

SB 427

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:
GARY M. SLOVIN
CHRISTOPHER G. PABLO
ANNE T. HORIUCHI
MIHOKO E. ITO

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:
gslovin@goodsill.com
cpablo@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com

MEMORANDUM

TO: Senator Donna Mercado Kim
Chair, Committee on Ways and Means

FROM: Chris Pablo

DATE: February 25, 2009

RE: **S.B. No. 427 - Relating to General Excise Taxation
Decision Making on Thursday, February 26, 2009 at 9:00 a.m.**

Dear Chair Kim and Members of the Committee on Ways and Means:

I am Chris Pablo, submitting comments on behalf of TriWest Healthcare Alliance Inc. (“TriWest”), a Delaware corporation headquartered in Phoenix, Arizona. **TriWest supports S.B. 427.**

In Hawaii, TriWest is the only third-party administrator of a cost-effective, high quality network of health care providers for the nation’s active and retired uniformed service members and their families, under a federal government program known as “TRICARE” (formerly known as “CHAMPUS”).

What is TRICARE? The Federal Government has established a managed health care program for members of the uniformed services and certain dependents. It was created in the early 1990s to supplement the existing military health care delivery system and provide health care services for active duty military personnel, military retirees, and their families (collectively, the “Beneficiaries”) by utilizing civilian health care providers.

In Hawaii, the Beneficiaries have access to military health care facilities, such as the Tripler Army Medical Center, and to health care clinics on military bases throughout the state. In addition, the Beneficiaries have access to medical services through the network of community health care providers that have been contracted by TriWest.

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TRICARE receives its funding as part of the annual defense appropriations budget. It is administered by the TRICARE Management Activity (“TMA”), which is part of the United States Department of Defense (“DoD”), Office of the Assistant Secretary of Defense (Health Affairs).

What is TriWest? TriWest is dedicated to providing the best possible service to military families. It manages the TRICARE program for over 2.7 million Beneficiaries – this is TriWest’s only line of business. In Hawaii, TriWest employs approximately sixty employees.

In the health care industry, TriWest’s business would be characterized as a “**third-party administrator.**” TriWest, known as a “**managed care support contractor**” in the applicable Federal laws and regulations, is a disbursing agent for the Federal Government in the western states, including Hawaii. Its job is to receive claims and invoices from health care providers, and then pay those claims according to the amounts and guidelines set by the Government (“**reimbursement**”). The Government then reimburses TriWest for the amounts paid, and also pays TriWest an **administrative fee** for its services. This is best illustrated in the attached PowerPoint slide.

TriWest pays Hawaii General Excise Tax on the amounts it receives from TRICARE as compensation for its services as *managed care contractor*, but it does not pay, and has never paid, tax on the reimbursement amounts. TriWest has been working with the Department of Taxation to seek confirmation that it is not subject to Hawaii General Excise Tax on such amounts. Department representatives generally have been sympathetic to TriWest’s position and understanding of its desire for certainty as to its tax liability. In the process of reviewing TriWest’s request for a definitive ruling letter from the Department, however, some technical concern was expressed as to the clarity of the legal basis for exempting such reimbursement amounts from Hawaii General Excise Tax. TriWest, therefore, is asking the Legislature to clarify that such reimbursement amounts are not taxable to TriWest.

What is the purpose of S.B. 427? The purpose of S.B. 427 is to make clear that the amounts received by TriWest from TRICARE as “reimbursements” are excluded from the imposition of the General Excise Tax. This clarification will be made by amending Section 237-24 (Amounts not taxable) to add a new subsection (17):

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“(17) Amounts received by a managed care support contractor of the TRICARE program that is established under 10 United States Code chapter 55, as amended, for the actual cost or advancement to third party health care providers pursuant to a contract with the United States.”

We thank you for the opportunity to testify in support of **S.B. 427**.

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____, 20____, in the _____ Circuit, State of Hawai'i, before me personally appeared **NAME(S)** to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument identified or described as a **DOCUMENTNAME** as such person(s) free act and deed, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

The foregoing instrument is dated _____, 20____ and contained _____ pages at the time of this acknowledgment/certification.

Signature: _____

Print Name: _____

Notary Public, State and County Aforesaid

My Commission expires: _____



US Department of Defense
Military Health System

REIMBURSEMENT
*For Medical Services
Provided to
Hawaii-based TRICARE beneficiaries
by Hawaii medical providers/hospitals*

ADMINISTRATIVE FEES
\$8.4 million/FY 2008
\$376,000 in GE Taxes/FY 2008

\$30 million/year

S.B. 427
*Proposes to
Amend §237-24 to
clarify that the
reimbursements are
not taxable amounts*



aka "TPA"
Third-Party Administrator
-Claims Processing
-Enrollment
-Utilization and Disease Mgmt
-Network Building

Managed care support contractor

Network Health Care Providers

Medical services & supplies



Soldiers, Sailors, Airmen, Dependents, Retirees

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

SENATE COMMITTEE ON WAYS & MEANS

WRITTEN POSITION STATEMENT REGARDING COMMITTEE DECISION MAKING

February 26, 2009

Dear Chair Kim:

Please find attached the Department of Taxation's summary position statement relating to the Senate bills being heard by your Committee on February 26, 2009. As a decision making hearing, the Department provides you and your Committee with the attached spreadsheet that includes the following information for efficient review of its positions:

- **Bill Number**
- **Bill Title**
- **Position**
- **Comments**
- **Revenue Impact**
- **Methodology**

The Department hopes that this information is useful to you, your Committee members, and your staff. Please feel free to contact me directly at 587-1513 if any additional questions arise.

Thank you for the opportunity to provide comments.

Respectfully submitted,

KURT KAWAFUCHI
Director of Taxation

Department of Taxation

Position Summary

Senate Committee on Ways & Means/February 26, 2009 Agenda

Bill Number	Bill Title "Relating to..."	Position	Comments	Revenue Impact	Methodology
SB 1299 SD 1	ADVANCED FLIGHT SIMULATOR TRAINING	Opposed to revenue loss	No technical comments.	Assuming a current effective date: *\$400,000 FY10 *\$1.2 m FY 11 *\$400,000 FY 12 *\$275,000 FY 13 thereafter	It is estimated that the construction of facilities for the aviation training would cost \$50 million over three years, with \$10 million being incurred in the first and third years and \$30 million being incurred in the second year. In the fourth year and thereafter, the facility is assumed to generate \$5 million in gross receipts and to increase the enterprise zone tax credit by 5%. GET is foregone at the rate of 4% on the construction costs and on the gross receipts from the training facility.
* SB 427	GENERAL EXCISE TAX	No comments	No technical comments.	Cannot provide due to taxpayer specific information.	Please discuss the revenue impact directly with the proponents of this measure.
SB 528 SD 1	TOBACCO	Support	No technical comments.	Loss of the retail tobacco permit enforcement function could result in a revenue loss of \$5.3 million per year.	Revenue loss is based on the assumption that 5% of the revenue might be lost due to lower level of compliance.

SB 1678 SD 1	TAXATION	No position; however acknowledge the potential revenue gain	No technical comments.	The bill will have little revenue impact, unless Congress enacts required legislation. However, the expense of the oversight committee would be incurred. If the required Congressional legislation is enacted, the effect on revenues is indeterminate, but it could be \$25 million annually in additional GET and Use Tax collections. Without the federal legislation, the revenue gain is estimated to be \$1-\$5 million. The exemption for blind, deaf, and disabled taxpayers would cost about \$500 thousand annually.	William Fox has estimated that e-commerce cost Hawaii between \$113 million and \$117 million in 2003. This number may be too large. First, Hawaii has an income tax credit for the general excise tax (GET) on capital investments made by business, so companies have little incentive to avoid the GET on investment property. Secondly, it is hard for individuals to avoid the tax on big-ticket items, such as automobiles.
SB 32 SD 1	FUEL	Opposed to revenue loss	No technical comments.	Assuming a current effective date, annual revenue loss is estimated at \$40.0 million for FY 2010 and after.	The cost of the GET exemptions for alcohol fuels has been estimated to be \$40 million annually. Sales of gasoline in CY08 is estimated to be 445 million gallons. Assuming that this figure applies in future, that 100% contains alcohol, and that the price net of all taxes is \$2.25 per gallon, the GET exemption would cost \$40 million annually (=445 million x 1.00 X \$2.25 x .04)