

MAR 18 2009

SENATE 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
16

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;
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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;

5
 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

10
 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 Senate of the Twenty-fifth
 20 Legislature of the State of Hawaii, Regular Session of 2009,
 21 that the Auditor is requested to conduct a management audit of
 22 the administration and collection of the environmental response
 23 tax by the Department of Taxation; and

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 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

29
 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

33
 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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OFFERED BY: *D. J. Jyl.*