

TAXBILLSERVICE

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SUBJECT: GENERAL EXCISE, USE, Exempt aviation fuel

BILL NUMBER: HB 123

INTRODUCED BY: McKelvey, Evans, Hanohano, Herkes and 6 Democrats

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, 2011

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 the 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.

The purpose clause of the measure notes that fuel sold from a FTZ for use by airlines traveling out of state is exempt from general excise and use taxes while interisland flights are not exempt. Given the fact that air carriers are currently flying directly to the neighbor islands, they are in direct to competition with interisland air carriers. Exempting common carriers from the general excise and use taxes for sales of fuel from a FTZ for interisland flights would level the playing field and create a fairer market for all airlines.

Digested 1/31/11

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

February 2, 2011

To: Chairmen Joseph M. Souki and Angus L.K. McKelvey and Members of the House Committee on Transportation and the House Committee on Economic Revitalization & Business:

My name is Keoni Wagner and I am the Vice President of Public Affairs for Hawaiian Airlines speaking on behalf of Hawaiian in support of the intent of H.B. No. 123.

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, but we believe that it is in the state's interest to reduce the financial burden of this tax on Hawaii's interisland air carriers.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



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LATE TESTIMONY

HOUSE COMMITTEES ON TRANSPORTATION AND ECONOMIC REVITALIZATION & BUSINESS

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

TESTIFIER: FREDERICK D. PABLO, INTERIM DIRECTOR OF
TAXATION (OR DESIGNEE)
COMMITTEE: TRN-ERB
DATE: FEBRUARY 2, 2011
TIME: 11:30AM
POSITION: COMMENTS; CONCERNED WITH COSTS

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.

The Department of Taxation (Department) has the following comments.

ELIMINATE SECTION 1, PURPOSE CLAUSE—The Department opposes Section 1 because it is legally and factually inaccurate. The Department strongly disagrees with the statement suggesting that the taxes assessed on aviation fuel—which is a self-assessed tax—is anyway inaccurate or illegal under the Federal Aviation Act. The Department is concerned that if this legislation does not pass, or does pass with this language, that an unwarranted advantage in favor of taxpayers could negatively impact the Department's rights.

UNBUDGETED REVENUE LOSS—The Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either. This legislation is estimated to result in a revenue loss of \$11.7 million per year.