LATE TESTIMONY

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SENATE COMMITTEE ON TRANSPORTATION & INTERNATIONAL AFFAIRS

TESTIMONY REGARDING SB 3194 RELATING TO TAXATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: JANUARY 30, 2008
TIME: 2:45PM
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 Department of Taxation (Department) takes **no position** on this legislation; however **offers comments and the revenue impact.**

This bill amends the general excise and use tax laws regarding sales of aviation fuel. Importantly, this legislation consists of suggestions the Department has made regarding the taxation of aviation fuel purchased from a foreign trade zone, namely that the exemption be provided for in Chapter 237 and 238, HRS. 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—

ELIMINATE CAPS—The Department does not support caps on credits or exemptions throughout the tax code. The Department is aware of one such cap, which is the Ko Olina credit. However, this credit applies to a far smaller universe of taxpayers. Caps on exemptions specifically are the most difficult to administer because there is no guidance provided in the statute for how to administer them. For example, is the exemption to be claimed on a first-come-first-served basis? Also, tax returns are filed periodically, which could likely result in going over the cap during a given period. Lastly, the caps become more prohibitive as fuel costs rise. The caps remain fixed, while the value of fuel (and the tax dollars generated) increase.

STUDY GROUP—The Department does not object to studying the economic impact of this legislation. However, the Department will be unable to share taxpayer information with the group.

II. REVENUE IMPACT.

Based upon the caps, this legislation will result in a revenue loss of \$3.8 million per year. Please note that the current drafting is ambiguous and could be interpreted to cost as high as \$7.6 million because the \$3.8 million could be interpreted as to apply separately to each tax type.



A I R L I N E S

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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 3194 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. Aloha supports the general intent of SB3194, however, our preference is for SB 2913 which would provide a full exemption on General Excise and Use Tax to Hawaii's inter-island airlines when they purchase jet fuel from a foreign trade zone (FTZ) for flights flown between points within the State of Hawaii.

This would be consistent with Federal law governing foreign trade zones and interstate commerce. More importantly, we believe that failure to grant an exemption for inter-island flights goes against the spirit, if not the letter of Federal law governing foreign trade zones.

We also 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.

On behalf of Aloha's more than 3,500 employees, we urge you to do what is fair, by clarifying and expanding the scope of the current GET exemption to include the exemption of fuel from the FTZ for inter-island flights.

