

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
FAX NO: (808) 587-1584

FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

HOUSE COMMITTEE ON FINANCE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 848 HD 1 RELATING TO GENERAL EXCISE TAX

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR
DESIGNEE)
COMMITTEE: FIN
DATE: MARCH 1, 2011
TIME: 11AM
POSITION: OPPOSED

This measure's stated intent is to expand the common paymaster exemption; however, it also appears to expand the related entities exemption.

The Department of Taxation (Department) is **opposed**.

It is the Department's understanding that the bill's intent is to expand the related entities exemption under HRS § 237-23.5 in two ways: (1) by diluting the requirements in order for two entities to be deemed "related," and (2) by expanding the types of services which qualify for the exemption.

The Department is opposed to expanding the related entities exemption in either of these two ways. However, if it is the committee's intent to move the bill forward, the Department recommends the bill be entirely re-written, using workable language which explains exactly to what extent the committee would like the common ownership requirements diluted and to what extent it wants the definition of "services" expanded. The Department also questions the need to expand the very narrow provisions of the federal common paymaster definition.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Expand common paymaster exemption

BILL NUMBER: HB 848, HD-1

INTRODUCED BY: House Committee on Economic Revitalization & Business

BRIEF SUMMARY: Amends HRS section 237-23.5 to provide that the general excise tax shall not be applicable to amounts received by one related entity under IRC section 267 to another IRC section 267 entity. The chapter shall not apply to amounts received by a common paymaster that are disbursed as remuneration to employees of two or more related persons where the common paymaster is making such remunerations on behalf of the related persons. Such amounts received or disbursed by the common paymaster shall include payments of payroll taxes and employee benefits that the common paymaster is making on behalf of the related persons and are payments which the for the employees are being remunerated.

Requires each related person using a common paymaster or multiple common paymaster to keep separate payroll records and other documentation required to prove the existence of concurrent employment. The records and documents shall be available for inspection by the director of taxation during normal business hours.

Defines "common paymaster" and "related persons" for purposes of the measure.

EFFECTIVE DATE: July 1, 2112

STAFF COMMENTS: Currently the common paymaster general excise tax exemption is applicable to: (1) an affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended; (2) a controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended; (3) those entities connected through ownership of at least **eighty** percent of the total value and at least **eighty** percent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, limited liability partnerships, or limited liability companies; and (4) any group or combination of the entities described in paragraph (3) constituting a unitary business for income tax purposes.

The proposed measure expands the common paymaster provisions to include IRC section 267 entities. While section 267 entities are entities connected through ownership of at least **fifty** rather than **eighty** percent of the total value and at least **fifty** rather than **eighty** percent of the total voting power of each such entity (or combination thereof), if this measure is adopted and expands the common paymaster general excise tax exemption, such transactions should be examined to ensure that only those common paymaster transactions are exempt. Further, as drafted, the changes being proposed in this bill may have unintended consequences for those companies that meet the eighty percent test insofar as the application

of Code sections 1504 and 1563. Instead of tagging the Section 267 entities onto the common paymaster provisions, consideration might be given to adding a new paragraph to HRS section 237-24.7 where the reimbursement of payroll and employee benefits by a related company is addressed. It should be noted that when the common paymaster provisions were established by Sections 1504 and 1563 in 1988, the eighty percent ownership was a critical test as to the applicability of the exemption. To now dilute that test raises questions about the appropriateness of the exemption.

If, in fact, this is a simple reimbursement of costs for payroll and employee benefits without any additional consideration, then the transaction is already exempt under HRS Sec. 237-20, provided there is no additional fee or remuneration for the disbursing paymaster for providing that service. Therefore, it appears that these particular related companies are indeed compensating the paymaster for this service and, therefore, are seeking this special treatment.

Digested 2/28/11



**Testimony to the House Committee on Finance
Tuesday, March 01, 2011
11:00 a.m.
Conference Room 308, State Capitol
Agenda #2**

**RE: HOUSE BILL NO. 848 HD1 RELATING TO THE GENERAL EXCISE
TAX**

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

The Chamber of Commerce of Hawaii ("Chamber") supports HB 848 HD1, which expands the applicability of the common paymaster exemption from the General Excise Tax ("GET").

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

Many businesses consist of a group of entities under common ownership. Employees of the business often do work for more than one of the entities, but for sake of convenience, one of the entities is designated as "paymaster" to handle payroll. The paymaster pays the employee salaries on behalf of all of the entities, and receives reimbursement from the other entities for their allocable shares.

Under current law, the paymaster entity is usually subject to GET on the reimbursements it receives from the related entities, even though it realizes no real benefit from those amounts, but simply passes them on to the employees. This creates an unsolvable dilemma for Hawaii businesses -- they must either bear the administrative cost of having multiple entities handle payroll, or bear the increased cost of GET on the intercompany reimbursements. There is no justification for this tax result. It just creates inefficiency for Hawaii businesses and discourages job creation.

HB 848 would make the common paymaster exemption less restrictive, and make it more applicable to the general business community in Hawaii. Because HB 848 would remove an inefficiency in current tax law, we support this measure.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 9:09 AM
To: FINTestimony
Cc: napualani@consultant.com
Subject: Testimony for HB848 on 3/1/2011 11:00:00 AM

Testimony for FIN 3/1/2011 11:00:00 AM HB848

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Napualani Wong
Organization: Individual
Address:
Phone:
E-mail: napualani@consultant.com
Submitted on: 2/28/2011

Comments:

February 28, 2011

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance
Members of the House Committee on Finance
(VIA FACSIMILE: 808-586-6001)

**RE: House Bill HB848 - Hearing Scheduled for Tuesday, March 1, 2011,
at 11:00 a.m., State Capitol, Conference Room 308**

Dear Honorable Marcus Oshiro, Honorable Marilyn Lee, and Members of the House
Committee on Finance:

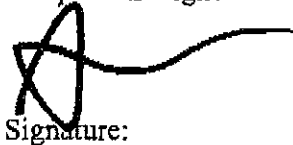
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The current tax laws are unclear on how to treat related companies and transactions that take place between related companies. Under the current law the State has sometimes taken the position to tax some related party transaction and this reformation will eliminate the inconsistent treatment of related party transactions.

I urge your approval of House Bill HB848.

Aloha,

Joseph L. Dwight



Signature:

Print Name: Joseph L. Dwight

Address: 1241 Lola Place

Kailua, HI 96734

February 28, 2011

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance
Members of the House Committee on Finance

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I urge your approving House Bill HB848

Aloha,



Print Name: Myron Nakata

Address: 2033 Kilakila Drive
Honolulu, HI 96817

February 28, 2011

VIA FACSIMILE: 586-6501

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

RE: **HOUSE BILL HB848 HD1- RELATING TO THE GENERAL EXCISE TAX
HEARING SCHEDULED FOR TUESDAY, MARCH 1, 2011, AT
11:00 A.M., HAWAII STATE CAPITOL, CONFERENCE ROOM 308**


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The current tax laws are unclear on how to treat related companies and transactions that take place between related companies. Through the adoption of section 267 of the IRC Code into the HRS section 237-23 as it relates to general excise tax law, related parties will not have to pay general excise tax between related parties as it relates to reimbursable expenses. Under the current law the State has sometimes taken the position to tax some related party transaction and this reformation will eliminate the inconsistent treatment of related party transactions. The passage of HB848 will allow companies to have a common paymaster to pay employees of two or more related businesses, and be exempt from general excise tax, on behalf of the related businesses, where the applicable relationship is defined under Section 267(b) of the IRC Code

Please approve House Bill HB848 HD1.

Aloha,



Signature



Print Name

206 6th Avenue

Address Honolulu, Hawaii 96816

February 28, 2011

VIA FACSIMILE: 586-6501

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

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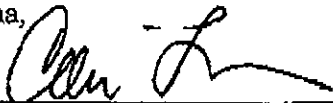
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Please approve House Bill HB848 HD1.

Aloha,



Signature

Colin Lau

Print Name

47695 Hui Ulili' St

Address

Kaneohe, HI 96744

February 28, 2011

VIA FACSIMILE: 586-6501

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

RE: **HOUSE BILL HB848 HD1- RELATING TO THE GENERAL EXCISE TAX
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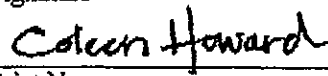
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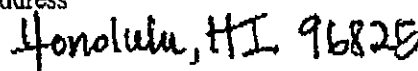
Please approve House Bill HB848 HD1.

Aloha,


Signature


Print Name


Address



February 28, 2011

VIA FACSIMILE: 586-6501

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

RE: **HOUSE BILL HB848 HD1- RELATING TO THE GENERAL EXCISE TAX
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Please approve House Bill HB848 HD1.

Aloha,



Signature

Misty Torres

Print Name

PO Box 25843, HNL 96825

Address

February 28, 2011

VIA FACSIMILE: 586-6501

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

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Please approve House Bill HB848 HD1.

Aloha,



Signature

Ross Ibarra

Print Name

45507 Halekulani St. Kaeohaka, HI 96744

Address

February 28, 2011

VIA FACSIMILE: 586-6501

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

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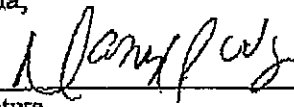
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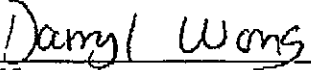
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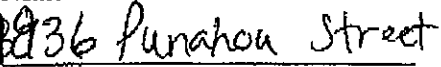
Aloha,

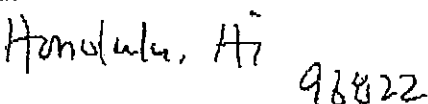


Signature



Print Name



Address


February 28, 2011

VIA FACSIMILE: 586-6501

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Please approve House Bill HB848 HD1.

Aloha


Signature

WARREN M. WONG
Print Name

1577 Nehoa St.
Address

February 28, 2011

VIA FACSIMILE: 586-6501

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

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Please approve House Bill HB848 HD1.

Aloha,

Signature

James W. Y. Wong

Print Name

2359 A Round Top Dr. Honolulu, HI 96822
Address

February 28, 2011

VIA FACSIMILE: 586-6501

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

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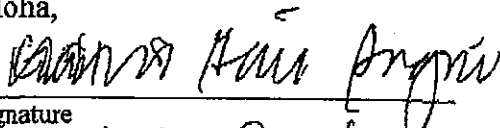
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Please approve House Bill HB848 HD1.

Aloha,


Signature

Carol Sngita
Print Name

1044 12th Ave.
Address

February 28, 2011

VIA FACSIMILE: 586-6501

Honorable Representative Marcus R. Oshiro, Chair
Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

RE: **HOUSE BILL HB848 HD1- RELATING TO THE GENERAL EXCISE TAX
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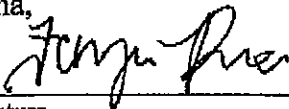
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Please approve House Bill HB848 HD1.

Aloha,



Signature



Print Name

700 Kalia Ave Honolulu, HI 96816
Address

February 28, 2011

VIA FACSIMILE: 586-6501

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Honorable Representative Marilyn B. Lee, Vice Chair
House Committee on Finance

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Please approve House Bill HB848 HD1.

Aloha,

Rosalind Moore
Signature

ROSALIND MOORE
Print Name

3358 ALOHEA AVE. HON, HI 96816
Address