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## HOUSE RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A MANAGEMENT AUDIT OF THE ENVIRONMENTAL RESPONSE TAX.

1           WHEREAS, section 243-3.5, Hawaii Revised Statutes, imposes  
2 a state environmental response tax of "5 cents on each barrel or  
3 fractional part of a barrel of petroleum product sold by a  
4 distributor to any retail dealer or end user, other than a  
5 refiner, of petroleum product"; and  
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7           WHEREAS, the federal government and other states have  
8 similar laws that impose a tax to address oil spills and other  
9 environmental issues; and  
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11           WHEREAS, Internal Revenue Service Publication 510: Part 2,  
12 Excise Taxes Other Than Fuel, states that no one is exempt from  
13 the federal environmental taxes, including foreign trade zones;  
14 and  
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16           WHEREAS, our State's law is supposedly mirrored after the  
17 federal law; and  
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19           WHEREAS, chapter 128D, Hawaii Revised Statutes, that is  
20 referenced in section 243-3.5, Hawaii Revised Statutes, was  
21 enacted to support the State's responsibilities under the  
22 Federal Emergency Planning and Community Right-to-Know Act; and  
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24           WHEREAS, for the implementation of the tax, section 243-1,  
25 Hawaii Revised Statutes, defines pertinent terms as follows:  
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27           (1) "Barrel" means "forty-two United States gallons of  
28 crude oil or petroleum product";  
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30           (2) "Petroleum product" means "any liquid hydrocarbon at  
31 standard temperature and pressure that is the product  
32 of the fractionalization, distillation, or other  
33 refining or processing of crude oil";  
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1 (3) "End user" means "any person or government entity who  
2 acquires petroleum products for their own use and not  
3 for resale";

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5 (4) "Retail dealer" means "a person who purchases liquid  
6 fuel from a licensed distributor, and sells the liquid  
7 fuel at retail. Only sales of liquid fuel for  
8 consumption or used by the purchaser, and not for  
9 resale, are sales at retail"; and

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11 WHEREAS, the statutes clearly indicate that the  
12 environmental response tax is intended to be imposed on each  
13 forty-gallon barrel of "liquid hydrocarbon" that is the product  
14 of the "refining or processing" of "crude oil" and sold to a  
15 "retail dealer" or "end user"; and

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17 WHEREAS, publicly available data, however, appear to  
18 display some discrepancies in the tax collections; and

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20 WHEREAS, for example, data from the Department of Taxation  
21 for 2008 show that the environmental response tax generated  
22 \$1,638,873 on a tax base of 32,777,476 barrels of petroleum  
23 products; and

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25 WHEREAS, multiplying the 32,777,476 barrel tax base by  
26 forty-two gallons results in a product of 1,376,653,992 gallons;  
27 and

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29 WHEREAS, the same data from the Department of Taxation,  
30 however, show that the liquid fuel tax base was 920,041,958  
31 gallons in 2008; and

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33 WHEREAS, the difference is substantial, suggesting that  
34 either the environmental response tax was over-collected or the  
35 liquid fuel tax was under-collected; and

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37 WHEREAS, data for 2005 also raise a question about the  
38 environmental response tax collection:

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40 (1) According to the Department of Taxation, the  
41 environmental response tax base in 2005 was 36,921,797  
42 barrels of petroleum products in forty-two gallon  
43 barrels;



1 (2) According to the Department of Business, Economic  
2 Development, and Tourism, 51,262,000 barrels of  
3 petroleum in fifty-five gallon barrels were imported  
4 into the State;

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6 (3) Some of the imported petroleum was refined into non-  
7 liquid products or refined into liquid products and  
8 then exported, thereby excluding those barrels from  
9 the environmental response tax; and

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11 (4) Nevertheless, the difference between the data is very  
12 large, and the reason for the difference requires  
13 examination; and

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15 WHEREAS, thus, the Legislature finds that an audit should  
16 be conducted on the imposition and collection of the  
17 environmental response tax; now, therefore,

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19 BE IT RESOLVED by the House of Representatives of the  
20 Twenty-fifth Legislature of the State of Hawaii, Regular Session  
21 of 2009, that the Auditor is requested to conduct a management  
22 audit of the administration and collection of the environmental  
23 response tax by the Department of Taxation; and

24  
25 BE IT FURTHER RESOLVED that the Auditor is requested to  
26 give particular attention to whether the Department of Taxation  
27 is imposing and collecting the tax on the appropriate tax base;  
28 and

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30 BE IT FURTHER RESOLVED that the Auditor is requested to  
31 submit the audit to the Legislature at least twenty days before  
32 the convening of the Regular Session of 2010; and

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34 BE IT FURTHER RESOLVED that certified copies of this  
35 Resolution be transmitted to the Auditor and Director of  
36 Taxation.

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39 OFFERED BY: *Irwin W. Choy*

MAR 18 2009