SB 2977

RELATING TO TAXATION.

Creates an income tax credit for aviation fuel taxes paid by interisland airplane carriers to transport people and goods between the islands of this State using turbo propeller airplanes.

NEIL ABERCROMBIE
GOVERNOR

GLENN M. OKIMOTO
INTERIM DIRECTOR

Deputy Directors
JADE T BUTAY
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RANDY GRUNE
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IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 8, 2012

SB 2977
RELATING TO TAXATION

SENATE COMMITTEE ON TRANSPORTATION & INTERNATIONAL AFFAIRS

The Department of Transportation opposes this bill. The Federal Aviation Administration has informed the Department that the bill is discriminatory and thus a violation of the grant agreements between the federal government and the State of Hawaii.

Thank you for the opportunity to provide testimony.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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To: The Honorable J. Kalani English, Chair
and Members of the Senate Committee on Transportation and International Affairs

Date: Wednesday, February 8, 2012
Time: 1:15 p.m.
Place: Conference Room 224, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2977 Relating to Taxation

The Department of Taxation (Department) appreciates the intent of S.B. 2977 and provides the following comments for your information and consideration.

S.B. 2977 creates an income tax credit for aviation fuel taxes imposed and paid under Chapter 243, Hawaii Revised Statutes (HRS), by an interisland airplane carrier.

Chapter 243, HRS, imposes the fuel tax liability on registered distributors of fuel, not on end users, such as an interisland airplane carrier. If the measure intends to provide net income tax relief for interisland airplane carriers, the carriers would need to calculate the amount of fuel taxes paid to the distributor, for use by turbo propeller airplanes, in order to claim the credit.

Thank you for the opportunity to provide comments.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:
S.B. NO. 2977, RELATING TO TAXATION.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

DATE: Wednesday, February 8, 2012 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): David M. Louie, Attorney General, or
Hugh R. Jones, Deputy Attorney General

Chair English and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill. This bill proposes to amend chapter 235, Hawaii Revised Statutes (HRS), to create an aviation fuel tax credit, which is deductible from the taxpayer's income tax liability, for fuel taxes paid by interisland airplane carriers who use turbo propeller airplanes. The tax credit allowed shall be for the amount of tax imposed under chapter 243, HRS, on qualified aviation fuel and paid by an interisland airplane carrier during the taxable year.

There is a drafting problem with this bill as currently written in that chapter 243, HRS imposes a fuel tax on each gallon of aviation fuel that is sold or for use in airplanes; however, the imposition of the tax falls on distributors, not air carriers. See section 243-4, HRS. To remedy this problem, the proposed tax credit could be given to fuel distributors. Or, the bill could be amended to provide an income tax credit for any fuel tax that is visibly passed on to interisland air carriers.

The Department of the Attorney General has no opposition to this bill, and hopes that the Committee finds these comments helpful.

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: INCOME, Fuel tax credit for interisland airplane carriers

BILL NUMBER: SB 2977

INTRODUCED BY: Tsutsui, English and 7 Democrats

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim an aviation fuel tax credit that shall be deducted from the taxpayer's net income tax liability for the taxable year in which the credit is properly claimed. The tax credit allowed shall be the amount of the fuel taxes imposed under HRS chapter 243 on qualified aviation fuel and paid by an interisland airplane carrier during the taxable year provided that the credit shall not exceed $_____ in a taxable year. Defines "interisland airplane carrier" as a business, person, or entity that owns or operates one or more turbo propeller airplanes to transport or convey baggage, passengers, or goods between the islands of this state for a fee.

Credits in excess of a taxpayer's income tax liability shall be refunded, provided such amounts are over $1. All claims, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to properly claim the credit shall constitute a waiver of the right to claim the credit. The director of taxation shall prepare the necessary forms to claim a credit, may require the taxpayer to furnish information to ascertain the validity of the claim for the credit, and may adopt rules necessary to effectuate the purposes of this section pursuant to HRS chapter 91.

Defines "aviation fuel," "net income tax liability," "qualified aviation fuel" and "turbo propeller airplane" for purposes of the measure.

EFFECTIVE DATE: Tax years beginning after December 31, 2011

STAFF COMMENTS: The proposed measure would allow an interisland air carrier that operates at least one turbo propeller airplane in the state to claim an aviation fuel tax credit equal to the amount of the fuel taxes paid on qualified aviation fuel during a taxable year. As drafted, if an interisland carrier has one turboprop plane with the rest being jet powered, it would appear that all fuel taxes paid for all planes during a taxable year would be eligible for the proposed credit. The adoption of this credit would be preferential treatment to a select group of taxpayers at the expense of other interisland air taxpayers who are ineligible for the credit, and therefore its enactment cannot be justified.

It should be remembered that tax credits generally are designed to alleviate an undue burden on those who are unable to carry that burden, largely the poor and low income. The adoption of this measure would result in nothing more than a subsidy by the state to certain interisland air carriers and would not in any way address the taxpayer's need for tax relief. Public subsidies are best handled through the appropriation process which allows transparency and accountability. Taxpayers would then know how much in public dollars is being spent and who is the beneficiary of those public dollars. A tax credit accomplishes neither accountability nor transparency.

SB 2977 - Continued

It should also be noted that the fuel tax on aviation fuel accrues to the state's airport special fund while the proposed tax credit would be applied again the state's net income tax which is a receipt of the state general fund. Thus, all taxpayers would be subsidizing the state airport system as opposed to the users of the airport facilities.

Digested 2/7/12

HAWAIIAN AIRLINES.

TESTIMONY OF ANN BOTTICELLI ON BEHALF OF HAWAIIAN AIRLINES
S.B. 2960, RELATING TO AERONAUTICS; S.B. 2977, RELATING TO TAXATION; S.B. 2978, RELATING TO TAXATION; S.B. 2979 RELATING TO TRANSPORTATION
Wednesday, Feb. 8, 2012

Aloha, Chairman English, Vice Chairman Espero and members of the Senate Committee on Transportation and International Affairs,

Mahalo for the opportunity to provide testimony on four measures which seek to provide tax credits or waivers or reductions in landing fees and airport terminal rent to interisland carriers which operate turboprop engine aircraft. It appears that the measures aim to encourage reliable air transportation service to rural areas with small populations, a goal we fully support. It may be appropriate for the state Legislature to provide a subsidy to allow reliable air transportation to and from isolated areas with very small populations, such as Hana and Kalaupapa. However, we believe that any subsidies should be tied to the operation of specific routes, rather than to carriers with a certain type of aircraft.

We are concerned that the measures as written allow the proposed subsidies to be very broadly applied. As written, the bills allow any carrier with "one or more" turboprop aircraft to obtain tax credits or rent and landing fee waivers or reductions on their entire commercial fleet including non-turboprop aircraft flying routes other than the targeted rural markets. As you know, the state airport operations are funded entirely by the landing fees and rents paid by all of its user airlines. Therefore, if broad landing fee waivers are granted, as allowed in these measures, the costs of these waivers would shift to other airlines, creating a situation where one private business (and its customers) -- is subsidizing the activities of another business. In the case of tax credits, state taxpayers would be subsidizing these operations.

Again, encouraging more air transportation to rural and isolated communities is a laudable goal that we support. If the state Legislature determines that subsidies are required, they are best implemented by route, rather than by type of aircraft and in a manner that does not transfer the cost of the subsidy to other users of the state airport system.

Thank you for the opportunity to testify.

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