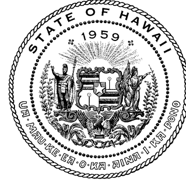
HB 306, HD1

EDT

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



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SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 306, HD 1 RELATING TO TAXATION

TESTIFIER:	**FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR DESIGNEE)**
COMMITTEE:	**EDT**
DATE:	**MARCH 21, 2011**
TIME:	**1:15PM**
POSITION:	**SUPPORT PART I; CONCERNS WITH PART II; NO POSITION ON PART III**

This bill has three parts. Part I clarifies the estate tax law. Part II repeals the income tax credit for taxpayers who pay income taxes to other jurisdictions. Part III imposes a new excise tax on gross income received from providing broadcast satellite services.

COMMENTS ON PART I – The Department of Taxation (Department) supports Part I of this bill. The Department requests that the amendments attached at the end of this testimony be adopted as further clarifications to the generation-skipping transfer tax and the estate tax for non-citizens. Because this bill merely clarifies the existing estate tax and makes no substantive changes, the Department estimates no revenue impact.

COMMENTS ON PART II – The Department is concerned Part II may potentially be unconstitutional if the repeal of this tax credit is characterized as double taxation. However, the Department defers to the Department of the Attorney General for final analysis.

For informational purposes, the Department would like to provide the amount of these credits claimed in past years:

- Tax Year 2006: $44.3 million
- Tax Year 2007: $29.6 million
- Tax Year 2008: $22.4 million

- Tax Year 2009: $20.0 million

COMMENTS ON PART III – The Department takes no position on this part and notes only that it cannot provide a revenue estimate due to the small population of vendors that would be subject to this tax.

H.B. 306, H.D.1, PART I, PROPOSED S.D. 1

March 14, 2011

PART I

SECTION 1. Section 236D-2, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of "generation skipping transfer", "Internal Revenue Code" and "taxable estate" to read:

""Generation-skipping transfer" means a generation-skipping transfer as defined and used in section 2611 of the Internal Revenue Code that occurs at the same time as, or as a result of, the death of an individual. A "generation-skipping transfer" does not include a direct skip described in section 2612(c) of the Internal Revenue Code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended and renumbered, as of December 31, 2009; provided that [~~sections 2011, 2102, and 2604 of the Internal Revenue Code shall mean those sections as of December 31, 2000; and provided further that~~] sections 2058 and 2106(a)(4)shall not be operative for purposes of this chapter. "Internal Revenue Code" includes the federal tax principles of alter ego, nominee, sham transaction, substance over form, economic substance, or business purpose, as those principles are developed by statute or common law. The Internal Revenue Code, for purposes of this

chapter, shall be applied using changes in nomenclature and other language, including the omission of inapplicable language or the insertion of interpretive language, where necessary to effectuate the intent of this chapter.

"Taxable estate" means taxable estate as defined in sections 2051 to [~~2056~~]2056A of the Internal Revenue Code. For purposes of section 236D-4.5, "taxable estate" means a taxable estate as defined and used [~~in~~] pursuant to sections 2106(a)(1), (2) and (3) and 2106(b) of the Internal Revenue Code [~~with situs in Hawaii~~]."

2. By repealing the definition of "federal credit":

[" ~~"Federal credit" means:~~

~~(1) For a transfer, the maximum amount of the credit for state death taxes allowed by section 2011 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent's adjusted taxable estate;~~

~~(2) For a generation skipping transfer, the maximum amount of the credit for state taxes allowed by section 2604 of the Internal Revenue Code as it existed on December 31, 2000; and~~

~~(3) For a noncitizen transfer, the maximum amount of the credit for state death taxes allowed by section 2102 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent's adjusted taxable estate.~~"]

3. By repealing the definition of "section 2011":

["~~"Section 2011" means section 2011 of the Internal Revenue Code as it existed on December 31, 2000.~~"]

SECTION 2. Section 236D-3, Hawaii Revised Statutes, is amended to read as follows:

"**[~~[~~]§236D-3[~~]~~] Residents; tax imposed; credit for tax paid other state.** (a) A tax in [~~an amount equal to the federal credit~~] accordance with the following table is imposed on the transfer of the taxable estate of every resident[~~.~~]:

If the taxable estate is:	The tax shall be:
Not over $3,560,000	Zero
Over $3,560,000 but not over $3,600,000	9.6% of the amount by which the taxable estate exceeds $3,560,000
Over $3,600,000 but not over $4,100,000	$3,840 plus 10.4% of the amount by which the taxable estate exceeds $3,600,000
Over $4,100,000 but not over $5,100,000	$55,840 plus 11.2% of the amount by which the taxable estate exceeds $4,100,000
Over $5,100,000 but not over	

$6,100,000	$167,840 plus 12% of the amount by which the taxable estate exceeds $5,100,000
Over $6,100,000 but not over $7,100,000	$287,840 plus 12.8% of the amount by which the taxable estate exceeds $6,100,000
Over $7,100,000 but not over $8,100,000	$415,840 plus 13.6% of the amount by which the taxable estate exceeds $7,100,000
Over $8,100,000 but not over $9,100,000	$551,840 plus 14.4% of the amount by which the taxable estate exceeds $8,100,000
Over $9,100,000 but not over $10,100,000	$695,840 plus 15.2% of the amount by which the taxable estate exceeds $9,100,000
Over $10,100,000	$847,840 plus 16% of the amount by which the taxable estate exceeds $10,100,000

(b) If any property of a resident is subject to a death tax imposed by another state [~~for which a credit is allowed by~~

~~section 2011~~]; and, if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in the state of decedent's domicile, the amount of the tax due under this section shall be credited with the lesser of:

(1) The amount of the death tax paid the other state [~~and credited against the federal estate tax~~]; or

(2) An amount computed by multiplying the [~~federal credit~~] tax imposed under subsection (a) by a fraction, the numerator of which is the value of the property subject to the death tax imposed by the other state, and the denominator of which is the value of the decedent's gross estate."

SECTION 3. Section 236D-3.5, Hawaii Revised Statutes, is amended to read as follows:

"**[§236D-3.5] Generation-skipping transfers; tax imposed; credit for tax paid other state.** (a) A tax in an amount equal to [~~the federal credit~~] two and 25/100 per cent is imposed on every generation-skipping transfer exceeding an aggregate exclusion of $3,560,000 per decedent of:

(1) Property located in this State; and

(2) Property from a resident trust.

(b) If the generation-skipping transfer is subject in another state to a similar tax [~~and qualifies for the federal~~

~~credit~~], the amount of the tax due under this section shall be credited with the lesser of:

(1) The amount of the tax paid to the other state [~~and credited against the federal tax~~]; or

(2) An amount computed by multiplying the [~~federal credit~~] tax imposed under subsection (a) by a fraction, the numerator of which is the value of the property subject to the generation-skipping transfer tax paid to the other state, and the denominator of which is the value of all property subject to the federal generation-skipping transfer tax.

[~~If paragraph (1) or (2) results in an amount less than the total federal credit allowed being paid to all states which may claim any part of the credit, then the interested states may agree to a fair and equitable apportionment of the credit without regard to the residence of the trust.~~]"

SECTION 4. Section 236D-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The tax shall be computed by multiplying the [~~federal credit~~] tax imposed on the transfer of the decedent's taxable estate under section 236D-3(a) by a fraction, the numerator of which is the value of the property located in Hawaii, and the denominator of which is the value of the decedent's gross estate."

SECTION 5. Section 236D-4.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The tax shall be computed by multiplying the [~~federal credit~~] tax imposed on the transfer of the decedent's taxable estate in accordance with the following table by a fraction, the numerator of which is the value of the property with a situs in Hawaii, and the denominator of which is the value of the decedent's gross estate under section 2103 of the Internal Revenue Code.

If the taxable estate is:	The tax shall be:
Not over $120,000	Zero
Over $120,000 but not over $150,000	0.8% of the amount by which the taxable estate exceeds $120,000
Over $150,000 but not over $200,000	$240 plus 1.6% of the amount by which the taxable estate exceeds $150,000
Over $200,000 but not over $300,000	$1,040 plus 2.4% of the amount by which the taxable estate exceeds $200,000
Over $300,000 but not over	

$500,000	$3,440 plus 3.2% of the amount by which the taxable estate exceeds $300,000
Over $500,000 but not over $700,000	$9,840 plus 4% of the amount by which the taxable estate exceeds $500,000
Over $700,000 but not over $900,000	$17,840 plus 4.8% of the amount by which the taxable estate exceeds $700,000
Over $900,000 but not over $1,100,000	$27,440 plus 5.6% of the amount by which the taxable estate exceeds $900,000
Over $1,100,000 but not over $1,600,000	$38,640 plus 6.4% of the amount by which the taxable estate exceeds $1,100,000
Over $1,600,000 but not over $2,100,000	$70,640 plus 7.2% of the amount by which the taxable estate exceeds $1,600,000

Over $2,100,000 but not over $2,600,000	$106,640 plus 8% of the amount by which the taxable estate exceeds $2,100,000
Over $2,600,000 but not over $3,100,000	$146,640 plus 8.8% of the amount by which the taxable estate exceeds $2,600,000
Over $3,100,000 but not over $3,600,000	$190,640 plus 9.6% of the amount by which the taxable estate exceeds $3,100,000
Over $3,600,000 but not over $4,100,000	$238,640 plus 10.4% of the amount by which the taxable estate exceeds $3,600,000
Over $4,100,000 but not over $5,100,000	$290,640 plus 11.2% of the amount by which the taxable estate exceeds $4,100,000
Over $5,100,000 but not over $6,100,000	$402,640 plus 12% of the amount by which the taxable estate exceeds $5,100,000

Over $6,100,000 but not over $7,100,000	$522,640 plus 12.8% of the amount by which the taxable estate exceeds $6,100,000
Over $7,100,000 but not over $8,100,000	$650,640 plus 13.6% of the amount by which the taxable estate exceeds $7,100,000
Over $8,100,000 but not over $9,100,000	$786,640 plus 14.4% of the amount by which the taxable estate exceeds $8,100,000
Over $9,100,000 but not over $10,100,000	$930,640 plus 15.2% of the amount by which the taxable estate exceeds $9,100,000
Over $10,100,000	$1,082,640 plus 16% of the amount by which the taxable estate exceeds $10,100,000"

SECTION 6. Section 236D-2.5, Hawaii Revised Statutes, is repealed.

["**~~[§236D-2.5] Taxation under chapter 236D; applicable exclusion amount.~~** ~~Notwithstanding any other law to the contrary, a decedent shall be entitled to all applicable exclusion or exemption amounts as determined under the Internal Revenue Code as of December 31, 2009, before being subject to any taxes imposed under this chapter, including up to a $3,500,000 applicable exclusion amount allowed by section 2010 of the Internal Revenue Code~~

~~on December 31, 2009, as further adjusted by law.~~"]

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March 21, 2011

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

RE: HB 306 – Relating to Taxation – Support HD 1 Amendment
EDT– March 21, 2011, Room 016, 1:15 P.M.

Aloha Chair Fukunaga, Vice Chair Wakai and members of the committee:

On behalf of Oceanic Time Warner Cable (Oceanic), which provides a diverse selection of entertainment, information, and communication services to nearly 350,000 households, schools and businesses and currently employs more than 900 highly-trained individuals, we appreciate the opportunity to support the proposed amendment contained in Section 6 to House Bill 306, Relating to Taxation.

BACKGROUND:

Cable customers pay more taxes and fees than satellite (DirecTV and Dish, for example) customers. This plain and simple fact can be verified by comparing a cable television service bill with a bill a satellite television service bill. Over time, states around the country have enacted parity measures like this one to equalize taxes and fees on cable and satellite services.

PROVIDING HAWAII RESIDENTS A TAX-NEUTRAL CHOICE:

Today, Hawaii customers who wish to purchase video services from Oceanic must pay multiple taxes and fees of up to a combined 5%, as well as state and local general excise taxes. While the state general excise tax is imposed on direct broadcast satellite (“DBS”) service, the other taxes and fees, including local general excise taxes, are not imposed on DBS providers or their customers.

Some may ask: “aren’t franchise fees paid primarily or solely for use of the rights of way?” The answer is an emphatic “no.” In fact, in addition to their payment of franchise fees, Oceanic must separately pay to maintain and repair the rights-of-way as part of their franchise agreements. Further, in consideration of their franchises, Oceanic is required to provide public access, and our fees help support broadbrand deployment and provide access to schools and libraries,, which Satellite companies do not pay.

Whether franchise and other fees are treated as a "tax" or a "fee", the impact is the same – Hawaii cable subscribers have to reach deeper into their pockets than Hawaii satellite subscribers. Oceanic simply supports that Hawaii allow its residents a tax neutral choice by equalizing the taxes and fees imposed on functionally similar video services.

IVIDEO TAX NEUTRALITY IN OTHER STATES:

Ten states enacted some form of video tax parity: Ohio, Kentucky, Delaware, Florida, Massachusetts, North Carolina, Tennessee, Utah, Virginia, and Washington. These states recognized the unfair treatment of some video programming service providers and the impact the disparate treatment has on consumers.

CONCLUSION:

Oceanic respectfully requests that Hawaii close the satellite loophole and enact tax reform to ensure that functionally equivalent services are taxed similarly. Sound tax policy dictates as much. Indeed, a fair and administrable tax system would promote the growth of the video programming marketplace and provide a tax-neutral choice for Hawaii consumers.

Further, this tax reform is helpful to providing relief to the state's budget deficit problem.

We appreciate your careful consideration of this matter and urge the Committee to support this amendment.

Sincerely,

Bob Barlow
President of Oceanic Time Warner Cable

March 18, 2011

Dear Hawaii Legislators:

On behalf of every satellite TV subscriber in Hawaii, we urge you to reject House Bill 306, H.D.1. The bill would impose a new discriminatory sales tax exclusively on satellite TV subscribers.

This proposed tax would force approximately 28,000 families in Hawaii to pay more for their television programming at a time when many are scaling back their lifestyles and spending more time at home in an effort to make ends meet. It would especially hurt those who live in rural parts of Hawaii that are not served by cable and who depend on DIRECTV or DISH Network for a reliable signal. For these households, H.B. 306 is a "rural tax" that punishes them just for living where they live.

This proposal is part of a nationwide effort by cable companies to gain an unfair advantage in the marketplace. In the last two years alone, the cable industry has tried unsuccessfully to convince over a dozen states to tax satellite subscribers.

The cable industry's lobbying effort is based on a misleading argument that satellite subscribers should be taxed because cable has to compensate municipalities through "franchise fees" paid for the right to lay cable in public rights-of-way. This argument is specious because these fees are a part of the cable industry's business model; satellite technology does not rely on public rights-of-way to deliver television programming. Cable companies have consistently acknowledged that franchise fees are a cost inherent to their business; they are the rent that cable companies pay for the right to access the public rights-of-way.

To assert that satellite subscribers should cover cable's business expenses is analogous to arguing that airline passengers should cover the cost of laying railroad tracks. Accordingly, H.B. 306 would result in satellite subscribers subsidizing cable's cost of doing business.

DIRECTV and DISH Network join the rest of our industry in urging you to take an immediate stand against any proposed discriminatory satellite-only tax. Please contact DIRECTV and DISH Network's representative in Honolulu, Amy Hirano at (808) 536-5688 should you have any questions.

Sincerely,

Larry Hunter EVP and General Counsel DIRECTV, Inc.	R. Stanton Dodge EVP and General Counsel DISH Network L.L.C.	Joseph Widoff President SBCA

Testimony of Satellite TV Installer

Chairman Fukunaga and members of the Committee, thank you for the opportunity to testify today. My name is Donovan Jones and I work for DIRECTV. Our employees install and maintain satellite dishes on the homes and businesses of satellite TV customers here in Hawaii. We have approximately 50 technicians in Hawaii, some of whom are joining me today to show their support. I am here today to urge you to vote “no” on HB 306.

As satellite TV technicians, we spend our days speaking with local families who choose satellite television for its quality, affordability, and access. As satellite TV has become more popular over the years, our industry has come to rely on these families as the cornerstone of our business.

Every day, we see families whose budgets have been strained by the current economic environment. Many are doing everything they can to make ends meet, cutting back on expenses, especially when it comes to entertainment. Now, more than ever, they are depending on satellite television as a main source of recreation for their families. They rely on satellite TV for access to news, sports, movies, and shows because buying tickets to the big game or the popular play isn’t as feasible as it used to be.

The new tax proposal being consdiered by the Hawaii Legislature will make even this basic luxury more expensive. It will put a new, burdensome tax on these families for no other reason than make it easier for the cable TV industry to do its business and stay competitive. At the same time, our customers’ neighbors who subscribe to cable television, will get an exemption from this new tax.

As a result of this proposed tax, many of our technicians could be forced out of work because families will have to tighten their belts even more. We try our best to provide the most reliable service around. And we believe competition for customers is a healthy part of doing business. But we do not believe the Legislature should impose laws or taxes that adversely affect fair business and the everyday family’s pocketbook.

Thank you very much for the opportunity to speak here today.

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March 21, 2011

The Honorable Carol Fukunaga, Chair
Senate Committee on Economic Development and Technology
State Capitol, Room 016
Honolulu, Hawaii 96813

RE: H.B. 306, H.D.1, Relating to Taxation

HEARING: Monday, March 21, 2011 at 1:15 p.m.

Aloha Chair Fukunaga, Vice Chair Wakai and members of the Committee:

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance, here to testify on behalf of the Hawai‘i Association of REALTORS® (“HAR”), the voice of real estate in Hawai‘i, and its 8,500 members. HAR **supports** the amendments to HRS Chapter 236D contained in Part I of H.B. 306, H.D.1, Relating to Taxation, which amends and clarifies the method of computing the Hawaii Estate and Transfer Tax.

HAR believes that the computation of the Hawaii Estate and Transfer Tax under HRS Chapter 236D is confusing and may not accurately reflect the legislative intent of Act 74, SLH 2010. HAR further believes that this confusion is in large part caused by HRS §236D-2.5 which HAR believes should be repealed and replaced with amendments to other sections of Chapter 236D.

HRS §236D-2.5 was inserted into Act 74 to ensure that estates valued at under $3,500,000 would not be subject to the Hawaii Estate and Transfer Tax as was the case in 2009 under the federal Estate Tax Law (and which has consistently been the position of the Obama Administration). Part I of H.B. 306, H.D.1, inserts what amounts to a $3,560,000 exemption which is currently contained in Act 74 into in a tax table which incrementally applies the Hawaii Estate and Transfer Tax to “taxable estates” (as defined in HRS §236D-2) in excess of $3,560,000 at rates equivalent to the former credit for state death taxes under IRC §2011 (i.e., from 9.6% to 16%).

Since Part I of H.B. 306 is merely a clarification of Act 74, under Section 12 of H.B. 306, H.D.1, Part I will be applied retroactively to the estates of decedents who died after April 30, 2010, the effective date of Act 74.

Mahalo for the opportunity to testify.

Testimony of Microcom

Members of the committee: There is no question that governments require revenue to work. They generally get this revenue many ways one of which is taxes. Taxes are strange things in some cases, because rather than simply being taxes on everything at a particular rate, sometimes we charge lower taxes on things we want them to do or higher taxes on things we don't want them to do. Before this committee is a proposal to apply an additional unspecified excise tax on Direct Broadcast Satellite television. It is not a tax on all pay television services, it is only a tax on satellite television services. We don't know the logic behind assessing a tax only on satellite TV. All we know is the result and that result is satellite TV subscribers will pay higher taxes for pay television services than cable television subscribers.

That result concerns us because it is an act of government that favors one segment of an industry over another. If government can do that today, tomorrow it won't be satellite TV, it might be groceries or rental cars. Should Safeway have to worry about being taxed at a higher rate than Foodland? Should AVIS and Enterprise be worried that Hertz will convince the legislature to raise taxes on all the other rental car companies?

Over the last 15 years satellite companies have brought needed competition to the islands. Oceanic invested in upgrades to their physical plant and programming that may not have happened as quickly if at all without this competition. It has certainly had an effect on cable prices in both the residential and commercial market. This proposed tax is an assault on this competition. We understand the need for the State of Hawaii to look at new forms of revenue. However, taxes must be imposed fairly on all concerned. If a tax such as this is not imposed on cable television, we can only view the effort in the legislature as an attempt by a particular business to gain a competitive advantage using its significant political power. Governments should not and cannot pick winners and losers in private industry. In this bill the government will be telling its citizens, some of whom don't have access to cable, that we would prefer you do business with Oceanic Time Warner. How can that be good for anybody other than Oceanic Time Warner Cable?

Microcom is small business with providing retail sales, installation, and service for residential and commercial customers of DISH Network and DirecTV. Employing 22 people on 3 islands, we have been serving Hawaii for more than 12 years with offices in Kailua Kona and Kapolei.

March 18, 2011

Hawaii State Senator Carol Fukunaga
Chair, Committee on Economic Development & Technology
Hawaii State Senate
415 S. Beretania St.
Honolulu, Hawaii 96813

Hawaii State Senator Glenn Wakai
Vice Chair, Committee on Economic Development & Technology
Hawaii State Senate
415 S. Beretania St.
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Dear Senators Fukunaga and Wakai:

We strongly urge you to oppose HB 306, a bill recently passed by the Hawaii House of Representatives that would impose an unfair satellite-only tax hike on TV subscribers.

As local retail businesses serving local Hawaiians, the proposed price hike on satellite TV would have a negative impact on us, our businesses, our employees and local families who are our customers. Our businesses are based on a vibrant and competitive video services market. Competition among video providers and platforms is good for business and the consumer.

Consumers choose a platform based on what that platform can provide a consumer, and at what price those services are provided. Giving one platform a pricing advantage over another inverts the free market-place to one that is solely a price driven market place. Services that would, otherwise be attractive to the consumer are not chosen. In other words, the consumer receives a lesser value when they are choosing exclusively on choice. In today's economy is more important than ever to give the consumer maximum return on their hard earned dollar. Fair competition promotes companies to not only bring price to the table but innovation in their product as well.

If the legislature feels that this is an opportunity to level the playing field between satellite and cable, we would respectfully suggest that this bill would do just the opposite and put satellite at a disadvantage.

Each platform has a way of going to market. Satellite spent billions of dollars in infrastructure, orbital space, and development of hardware as their investment. Satellite spends millions of dollars advertising in our local markets, providing jobs in that manner. Satellite reaches places that cable has been unwilling to invest their resources.

A satellite-only tax would especially hurt families and small businesses in rural areas that cable refuses to serve. Cable frequently ignores the rural customer because it's not cost effective to reach that customer. As you are supporting this bill, please keep in mind, that you are supporting the mindset that says it's okay to ignore the customers in the areas cable can't or won't go into.

We would respectfully ask, if the state is looking to level the playing field, how can a bill be brought to the floor and voted on, that is patently, one sided? That is not competition. That's special interest. HB 306's proposed tax harms competition in the video services market and unfairly singles out satellite TV customers for a tax hike.

We urge you to oppose HB 306, the discriminatory satellite-only TV tax. This tax would force families to pay more for their television programming when many of them are scaling back their lifestyles and spending more time at home in an effort to make ends meet. With the recent earthquake in Japan threatening Hawaii's tourism industry, now is the worst possible time to start piling new taxes on small businesses and families.

Consumers should be able to choose the TV service they prefer based on what they care about-better programs, better service, and better prices.
Please keep the video services market in Hawaii robust by rejecting this tax on satellite TV.

Sincerely,

Timothy W. Sullivan
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cc: Hawaii Senate Committee on Economic Development & Technology

Testimony from Jason Gardner, Satellite Distributor

Chairman Fukunaga and members of the Committee, thank you for the opportunity to testify here today. My name is Jason Gardner and I am the President of The Satellite Guy, Inc. We sell satellite TV equipment to retailers throughout the state of Hawaii and have a large warehouse facility in Honolulu that employs 9 people.

I am here today to urge you to oppose HB 306, a bill that would unfairly impose a new tax on satellite TV service but not cable television. Now is not the time to strain consumers with new taxes, especially when they unfairly target one sector of the television industry.

Over the years, cable TV providers have been required to pay franchise fees in exchange for the right to tear up public sidewalks and roads for to install their cable wire. We in the satellite industry use more innovative technology, avoiding these costly and invasive business practices because our service signals are sent via the airwaves.

Imposing a new tax on satellite television service effectively penalizes our industry's strong business model. And to limit this new burden to our industry alone, I believe, results in a backdoor subsidy for a cable industry that is struggling to keep its competitive edge.

Additionally, given the economic climate in this country, now could not be a worse time to burden consumers with more taxes. Families are struggling enough as it is. And satellite television is one of the few remaining forms of entertainment that's actually affordable. To tax the satellite industry is to tax working class families.

As a businessman, I understand the cable industry is frustrated by the recent success of satellite television. But the state should not be picking winners and losers by <u>penalizing customers of one company with a higher tax</u> than paid by their competitor. This is government paternalism at its worst. Attempts to prop up one industry at the expense of another only hurts healthy market competition and an innovative national economy.

Thank you for allowing me to speak before the committee.

Satellite Broadcasting
& Communications
Association

Lisa Volpe McCabe
Director Public Policy & Outreach

Testimony of Lisa V. McCabe
Director, Public Policy and Outreach
Satellite Broadcasting & Communications Association

Before the Committee on Economic Development & Technology on H.B. 306
March 21, 2011

Chairman Fukunaga, and members of the Committee on Economic Development & Technology, thank you for the opportunity to submit testimony. I am Lisa McCabe, Director of Public Policy and Outreach for the Satellite Broadcasting & Communications Association.

The SBCA is the national trade organization for the consumer satellite industry. The SBCA is composed of satellite service providers, equipment manufacturers, distributors, retailers and national and regional distribution companies that make up the satellite services industry. I'm address the Committee to speak on behalf of the 28,000 citizens of Hawaii who subscribe to one of the two national satellite TV service providers that offer service in the State.

I urge you to reject H.B. 306. In short, it's discriminatory, it's illegal, and it's just bad policy. Thousands of satellite TV subscribers would be burdened with additional tax, crushing small businesses and hurting the Hawaii economy at the worst possible time

Every subscriber of pay TV in the State already pays a 4.16% tax on their service. H.B. 306 seeks to increase that burden by creating a new tax that would only be imposed on satellite TV subscribers while giving cable subscribers a free ride.

There could not be a worse time to raise taxes on satellite television service. TV is our primary source of information on everything from local news and weather to national politics. We click it on first thing in the morning to learn if a storm is brewing, if our schools are closing, and if we have to take an alternative route to work. Throughout the day, it tells us if our Medicare payments will be cut, if our streets are safe, and how our troops are faring in far-away wars. At night, we turn to TV to entertain us, or relax us, to teach us and inspire us, to keep us awake or to lull us to sleep.

When times are tough and wallets are thin, TV is the entertainment of last resort for thousands of Hawaii families. We can cut out restaurants, we can rule out plays, movies, lectures, and sporting events as luxuries. And when we do, we stay at home and click on the TV. The proposal would punish Hawaii families simply because they have chosen satellite TV service instead of cable.

This tax would be especially burdensome to Hawaii families living in rural parts of the State who have few options for service. This tax would hit senior citizens on fixed incomes

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extremely hard. This tax would hurt hotel, bar and restaurant owners in Hawaii who need satellite TV just to stay in business.

We recognize that at times like this, difficult decisions about taxes and tax policy must be made. But the new tax proposed by H.B. 306 will only exacerbate the budgetary problems of many thousands of Hawaiian families and will help no one.

By imposing such a discriminatory tax on satellite TV service, the state legislature would be tipping the competitive landscape in favor of cable. For years, the public outcry about the high rates charged by the entrenched cable monopolies, their low quality of programming and service, and their poor customer service standards was alarming. Congress heard these complaints, and answered by adopting a national policy to encourage competition in the video market place. Congress knew that effective competition would improve consumer satisfaction, and it worked. As satellite emerged as viable competitor to cable, the quality of service, programming, and customer service standards have improved, and consumers now get more value out of every dollar they spend on subscription TV services. Maintaining competition is the best way to provide positive influence in the marketplace. Tax policy that sets a level playing field is the best way to foster competition in Hawaii's video services marketplace. As such, I urge you to not to turn back the clock with such an anti-competitive and discriminatory tax policy.

But, more importantly from a fiscal standpoint, the form of discrimination proposed by H.B. 306 is not only anti-competitive; it is also illegal because it violates the Constitution of the United States.

If H.B. 306 is enacted it will be challenged in court and it will be struck down. In short, this form of discrimination violates the constitution because it encroaches on Congress's exclusive jurisdiction to regulate interstate commerce. Any tax that discriminates against interstate commerce is unconstitutional and this tax would be no exception. It is blatantly discriminatory and it will be struck down. And when it does get struck down, the State will be forced to return all of the ill-gotten revenue generate by this discriminatory tax to the satellite subscribers. This is simply not a risk that makes sense in the current economic climate.

In sum, I ask you all for your support in rejecting H.B. 306 and its discriminatory tax on satellite TV service. It's the wrong tax at the wrong time. It increases taxes without increasing revenue. It's illegal and not worth the risk. Simply put, it's just bad policy.

Thank you for the opportunity to submit testimony regarding H.B. 306.

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Testimony of Brendan Burchfiel
Owner, The Shack

Chairwoman Fukanaga, Vice-Chairman Wakai, and members of the Committee, thank you for the opportunity to testify here today. My name is Brendan Burchfiel. I am the General Manager of The Shack at Hawaii Kai here in Honolulu, and I am here today on behalf of the bar industry in Hawaii to urge you to oppose HB 306. This proposed price hike on satellite TV would have a negative impact bar owners, our employees, and the local families who are our customers.

In addition to our famous cheeseburgers, The Shack specializes in offering customers access to a wide variety of televised sporting events. Like many bar owners, we switched to satellite TV because satellite offers a better selection of sports, and better quality at a lower price.

Restaurant and bar owners operate on narrow profit margins. A new tax that increases the cost of satellite television has a real impact, particularly at a time when so many of us are struggling to get by.

This economic downturn has been extremely hard on local restaurants and bars like The Shack. We serve a mix of locals and tourists – and business has been down on both fronts. Local families living on tight budgets are eating out less, and we all know that the state’s tourism industry has been struggling. It just makes no sense to impose new taxes that hurt restaurants and bars just as we are starting to come out of this long downturn.

And more importantly, it isn’t fair. This bill punishes businesses like us for choosing Satellite TV by burdening us with a new tax -- while cable subscribers get a free pass.

As I see it, this bill helps no one but the cable companies. They are trying to keep more customers, not by improving their programming or lowering prices, but by driving up the cost of the competition.

Consumers should be able to choose the TV service they prefer based on what they care about – better programs, better service, and better prices. Please don't burden struggling Hawaii businesses with a new tax they cannot afford.

March 18, 2011

To: Chair Senator Carol Fukunaga
Vice Chair Senator Glenn Wakai
Committee on Economic Development and Technology

Re: HB306, HD1 – Relating to Taxation
Hearing on Monday, March 21, 2011, 1:15 pm Conference Room 016

Dear Chair Carol Fukunaga and Committee:

Thank you for allowing my testimony on HB306, HD1. I do NOT represent a large company or powerful lobby group on this issue.

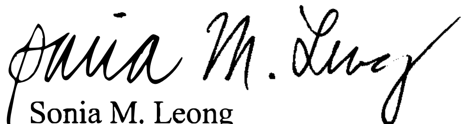
I am, however, a loyal supporter of yours and believe in your sincere intent to help us, the "ordinary people" of Hawaii by fostering the economy and bringing the best and latest in technology to this State. I speak for all of these people, many of whom are not even aware of HB306 HD1, and all of which will be hurt if it passes.

My concern is with the portion of Bill HB306,HD1 that imposes an excise tax on satellite-TV providers. I believe that it will take Hawaii back a few steps in our effort to improve its business image, which is unfortunately not very good.

HB 306 HD1 will also discourage companies with the latest technologies (such as what satellite-TV is) from coming here. These cutting-edge companies are the exact kinds of businesses that you want here, because they not only afford our residents with more and better choices to enhance their lifestyles, but also create clean industries with good-paying jobs for our children.

Finally, taxing satellite-TV companies will punish common citizens because they will be the ones to bear the added tax burden. For many, premium TV is one of the few everyday pleasures they have; and for some who live in rural areas that have no cable TV, satellite TV is their only option for pay TV. Making satellite TV more expensive for these people makes it harder and harder for ordinary people to afford this very simple pleasure.... possibly the only remaining affordable entertainment for some.

Please Senator Fukunaga, I strongly urge the Committee to defer HB 306 HD1.



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L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ESTATE AND TRANSFER, INCOME, MISCELLANEOUS, State imposition; repeal credit for taxes paid; tax on direct broadcast satellite providers

BILL NUMBER: HB 306, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 236D-3 to provide that an estate and transfer tax shall be imposed on the transfer of the taxable estate of every resident according to the following:

If the taxable estate is:	The tax shall be:
Not over $3,560,000	0
Over $3,560,000 but not over $3,600,000	9.6% of the amount in excess of $3,560,000
Over $3,600,000 but not over $4,100,000	$3,840 plus 10.4% over $3,600,000
Over $4,100,000 but not over $5,100,000	$55,840 plus 11.2% over $4,100,000
Over $5,100,000 but not over $6,100,000	$167,840 plus 12% over $5,100,000
Over $6,100,000 but not over $7,100,000	$287,840 plus 12.8% over $6,100,000
Over $7,100,000 but not over $8,100,000	$415,840 plus 13.6% over $7,100,000
Over $8,100,000 but not over $9,100,000	$551,840 plus 14.4% over $8,100,000
Over $9,100,000 but not over $10,100,000	$695,840 plus 15.2% over $9,100,000
Over $10,100,000	$847,840 plus 16% over $10,100,000

Repeals the “federal credit” provision of the maximum amount of the credit for state death taxes allowed by section 2011 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent’s adjusted taxable estate and the federal exclusion amount under HRS section 236D-2.5. This section shall be applicable to tax years beginning after December 31, 2010 and apply retroactively to estates of decedents who died after April 30, 2010.

Repeals HRS section 235-55 which provides an income tax credit in the amount of taxes paid by resident taxpayers in any state, or to the District of Columbia, Puerto Rico, or any other territory or possession of the United States, or to a foreign country. This section shall be applicable to tax years beginning after December 31, 2010.

Adds a new chapter to the HRS to impose an excise tax on direct broadcast satellite service providers. The tax shall be assessed and collected annually on such providers on account of their business and other activities in the state measured by gross revenues derived from the sale of direct broadcast satellite services, multiplied by _____%. The tax shall not apply to internet access services, including services purchased, used, or sold to provide direct broadcast satellite services. Delineates provisions for the remittance, reporting, and record keeping by the provider. The revenue from the excise tax shall be deposited into the general fund. This section shall take effect on January 1, 2030 and be applicable to tax years beginning after December 31, 2011.

EFFECTIVE DATE: Upon approval as noted

STAFF COMMENTS: With the adoption of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the federal estate tax was phased out and ultimately repealed over a ten-year period. Along with that repeal, the credit that is allowable under the federal law recognizing that an estate may have incurred state death taxes is phased out over a three-year period beginning in 2002. Hawaii, like many other states, has utilized this amount as its state death tax since 1983 and is known as the "pick up" tax as the state merely picks up what the federal table allows as state death taxes.

The pick up tax was created in 1924 when Congress provided a credit against the federal estate tax which had been created in 1916 in recognition of the estate having been required to pay death taxes to the state. This dollar-for-dollar credit against state taxes paid enables the state to "pick up" some of the federal tax liability without increasing the total liability of the state. Thus, when the state chose to eliminate its old inheritance tax in favor of the pick up tax in 1983, it eliminated any additional state tax liability for the estate and made its tax revenues from this source completely dependent on the federal law. One of the pluses to utilizing the pick up tax is that it eliminated any additional paperwork that a separate state death tax would involve.

On January 1, 2010, the federal estate tax was officially repealed by EGGTRA, but on December 17, 2010, it was reinstated retroactively to January 1 by Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (PL 111-312). The federal estate tax is now 35% with a $5 million individual exemption for the 2010, 2011 and 2012 tax years. On January 1, 2013 the exemption and rate are scheduled to revert back to the numbers that were in effect in 2002 - a $1,000,000 exemption and 55% estate tax rate.

This measure proposes to "decouple" from the federal provisions and impose a tax on estates of over $3,560,000 at 9.6% to 16% for estates $10,100,000 and over. It should be noted that while Hawaii utilized the "pickup tax" and relied on the federal Internal Revenue Code provisions, and this measure would adopt a similar tax for Hawaii tax purposes, it is questionable whether the estate and transfer tax provisions under HRS section 236D are updated to be efficient and equitable since these provisions have not been needed and have not been amended or updated.

Further, it should be noted that in the closing days of the 2010 session of Congress, federal lawmakers resurrected the federal death tax, setting the estate tax exemption at $5 million and a top rate of 35% of any amount of an estate over and above the basic exemption applicable to those dying after December 31, 2009 but before January 1, 2013. This measure appears to use $3,560,000 as the floor for state tax exemptions for Hawaii estates, which is slightly higher than the federal tax exemption that was in effect through the calendar year 2009. That extension of the federal estate tax will sunset on December 31, 2012 when the federal exemption will drop back to $1 million which will force federal lawmakers to revisit this issue at that time. Thus, this measure should be seen as another temporary measure to reinstate the estate tax for Hawaii purposes. Regardless, given that Hawaii went without an estate tax for nearly five years, one questions what the motive for the reinstatement of the law accomplishes other than a grab for additional general fund revenues. If nothing else, lawmakers should set the same parameters as the federal law for those dying after December 31, 2009 by adopting the $5 million exemption. With the federal exemption set at that level from now until 2013, keeping the state exemption at $3.5 million will create the disparity of having an estate taxed at the state level but not at the federal level. Further, because the Hawaii law does not recognize the newly established portability of the exemption that was

adopted at the federal level, spouses will be caught between the two laws.

While proponents declare that this proposal clarifies how the law is to be applied, they have not addressed some of the other changes in the federal law which create disparities between the two laws. Thus, while this proposal attempts to clarify how the state tax is to be applied in Hawaii, it is an incomplete reform of the hasty re-enactment of the estate tax law last year. Because of the changes enacted late in the year at the federal level, the clarification of the state law should have been debated long before the start of this session. Unfortunately, only those privy to the proposal were able to introduce their special interest into the measure as it does not address many of the other changes that should have been considered. With that in mind, consideration should be given to imposing a sunset provision of 2013 on this proposed change to force local lawmakers to review what Congress will do in 2012 in order to put the Hawaii law in synch with the federal law. Under this law, some estates may be taxable for state purposes but not for federal purposes in the next two years.

This measure also repeals the provision that allows taxpayers to claim a credit for taxes paid in any state, the District of Columbia, Puerto Rico, or any other territory or possession of the United States or foreign county. This provision was adopted to prevent taxpayers from being taxed twice on the same income. Inasmuch as that portion of income earned from sources outside Hawaii will be taxed by the local jurisdiction where that income is realized, this tax credit allows the taxpayer to pay only the maximum tax that would otherwise be due on that income. Should the income tax rate be higher in the other jurisdiction, Hawaii sees no part of the tax on that income. On the other hand, should the tax imposed on by the other jurisdiction be lower than what Hawaii imposes on that same income, the credit allows the taxpayer to take credit for that tax paid, but still pay the additional amount of tax due as a result of Hawaii imposing a higher rate. Should this provision be repealed, the taxpayer would end up paying the other jurisdiction's tax plus the Hawaii tax from dollar one, again, a double taxation of the same amount of income. Unfortunately the attorney general has not opined on this provision and as such the severability clause inserted in this draft of the measure is prudent.

This measure also proposes an excise tax on the providers of direct broadcast satellite service, such as Direct TV, Dish network, etc. While the tax would be based on a percentage of the amount of gross revenue derived from providing service in the state, depending on the percentage adopted, a rate set too high may be considered confiscatory and any attempt to extract too much from these providers will cause these providers to stop offering service to Hawaii. Based on testimony provided earlier, it appears that the playing field for video broadcaster providers is uneven in that where a provider relies on cables which require rights-of-way, multiple access fees are levied in addition to franchise taxes for being allowed to extend the cable network over various geographic areas.

For dish transmissions, no such lines, cables or rights of way are necessary as signals are transmitted via satellite. However, given it is the same type of service that is being provided, consideration should be given to rewriting the entire protocol of taxing video broadcasting for not only the here and now but into the future. This would probably require creating a new chapter of taxation and placing all such video transmission businesses under that law, and exempting those which are currently subject to other taxes and fees from those charges. Certainly, as technology evolves, this particular service will not conform to existing methods of taxation. In the interest of equity, consideration should be given to turning this task over to an interim committee for further work.

Digested 3/18/11