SB 1318

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SENATE COMMITTEE ON WAYS & MEANS

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING SB 1318 RELATING TO USE TAX

TESTIFIER: **FREDERICK D. PABLO, INTERIM DIRECTOR OF TAXATION (OR DESIGNEE)**
COMMITTEE: **WAM**
DATE: **FEBRUARY 3, 2011**
TIME: **9AM**

POSITION: **SUPPORT**

This measure eliminates unnecessary and redundant language from the use tax law that relates to an exemption for certain interstate commerce activities, namely stevedoring.

The Department of Taxation (Department) **supports** this measure and asks that it be passed out of committee.

The purpose of this measure is to clarify the current application of the use tax by eliminating overbroad and redundant language in a provision relating to interstate commerce activities.

HOUSEKEEPING AMENDMENT FROM PAST LEGISLATION RELATING TO STEVEDORING—In Act 74, Session Laws of Hawaii 1979, the Legislature amended the tax law to prevent the application of Hawaii general excise or use tax to certain interstate commerce activities of common carriers, which the legislative history identifies as primarily those involved in stevedoring and other similar activities.

Act 74 SLH 1979 was passed in response to a United States Supreme Court opinion that expanded the State's ability to tax interstate commerce. In order to prevent the State from taxing stevedoring and other similar activities,

Act 74 was the solution.

As noted in the committee report discussing HB 1200, which became Act 74:

> [T]he practical effect of this bill would be to exclude from general excise and use taxation stevedoring and other interstate commerce activities. Such activities and the proceeds derived from them have historically enjoyed exemption from state taxation due to judicial interpretation of the interstate commerce clause of the US Constitution.
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> In April 1978, however, the US Supreme Court handed down a ruling which determined that states may directly tax the privilege of conducting interstate business where such taxes are fair and a relationship between the business activities being taxed and the state is established. Several months after the Court's ruling, the state department of taxation set guidelines for the taxation of stevedoring and other interstate commerce activities. Expressing concern for the economic impact of the implementation of the taxation guidelines, the governor later suspended assessment of the taxes. This bill would codify this exemption of stevedoring and related activities from taxation, notwithstanding the recent Supreme Court ruling.

SCRep. 513, HB 1200, 1979.

Since the passing of Act 74, the tax laws have been amended again to expressly exempt the particular stevedoring and other interstate commerce activities originally intended to be exempted by the Legislature by Act 74.

Over time, the general excise tax was amended to expressly exempt the following interstate commerce activities, which now exist in the general excise tax law—

(4) Amounts received or accrued from:

(A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;

(B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and

(C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;

Though the general excise tax was expressly amended, the use tax retained the exemption language this bill seeks to eliminate as unnecessary and redundant.

NO EXPRESS USE TAX EXEMPTION IS NECESSARY BECAUSE THE GET EXEMPTION APPLIES—With regard to the use tax, no express exemption for stevedoring is necessary because the use tax law automatically exempts any transaction exempt under the general excise tax law. Section 237-24.3(4), HRS, exempts from the general excise tax those activities Act 74 intended to exempt, which by operation of section 238-3, HRS, automatically applies to use tax activities. As a result of this analysis, amendments by Act 74 to the use tax law are surplusage.

ACT 74 SLH 1979 IS NOW REDUNDANT—Because other provisions now expressly exempt the stevedoring activities that were intended to be exempted by the language the Department seeks to repeal, Act 74's language in the use tax law is now redundant and unnecessary.

NO REVENUE IMPACT—This provision is not intended to have any substantive impact on the use tax law. Therefore, no revenue impact exists.

L E G I S L A T I V E

TAXBILLSERVICE

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SUBJECT: USE, Clarify law relating to stevedoring activities

BILL NUMBER: SB 1318; HB 1091 (Identical)

INTRODUCED BY: SB by Tsustui by request; HB by Say by request

BRIEF SUMMARY: Amends HRS section 238-3 to delete the provision preventing the application of the general excise or use tax law on stevedoring activities before April 1, 1978.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This is an administration measure submitted by the department of taxation TAX-04(11). The legislature by Act 74, SLH 1979, adopted this provision to ensure that stevedoring activities would not be subject to the general excise tax or use tax law in response to a United States Supreme Court opinion (in re Department of Revenue of Washington v. Association o f Washington Stevedoring Companies, 55 L.Ed.2d.682 (1978)) that expanded the state's ability to tax interstate commerce by specifying that stevedoring activities were not protected by the federal interstate commerce clause and, therefore, could be taxed by state and local governments.

While the department did not have any objection to the original law, it did note that the broadness of the language of the original exemption went far beyond what had been exempt from the law prior to the Supreme Court decision. As a result, legislation was introduced in 1987 to specifically highlight those stevedoring activities that were presumed to be exempt before the 1979 legislation. At that time, this Service questioned the necessity of the proposed amendment to HRS Section 238-3 (a) as the service it attempts to exempt is already covered in the amendment that had been proposed to the general excise tax. However, Act 292 SLH 1987, was adopted with the amendment to the use tax that this measure now proposes to delete.

Since HRS Section 237-24.3 (4) specifically enumerates the types of stevedoring activities which remain exempt from the general excise tax, the exemption also applies to the complementary use tax. Thus, the language eliminated in this proposal is justified.

Digested 2/2/11