

SB 174

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



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**SENATE COMMITTEE ON HEALTH
TESTIMONY REGARDING SB 174
RELATING TO TAXATION**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: FEBRUARY 18, 2009

TIME: 3:15PM

ROOM: 016

This measure seeks to exempt physicians licensed under chapter 453, HRS, whose principal place of business is located in a county with a population of less than 500,000, from the general excise tax (GET).

The Department of Taxation (Department) opposes the unbudgeted revenue loss anticipated by this measure.

NO POSITION ON THE MERITS OF THE EXEMPTION—The Department takes no position on the merits of whether physicians on the neighbor islands should be exempt from the GET. However, the Department points out that the GET is a privilege tax on the right to conduct business in Hawaii and will only maintain its relatively low rate to the extent its base is not eroded by further exemptions.

DEFERRAL TO DLIR ON THE EMPLOYMENT LAW PROVISIONS—The Department defers to the Department of Labor & Industrial Relations on the employment law changes contained in this measure.

OPPOSED TO UNBUDGETED REVENUE LOSS—The Department cannot support the tax provision in this measure because it is not factored into the budget. The Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either. Given the forecasted decrease in revenue projections, this measure would add to the budget shortfall.

REVENUE LOSS— Annual revenue loss is estimated at \$9.2 million for FY 2010 and after.

LINDA LINGLE
GOVERNOR



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February 13, 2009

To: The Honorable David Y. Ige, Chair
and Members of the Senate Committee on Health

Date: February 18, 2009
Time: 3:15 p.m.
Place: Conference Room 016, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

Testimony in Opposition
to
S.B. 174 - Relating to the Income Tax Law

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 174 proposes to amend section 383-7, HRS, to exempt neighbor island physicians and osteopathic physicians from paying general excise taxes and unemployment insurance taxes.

II. CURRENT LAW

Currently, there is no exclusion under Chapter 383, HRS, for services performed by physicians or osteopathic physicians.

III. SENATE BILL

The Department opposes this measure for the following reasons:

1. Excluding such services would impact the UI trust fund and also have an impact on general revenue.

2. Favoring certain employers operating in certain localities who employ physicians and osteopathic physicians is inconsistent with the “uniform method” requirement which requires that all employers be treated the same.

Section 3303(a)(1) of the Federal Unemployment Tax Act (FUTA) requires that the “experience” of all employers subject to contributions under a state law be measured by the same factor throughout the same period of time by uniform methods applicable to all employers and to all measures of experience under an approved state experience rating system. Any adjustment to the method of measuring experience or in the computation of rates should apply uniformly to preclude any distortion of relative experience.

Failure of state law to conform with FUTA law may jeopardize certification for the FUTA additional tax credit and result in higher federal taxes for all employers in Hawaii. Without the additional offset credit, employers will only receive credit against the 6.2% FUTA tax in the amount of the state UI taxes paid. Whereas employers currently pay only 0.8% FUTA tax because Hawaii law is compliant with federal law, their FUTA liability would increase if the “uniform method” requirement is violated.

3. Section 3304(a)(6)(A), FUTA, requires that all services performed by employees of state and local governmental entities, certain nonprofit organizations and federally recognized Indian tribes must be covered by state law unless specifically exempted by federal law.

If state law permits the denial of services performed by physicians and osteopathic physicians for governmental entities, Indian tribes and nonprofits when these services are required to be covered, certification of the FUTA tax offset credit would be denied and administrative grants to operate the UI program would be withheld, which would lead to closing of all UI offices. All contributory employers in the state would be liable for the full 6.2% FUTA tax but jobless workers could not collect unemployment compensation because of the shutdown of all local offices.

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SUBJECT: GENERAL EXCISE, Exempt physicians

BILL NUMBER: SB 174; HB 405 (Identical)

INTRODUCED BY: SB by Takamine, Baker, English, Green, Hooser, Kokubun, Tsutsui; HB by Nakashima and 6 Democrats

BRIEF SUMMARY: Adds a new paragraph to HRS section 237-23(a) to exempt from the general excise tax services performed by a licensed physician under HRS chapter 453 at a principal place of business located in a county with a population of less than 500,000.

EFFECTIVE DATE: July 1, 2009

STAFF COMMENTS: This measure proposes a general excise tax exemption to encourage physician taxpayers to practice in the counties of Hawaii, Maui and Kauai. It should be remembered that using the tax system to achieve social goals, as this measure proposes, is an inefficient means of accomplishing such goals. While this measure would grant preferential treatment to a select group of taxpayers, it would discriminate against those physicians located on the island of Oahu.

This measure is a reflection of the lack of understanding on the part of lawmakers about the state's tax system, its purpose, functions and limitations. If adopted, the measure would result in a lack of accountability as there is no way to determine the cost of the proposed exemption. While the adoption of this measure will result of less incoming revenue to the state, it is questionable whether it is prudent to adopt such a measure.

Digested 2/17/09