

# SB 2191

## **RELATING TO TAXATION**

*Description:*

Exempts certain sales of non-new motor vehicles currently registered in the State from the general excise tax. Requires an unspecified percentage of the sum of all general excise tax revenues from non-exempt motor vehicle sales to be deposited with the county where the motor vehicle sale occurred. Requires a county DMV to collect the general excise tax on vehicle sales. Requires the county DMV to provide the transferor's name and address to DOTAX.

**NEIL ABERCROMBIE**  
GOVERNOR

**BRIAN SCHATZ**  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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**FREDERICK D. PABLO**  
DIRECTOR OF TAXATION

**RANDOLF L. M. BALDEMOR**  
DEPUTY DIRECTOR

January 25, 2012

To: The Honorable Will Espero, Chair  
and Members of the Senate Committee on Public Safety, Government Operations, and  
Military Affairs

Date: Thursday, January 26, 2012  
Time: 2:50 p.m.  
Place: Conference Room 224, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. No. 2191 Relating to Taxation

The Department of Taxation (Department) opposes this measure.

The Department would first note that current law already mandates the payment of general excise taxes on the sales of motor vehicles within the State by anyone who is engaged in business. This measure does not turn an otherwise non-taxable sale into a taxable transaction. While this measure appears to be aimed at increasing compliance with the tax law, it is easily manipulated and bypassed by sellers, and substantially burdens the Department, the city and county departments of motor vehicles, the purchasers, and the sellers of these used vehicles without any corresponding benefit.

The measure provides that a seller who sells two or less vehicles per calendar year is a casual seller. Thus, a person who wants to get around this law need only enlist the help of a spouse, siblings, friends, or anyone else by getting that person to sell the next two cars, and then enlisting another, and so on down the line. By not selling more than two cars per year, no one would be engaged in a taxable transaction under this measure.

The measure also requires every seller of a motor vehicle who claims to be a casual seller to present a certificate obtained from the Department certifying that the transaction is exempt because it is a casual sale. However, the Department does not have the resources to determine if a seller is a casual seller. The Department has no way of verifying a claim that a seller sold no more than two vehicles in the calendar year, and in any event does not have the manpower to issue such certificates or to research the transactions at the motor vehicle departments.

The measure also appears to require each county motor vehicle department to collect the tax on the transfers of all vehicles, or to insure that a certificate from the Department, verifying that a

seller is a casual seller is obtained. This is because the county cannot issue a transfer of ownership unless the tax has been paid, or a certificate of exemption is presented. Unless the county actually collects the tax, it would not know if the tax has been paid, since general excise tax returns do not reflect the details of individual transactions subject to the tax.

The county must also send a notice of all transferors to the Department. Because the counties likely must collect the tax, while the general excise tax returns must be filed with the Department, the Department would expend considerable resources in cross-checking general excise tax returns to determine whether amounts claimed to have been paid to the county motor vehicle departments were in fact paid, and to otherwise reconcile the general excise tax returns and remittances. The tax forms, both paper and electronic, would have to be revised to reflect the need for additional information, and the Department's computer system would also have to be modified to accept such changes. The paper and electronic form changes would take the Department a minimum of six to twelve months to implement, assuming no other tax law changes were enacted during the same time period.

This measure would also require the buyer and the seller to appear before the Department when a certificate of exemption is obtained. It is not clear why the buyer of the vehicle would need to be present. The buyer would not generally know of any previous transactions made by the seller and in any event would likely support what the seller says since it would be in the buyer's interest in order to avoid the payment of the tax which otherwise might get charged.

Finally, the proposed amendments to Section 237-24.75(4)(A), Hawaii Revised Statutes may have the unintended consequence of wholly exempting from the general excise tax sales which may currently be subject to tax. For example, the measure exempts from the general excise tax all sales occurring through a licensed motor vehicle auction. A motor vehicle auction house may be subject to the general excise tax on the sales of vehicles, depending on the terms of the sales agreement with the owner of the vehicle. However, this measure would exempt all sales after the effective date from the general excise tax, regardless of whether the sale by the auction house might currently be subject to the tax.

Thank you for the opportunity to provide comments.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 24, 2012 1:00 PM  
**To:** PGM Testimony  
**Cc:** [REDACTED]  
**Subject:** Testimony for SB2191 on 1/26/2012 2:50:00 PM  
**Attachments:** S2191-12.pdf

Testimony for PGM 1/26/2012 2:50:00 PM SB2191

Conference room: 224  
Testifier position: Comments Only  
Testifier will be present: No  
Submitted by: Lowell Kalapa  
Organization: Tax Foundation of Hawaii  
E-mail: [REDACTED]  
Submitted on: 1/24/2012

Comments:

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** GENERAL EXCISE, Exempt sale of non-new motor vehicle; disposition of revenue

**BILL NUMBER:** SB 2191

**INTRODUCED BY:** Gabbard and 1 Democrat

**BRIEF SUMMARY:** Amends HRS section 237-24.75 by adding a new paragraph (4) to provide that amounts received by a transferor from the sale of a non-new motor vehicle currently registered in the state shall be exempt from the general excise tax; provided that the sale: (1) is not an open title transaction and more than 180 days have elapsed from the date of issuance of the certificate of ownership from the prior registered owner and the date of application for registration of the new registered owner; (2) involves a casual seller; or (3) occurs through a licensed motor vehicle auction.

Defines "casual seller" as a person that is not required to have a general excise tax license and who in any calendar year transfers fewer than three motor vehicles for consideration. Defines "non-new motor vehicle" as a motor vehicle that has at least one newer model year in operation or has been in regular use for the past 180 days and is currently registered to an individual owner. Defines "open title transaction" as the transfer of an ownership interest in a motor vehicle where the transferor is neither the registered owner nor the legal owner of the motor vehicle as shown on the certificate of title. "Transferor" means the person or entity who receives consideration for the transfer of ownership of a motor vehicle, regardless of whether the person or entity appears on the certificate of title for the motor vehicle as the registered or legal owner.

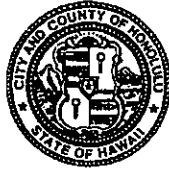
Amends HRS section 237-31 to provide that the sum from all general excise tax revenues realized by the state as a result of non-new motor vehicle sales, other than sales exempt from the tax pursuant to section 237-24.75(a)(4), shall be deposited as follows: (1) \_\_\_% to the credit of the department of taxation; (2) \_\_\_% to the county treasury of the county where the transaction occurs; and (3) any excess balance to the state treasury as a state realization.

Amends HRS section 286-52 to provide that as a condition of the transfer of title or interest of a legal owner of a motor vehicle, payment of the tax imposed by HRS section 237-13(2)(A) shall be required. The tax shall be levied on the greater of the amount of: (1) the consideration exchanged for ownership of the vehicle; (2) or the retail value of the motor vehicle as shown in the Kelley Blue Book or similar authority for valuation of motor vehicles. In lieu of payment of the tax imposed by HRS section 237-13(2)(A), an applicant for transfer of ownership of a motor vehicle may present a certificate from the department of taxation showing that the transaction is exempt pursuant to section HRS 237-24.75(a)(4). Requires the department of motor vehicles to maintain the certificate as part of the documentation of the registration. Also directs the department of motor vehicles to provide the transferor's name and address to the department of taxation for verification of general excise tax filings.

**EFFECTIVE DATE:** Upon approval

DEPARTMENT OF CUSTOMER SERVICES  
**CITY & COUNTY OF HONOLULU**  
DIVISION OF MOTOR VEHICLE, LICENSING AND PERMITS  
ADMINISTRATION  
P.O. BOX 30300  
HONOLULU, HAWAII 96820-0300

PETER B. CARLISLE  
MAYOR



GAIL Y. HARAGUCHI  
DIRECTOR

DENNIS A. KAMIMURA  
LICENSING ADMINISTRATOR

January 25, 2012

The Honorable Will Espero, Chair  
and Committee Members  
Committee on Public Safety, Government  
Operations and Military Affairs  
The Senate  
State of Hawaii  
State Capitol, Room 231  
Honolulu, Hawaii 96813

Dear Chair Espero and Committee Members:

Subject: S.B. No. 2191, Relating to Taxation

The City and County of Honolulu has operational concerns and therefore oppose S.B. No. 2191, which requires new procedures before the counties may process a motor vehicle transfer of ownership.

During Fiscal Year 2011, the City and County of Honolulu recorded approximately 172,000 motor vehicle transfers. This bill requires that the counties must determine and collect the sales tax as a condition of recording a transfer of ownership. Section 237-13(2)(A), HRS, relates to "(2) Tax on business of selling tangible personal property". With the exception of used car dealers sales where the seller is the registered owner or the used car dealer completing Section C on the certificate of title and banks that sell repossessed motor vehicles, there is no way that the motor vehicle office will be able to determine if Section 237-13(2)(A), HRS, would be applicable to the transfer being submitted.

In order for the motor vehicle offices to calculate the taxes to be collected based on the retail value of the vehicle, the City and County of Honolulu must program its computer system and purchase the appropriate software to calculate the taxes. The bill does not provide for funding of this up-front cost.

The Honorable Will Espero, Chair  
and Committee Members  
January 25, 2012  
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If the purchaser does not wish to pay the taxes as a condition of recording the transfer of the vehicle, the bill requires the purchaser to present a certificate issued by the State Department of Taxation indicating the payment of tax or exemption from taxation. Section 286-52(b), HRS, require that all transfers be recorded within 30 days of the date of sale or be charged a \$50 penalty. From the purchaser's perspective, assuming that the purchaser does not want to pay the tax on behalf of the seller, the purchaser must ensure that the seller obtains the certificate indicating payment of taxes or exemption within the 30-day period so as to avoid payment of the \$50 delinquent transfer penalty. The Bill provides that in order to obtain a "casual seller" exemption, both the seller and purchaser must appear at the same time at the Department of Taxation.

The City and County of Honolulu recommends that this bill be held.

Sincerely,



Dennis A. Kamimura  
Licensing Administrator

STAFF COMMENTS: It appears that this measure exempts from the general excise tax: (1) the sale of a used motor vehicle that has not been sold within six months; (2) is a casual sale; **or** (3) is sold through a licensed motor vehicle auction. As proposed, it would appear that a used motor vehicle sold by a used car dealership that has not been sold for 180 days and used motor vehicles sold at a motor vehicle auction would be exempt from general excise taxation. While under the current law, the sale of such motor vehicles is subject to the general excise tax, it would appear that the enactment of this measure would grant preferential treatment to these select type of motor vehicle sellers.

Under current law, a “casual sale” is defined as an “occasional or isolated” sale of tangible personal property or in other words the seller of the goods is not conducting a regular business of selling such tangible personal property. This proposal would add a definition of a “casual seller” that would seem to be in conflict with the existing definition of casual sale as it would allow a “casual seller” to be one who sells fewer than three motor vehicles in a calendar year. This would seem then to condone the seller of more than one motor vehicle to be exempt from the general excise tax yet appear to be in the business of regularly selling used motor vehicles. Further, because it extends an exemption solely because a car has not been sold or changed hands in the last six months or 180 days, car dealers who sell used motor vehicles could carefully time their sales of used vehicles to fall just outside the holding period of six months and escape the payment of the tax. Similarly, why should licensed vehicle auctions be exempt from paying the tax as it would appear that such auctions are an on-going business activity. It should be remembered that the general excise tax is imposed for the privilege of doing business in the state and, as such, licensed auctions should not be exempt from paying for the privilege of doing that business in this state.

The measure also proposes to divert general excise tax revenue derived from the sale of used motor vehicles, other than those exempted by this measure, from the general fund with \_\_\_\_% provided to the department of taxation, \_\_\_\_% to the county treasure where the transaction occurs, with any remaining balance to the general fund. If it is the intent of this measure to repay the department of taxation and the county in which the sale of such motor vehicle occurred for costs incurred to implement this measure, it should be noted that there is no similar disposition of those revenues realized when a new motor vehicle is sold by a dealer. Such earmarking of tax revenues represents an inefficient means of funding a program and obscures accountability for not only the program but the funds that have been earmarked for this particular activity.

Digested 1/24/12



TESTIMONY OF JOHN P. GILLMOR ON SB NO.2191

PUBLIC HEARING DATE: January 26, 2012

RELATING TO AN EXCISE TAX ON CERTAIN MOTOR VEHICLE SALES TRANSACTIONS

My testimony is given as attorney for the Hawaii Independent Automobile Dealers Association. I support the intent and purposes of the bill.

Hawaii Revised Statutes, Chapter 437 provides that a person who sells three or more motor vehicles in a year is a dealer who is required to obtain a license and comply with the regulations applicable to motor vehicle dealers. With the advent of the internet and programs such as "Craig's List" it has become much easier to circumvent the provisions of Hawaii Revised Statutes, Chapter 437. One of the provisions which has become easier to circumvent with the advent of Craig's List is the requirement that the dealer have a fixed place of business, as evidenced by a lease of commercial space for a period of not less than one year. The requirement of a fixed place of business was important for several reasons. For the consumer, it provided a place to go to see the vehicles and "kick the tires". Also, it provided a place to go to seek redress in the event of issues involving the transaction. With the advent of Craig's List, the unlicensed "dealer" can finesse the tire kicking stage by meeting over the internet, exchanging some pictures, and agreeing to meet at some point at the parking lot of Sports Authority for a test drive. The unlicensed "dealer" treats the sale as a private transaction, whether he is selling five or one hundred motor vehicles a year. The buyer simply registers the vehicle by presenting a certificate of title and pays no tax. Generally, the identity of the unlicensed dealer or "curbstoner" is not disclosed at the time of registration.

This act seeks to tax those unlicensed dealer transactions on a per vehicle basis. It may be argued that such legislation is unnecessary because the motor vehicle licensing authority has the power to investigate and punish those unlicensed persons who are selling more than three motor vehicles per year. Because of staffing limitations and the fact that these unlicensed "dealers" do not operate from any fixed location (and are therefore very difficult to police), this argument is somewhat illusory.

It is not the purpose of the bill to tax a genuine non dealer transaction or interfamily gifts of motor vehicles. Virtually every change of title transaction is (or should be) excluded from the proposed tax. The exceptions are "flipping" of title within a period of 180 days (that period comes from the time period in typical flooring of inventory arrangements between dealers and commercial banks) and open title transactions. The concept of open title transactions can be understood by analogy to bearer bonds. An open title transaction occurs when there is a transfer of ownership without registration of title. Typically, transfers through an auto auction, especially by disposals of "fleet" vehicles by banks and leasing companies, are open title transactions. Although such open title transactions are customary and useful at the auction and the dealer level, there is no "paper trail" of actual ownership until there is a registration at the DMV by a retail buyer. Accordingly, open title transactions are also a vehicle which gives anonymity to those who would evade the tax law and other laws. Open title transactions allow the unlicensed dealer to operate under the pretense that he or she is not really engaged in business.

Although there are almost as many motor vehicles as there are people in the state, the number of change of title transactions at the DMV is much smaller, about 45,000 per year. Of that number, it is estimated that there are from 37,000 to 40,000 licensed dealer transactions per year, which would leave 5,000 to 8,000 transactions, which are either exempt under casual sale, gift, transaction under \$1000 or other exemptions, or which are subject to tax. The estimated range of transactions subject to the proposed tax is 2000 to 3000 transactions per year (mostly on Oahu). At an average of \$8000 per vehicle, this amounts to tax revenue of \$700,000 to \$1,000,000 per year.

Clearly, the proposed bill is not a major revenue raiser. The basis for this bill is that the motor vehicle sales industry is one of the most highly regulated industries in the state. The reason for the high level of regulation is consumer protection. The growth of internet sales has allowed unlicensed dealers to gain a much larger market share through avoidance of the major costs of doing business -- rent, taxes, and insurance. Both licensed dealers and consumers are suffering the consequences. If the problem continues to grow, total tax revenue from licensed motor vehicle dealer will stagnate and decrease. The proposed bill will be a major step in exposing non licensed dealers to taxation and will raise more than enough revenue to justify the cost of administration.

Clearly, this bill calls for a change in the way the DMV does business. At present, all the DMV requires to transfer a motor vehicle title is the prior owner's certificate of title with signature(s) releasing title. Under the proposed tax, there will be a large number of dealer transactions which should be fairly easy to process as exempt transactions. The remaining transactions will require the registrant to fill out a detailed transaction form. The answers given on the form will clearly indicate whether the transaction is exempt. If the transaction is not exempt the amount of tax can be easily calculated. The state department of taxation should do the bulk of the work. We live in a world where change is inevitable. The proposed tax bill addresses a problem which is becoming more acute by reason of the way motor vehicles are now being sold. There is a legislative problem to be addressed. The solution outlined in the proposed bill encompasses the smallest amount of change for DMV that is possible while still maintaining the purposes of the bill.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 24, 2012 9:03 AM  
**To:** PGM Testimony  
**Cc:** [REDACTED]  
**Subject:** Testimony for SB2191 on 1/26/2012 2:50:00 PM

Testimony for PGM 1/26/2012 2:50:00 PM SB2191

Conference room: 224  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: James Pierce  
Organization: HIADA  
E-mail: [REDACTED]  
Submitted on: 1/24/2012

**Comments:**

I Support this SB2191, this is a wonderful means to create revenue for the State of Hawaii. Currently New and Used car dealers are pay a GE Tax on all vehicle transactions, this will not only generate revenue but may also stimulate economic growth by equalizing taxes on large casual sales.

James Pierce