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GOVERNOR

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LT. GOVERNOR



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**SENATE COMMITTEES ON TRANSPORTATION AND INTERNATIONAL AFFAIRS  
& ECONOMIC DEVELOPMENT AND TECHNOLOGY**

**TESTIMONY OF THE DEPARTMENT OF TAXATION  
REGARDING HB 123 HD 2  
RELATING TO INTRA-STATE AVIATION**

**TESTIFIER:**                   **FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR  
DESIGNEE)**

**COMMITTEE:**               **TIA/EDT**

**DATE:**                       **MARCH 23, 2011**

**TIME:**                       **1:15PM**

**POSITION:**               **COMMENT ON REVENUE IMPACT**

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This bill proposes to exempt aviation fuel purchased from a foreign trade zone from the state general excise and use taxes for fuel used in inter-island travel.

This legislation is estimated to result in a revenue loss of \$11.7 million per year.

**TESTIMONY OF KEONI WAGNER ON BEHALF OF HAWAIIAN AIRLINES  
REGARDING H.B. NO. 123, HD 2, RELATING TO INTRA-STATE AVIATION**

March 23, 2011

To: Chairpersons Kalani English and Carol Fukunaga and Members of the Senate Committee on Transportation and International Affairs and the Committee on Economic Development and Technology:

My name is Keoni Wagner and I am the Vice President of Public Affairs for Hawaiian Airlines speaking on behalf of Hawaiian regarding H.B. No. 123, HD 2.

This bill is similar to the bills which were submitted during previous legislative sessions to clarify the applicability of an existing Federal exemption from state taxes on all aviation fuel sold from a foreign trade zone (FTZ) for interisland flights between points within the State of Hawaii. Under current State interpretation of the law, carriers that operate flights between Hawaii and the mainland or international destinations enjoy the benefit of this exemption, but interisland carriers do not. We continue to believe that, under the federal definition of interisland flights as "interstate commerce," this exemption applies to interisland flights as well.

Hawaiian is acutely aware of the difficult budgetary decisions being weighed by the Legislature this session and would like to thank the Committees for considering this measure.

Thank you for the opportunity to comment on this measure.

# TAXBILLSERVICE

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SUBJECT: GENERAL EXCISE, USE, Exempt aviation fuel

BILL NUMBER: HB 123, HD-2

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Adds a new section to HRS chapter 237 and HRS section 238-1 to provide that amounts received from the sale or use of aviation fuel categorized as privileged foreign merchandise, non-privileged foreign merchandise, domestic merchandise, or zone-restricted merchandise that is admitted into a foreign trade zone and purchased by a common carrier for consumption or use in air transportation between two points of the state shall be exempt from the state's general excise and use tax laws, respectively.

EFFECTIVE DATE: July 1, 2030

STAFF COMMENTS: Currently aviation fuel is imported and stored in Hawaii Fueling Facilities Corporation (HFFC) storage tanks. HFFC was established in 1969 to provide fuel storage and distribution to its member airlines. On September 1, 1997, the HFFC began operating under a foreign trade zone (FTZ) at the Honolulu International Airport. Fuel purchased from HFFC for use in aircraft of HFFC members is exempt from the imposition of the general excise, use, and fuel taxes since they are operating in the FTZ. When the fuel is then pumped through the HFFC's bonded fuel lines and provided to the aircraft, the fuel remains in interstate commerce and technically is outside the jurisdiction of the state and the imposition of state taxes.

The current exemption from taxes for product within the FTZ but sold for consumption outside the state applies only when the consumption of such product occurs out of state when sales are made to any common carrier in interstate or foreign commerce. This proposal would extend the exemption from general excise and use taxes to fuel purchased through the FTZ which is consumed in intrastate commerce.

It has been recently learned that the U.S. Customs Service does not share the interpretation that air carriers flying from Hawaii to another domestic destination outside Hawaii can utilize duty-free or bonded fuel as the Service believes that bonded fuel can only be used when the destination is international. The US. Custom Service should be queried on this interpretation.

Digested 3/17/11

Owen Miyamoto  
3209 Paty Drive  
Honolulu, HI 96822-1439

March 22, 2011

Honorable J. Kalani English, Chair  
Honorable Will Espero, Vice Chair  
Honorable Members of the Senate Committee on Transportation and International Affairs

Honorable Carol Fukunaga, Chair  
Honorable Glenn Wakai, Vice Chair  
Honorable Members of the Senate Committee on Economic Development and Technology

**I am submitting comments for HB 123, HD2, Relating to Intra-State Aviation**

I am a former employee of the Airports Division, which leases lands for aviation fuel storage and distribution systems between fuel tanks and hydrants at airports throughout the state. The original aviation fuel storage and distribution system was installed and operated by three fuel companies supplying jet fuel in Hawaii. The system was subsequently acquired by the Honolulu Fueling Facilities Corporation, which is owned by the airlines at the airport.

When bonded fuel was introduced by suppliers for delivery to international airlines, the US Customs Service required a physical separation between bonded and domestic fuel. Customs is the agency responsible to assure bonded fuel is used only for flights flown from the US to foreign destinations. Subsequently, Customs ruled that monitoring of bonded fuel could be accomplished by careful inventory control which separated the amounts of fuel delivered to domestic airlines from airlines destined for foreign airports. This made it unnecessary for the supplier to operate two systems.

It is my understanding that bonded fuel, which is regulated by federal laws, can only be supplied to an airline flying beyond the boundaries of the US and destined to land at a foreign airport. It is questionable that an intrastate or an interstate flight would be able to purchase bonded fuel to avoid federal or state taxes.

I suggest the Legislature consult with the US Customs Service for their opinion as to whether a common carrier engaged in intrastate aviation is able to take advantage of the tax exemptions offered by bonded fuel.

Thank you for the opportunity to present my views.

  
Owen Miyamoto

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 16, 2011 2:32 AM  
**To:** TIATestimony  
**Cc:** swartzg001@hawaii.rr.com  
**Subject:** Testimony for HB123 on 3/23/2011 1:15:00 PM

Testimony for TIA/EDT 3/23/2011 1:15:00 PM HB123

Conference room: 016  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: gregory swartz  
Organization: Individual  
Address:  
Phone:  
E-mail: [swartzg001@hawaii.rr.com](mailto:swartzg001@hawaii.rr.com)  
Submitted on: 3/16/2011

Comments:  
We need the money for general fund purposes. No special interest exemptions.