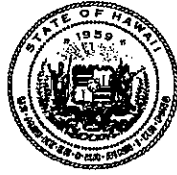


NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



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RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

LATE

To: The Honorable Ryan I. Yamane, Chair
and Members of the House Committee on Health

Date: Friday, February 3, 2012

Time: 9:00 a.m.

Place: Conference Room 329, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 2120 Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 2120 and offers the following comments for your consideration.

H.B. 2120 amends the tobacco tax to tax pipe tobacco at its own specific rate. Currently, HRS Chapter 245 taxes pipe tobacco as a "tobacco product," which is taxed at a rate of 70% of the wholesale price of each article or item sold. H.B. 2120 defines pipe tobacco separately from other "tobacco products" and taxes it at a rate of either \$2 per ounce or 70% of the wholesale price, whichever is greater. In addition, H.B. 2120 taxes an additional \$2 per ounce for pipe tobacco sold by retailers who did not purchase their pipe tobacco from an in-state wholesaler.

H.B. 2120, by imposing the tax per ounce, will help with enforcement of the tobacco tax. Under the current law, the tax is imposed per article or item sold. Determining what constitutes an item or article can sometimes be difficult in situations where retailers may bundle many smaller items into larger items for retail sale.

However, the Department suggests amending the bill by removing HRS § 245-3(a)(15) from Section 2 both because it may be unconstitutional and because it may create unintended confusion.

First, the Department is concerned that an additional tax levied on products purchased from out of state may violate the Commerce Clause of the United States Constitution, but defers to the Department of the Attorney General on this issue. If determined to be unconstitutional, the Department recommends deleting the words "or from outside the state" from proposed HRS § 245-3(a)(15) in Section 2 of the bill, or by deleting the paragraph entirely and replacing it with the language provided below.

The Department believes the intent of paragraph (15) is to ensure that a retailer, that acquires pipe tobacco from an unlicensed seller, is subject to tax similar to the way a wholesaler would be under paragraph (14). Under current law, a retailer who acquires pipe tobacco from an unlicensed seller is subject to the tobacco tax under HRS § 245-3(a)(12), which taxes "the wholesale price of each article or item of tobacco products ... sold by a wholesaler or dealer." "Dealer" is defined under HRS § 245-1 to mean "any person coming into the possession of cigarettes or tobacco products which have not been acquired from an authorized permit holder or licensee under [Chapter 245]." Furthermore, current law includes pipe tobacco in its definition of "tobacco products". Thus, under current law, a pipe tobacco retailer who acquires pipe tobacco directly from a manufacturer or from outside the state (neither being authorized permit holders or licensees) is considered a dealer under HRS § 245-1 and subject to the tobacco tax under HRS § 245-3(a)(12).

The impact of H.B. 2120 amending the definition of "tobacco products" to no longer include pipe tobacco is that it removes pipe tobacco retailers from the definition of "dealer." As a result, pipe tobacco retailers would no longer be subject to tax under the current HRS § 245-3(a)(12) or proposed HRS § 245-3(a)(14) under H.B.2120. The Department believes it is the drafter's intent to ensure such retailers who do not buy from authorized permit holders or licensees remain subject to the tobacco tax; and therefore H.B. 2120 imposes a \$2 per ounce tax on such retailers under proposed HRS § 245-3(a)(15).

This is confusing for the following reasons. First, it is unclear why paragraph (15) imposes the \$2 per ounce tax and not the greater of it versus a tax equal to 70% of the purchase price paid to the manufacturer or person outside the state, thereby effectively mirroring the tax imposed by paragraph (14). Second, it is unclear whether the Department's interpretation of the bill is correct.

It is also possible the bill's drafter intended paragraph (15) to act as a second, additional \$2 per ounce tax on retailers, who purchase from manufacturers or from outside the state, and that the bill's removal of pipe tobacco retailers from the definition of "dealer" under HRS § 245-1 is unintentional. The Department believes this is a possible interpretation because the word "dealer" appears in the bill's paragraph (14). If it is the bill's intent to remove pipe tobacco retailers from the definition of "dealer," then imposing the pipe tobacco tax on dealers does not make sense.

Assuming that paragraph (15)'s reference to out-of-state sellers is unconstitutional, and further assuming it was not the drafter's intent to impose a double tax on pipe tobacco retailers that purchase from unlicensed sellers, the Department suggests as a solution:

- Deleting paragraph (15) from the bill
- Amending the definition of "dealer" under HRS § 245-1 to read:

"Dealer" means any person coming into the possession of cigarettes ~~[or]~~, tobacco products, or pipe tobacco which have not been acquired from an authorized permit holder or licensee under this chapter, or any person rendering a distribution service who buys and maintains, at the person's place of business, a stock of cigarettes ~~[or]~~, tobacco products, or pipe tobacco that ~~[have]~~ has not been acquired from a licensee and who distributes or uses such cigarettes ~~[or]~~, tobacco products, or pipe tobacco."

Thank you for the opportunity to provide comments.



COALITION FOR A
TOBACCO-FREE HAWAII

L A T E

To: The Honorable Ryan Yamane, Chair
The Honorable Dee Morikawa, Vice Chair
Members, House Committee on Health
From: Deborah Zysman, MPH; Executive Director
Hrg: Health Committee Friday 2/3/2012 9:00am
Re: **Comments on HB2120 Relating to Taxation**

Thank you for the opportunity to comment on HB 2120 which provides for a tax on pipe tobacco.

The Coalition for a Tobacco Free Hawaii (Coalition) is the only independent organization in Hawaii whose sole mission is to reduce tobacco use through education, policy and advocacy. The Coalition provides leadership for the tobacco control community, develops networks, helps coordinate tobacco control programs and builds community awareness.

The Coalition offers the following comments:

Pipe Tobacco Should Continue to be Included as a “Tobacco Product, Other than Large Cigars.” It is unnecessary to create additional categories for each type of “Other Tobacco Product.”

Health is Promoted By Increasing the Tax on Tobacco Products Other Than Cigarettes

The Coalition strongly supports increasing the tax on all tobacco products other than cigarettes. Bills such as SB2422 accomplish this. By increasing the cost of tobacco products, use by adults and young people will decrease. This will result in a decline in the serious health conditions that arise from use of tobacco including cancer of the esophagus pharynx, larynx, stomach, and pancreas, gum disease, and the risk of cardiovascular disease.

Adolescents and young adults are two to three times more sensitive to tobacco price changes than adults—less youth will begin to start using tobacco and more will reduce their consumption.

Parity in Taxes on Cigarettes and Other Tobacco Products Is Imperative and Supported by Hawaii Residents The Coalition supports efforts to set the tax on other tobacco products comparable to the tax on cigarettes. According to a recent poll of Hawaii residents, more than three-quarters support taxing other tobacco products at the same level as cigarettes.



A Portion of the Revenues Must Be Earmarked for Tobacco Prevention and Treatment

Hawaii residents overwhelmingly agree (89 percent) that it's important for the state to earmark some of the revenue to fund tobacco prevention and quit smoking programs. When the price of tobacco increases, more seek help to quit. It's necessary for Hawaii to have community resources such as the Quitline, the American Lung Association, and services at community health centers to help tobacco users address their nicotine addiction.

We urge you to dedicate a portion of the revenue from cigarette and tobacco taxes to programs that help tobacco users quit. We also urge you to maintain existing funding for tobacco prevention and quit smoking programs to meet the demand.

The Coalition Recommends Language to Ensure Tax Parity and Health Benefits in the

Future. The Coalition urges the Legislature to consider adding in language that would result in the continued parity between the taxes on tobacco products and cigarettes. When the tax on cigarette increases, the tax on other tobacco products would also increase. In addition, more parity is created when products are sold in larger quantities, rather than in single or small amounts.

Thank you for the opportunity to provide comments in support of this measure.



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Testimony on HB 2120, "Relating to Taxation"

The intent of HB 2120 is to raise the tax on pipe tobacco to a level comparable to cigarettes, thus eliminating the incentive of, among others, youths, from turning to pipe tobacco as a cheaper alternative to tobacco and reducing the likelihood of them becoming addicted, and or using it as a gateway to cigarette use.

The health dangers of tobacco use of any kind are now relatively well known. There is no safe exposure level to any form of tobacco, and each form brings its own set of health risks, especially to the cardiovascular system.

While the AHA supports the intent of HB 2120, there are several other bills under consideration during this Legislative Session that would tackle the broader range of "other tobacco products" and bring them all to a tax level comparable to that for cigarettes. Addressing the taxes on all "OTPs" in one bill would be the better approach, rather than addressing them in individual legislative measures.

Respectfully submitted,

Don Weisman

Hawaii Government Relations/Mission:Lifeline Director

Serving Hawaii since 1948

For information on the AHA's educational or research programs, contact your nearest AHA office, or visit our web site at www.americanheart.org or e-mail us at hawaii@heart.org

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free of cardiovascular
diseases and stroke."***

Please remember the American Heart Association in your will or estate plan.

morikawa2 - Grant

From: kawikc@aol.com
Sent: Thursday, February 02, 2012 9:50 PM
To: HLTtestimony
Subject: AS PER HB2120

LATE

WHAT THE HELL ARE YOU PEOPLE SMOKIN!!!! YOU FRICKIN RIGHT I WILL BE THERE TOMORROW WITH A FEW WORDS TO SAY...DAMN, I CAN'T BELIEVE THIS TYRANNY...AND BTW...THANKS FOR SUCH AMPLE NOTICE...GOVERNMENTAL LEGISLATION IS INDEED RIGGED AGAINST THE CITIZENS...KAWIKA CROWLEY
HAWAII BAR OWNERS ASSOCIATION