

MAR 18 2009

SENATE CONCURRENT 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



1 of the fractionalization, distillation, or other
2 refining or processing of crude oil";

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4 (3) "End user" means "any person or government entity who
5 acquires petroleum products for their own use and not
6 for resale";

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

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

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

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23 WHEREAS, for example, data from the Department of Taxation
24 for 2008 show that the environmental response tax generated
25 \$1,638,873 on a tax base of 32,777,476 barrels of petroleum
26 products; and

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

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

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36 WHEREAS, the difference is substantial, suggesting that
37 either the environmental response tax was over-collected or the
38 liquid fuel tax was under-collected; and

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

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43 (1) According to the Department of Taxation, the
44 environmental response tax base in 2005 was 36,921,797



1 barrels of petroleum products in forty-two gallon
2 barrels;

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

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

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14 (4) Nevertheless, the difference between the data is very
15 large, and the reason for the difference requires
16 examination; and

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18 WHEREAS, thus, the Legislature finds that an audit should
19 be conducted on the imposition and collection of the
20 environmental response tax; now, therefore,

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

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29 BE IT FURTHER RESOLVED that the Auditor is requested to
30 give particular attention to whether the Department of Taxation
31 is imposing and collecting the tax on the appropriate tax base;
32 and

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

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38 BE IT FURTHER RESOLVED that certified copies of this
39 Concurrent Resolution be transmitted to the Auditor and Director
40 of Taxation.

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43 OFFERED BY:



