SB 2978

RELATING TO TAXATION.

Establishes a tax deduction for the amount of interisland airplane carrier landing fees and terminal facility lease rents paid in any county with a population of less than 500,000 persons.

NEIL ABERCROMBIE
GOVERNOR

GLENN M. OKIMOTO
INTERIM DIRECTOR

Deputy Directors
JADE T BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:

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

February 8, 2012

SB 2978
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

FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

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. 2978 Relating to Taxation

The Department of Taxation (Department) appreciates the intent of S.B. 2978, but notes that the proposed tax deduction is currently a deductible expense under state income tax law.

S.B. 2978 creates an income tax deduction for landing fees and terminal facility rents paid by an interisland airplane carrier.

Landing fees and terminal facility rents paid by interisland airplane carriers are ordinary business expenses deductible under Internal Revenue Code Section 162, and incorporated into Hawaii Income Tax Law by HRS § 235-2.4.

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. 2978, 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
Cynthia M. Johiro, Deputy Attorney General

Chair English and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill amends chapter 235, Hawaii Revised Statutes (HRS), to establish an income tax deduction in the amount of interisland airplane carrier landing fees and terminal facility lease rents paid in any county with a population of less than 500,000 persons.

If the bill is passed by the Legislature and signed into law, it would be presumed to be constitutional. In Pray v. Judicial Selection Commission, 75 Hawai'i 333, 861 P.2d 723 (1993), the Supreme Court of the State of Hawaii stated "we have long held that: (1) legislative enactments are 'presumptively constitutional;' (2) 'a party challenging [a statutory scheme] has the burden of showing unconstitutionality beyond a reasonable doubt;' and (3) the constitutional defect must be 'clear, manifest [,] and unmistakable.'"

Although this bill could be subject to legal challenges if adopted, we believe there is a good probability that the court would sustain the validity of its proposed tax deduction, because it is available to resident and nonresident Hawaii taxpayers alike. Both instate and out of state interisland air carriers paying landing fees and terminal facility lease rents could claim the deduction irrespective of the operators or carriers' place of domicile. In this regard, this bill creates similar tax incentives for economic activity that takes place within Hawaii under existing income tax credits. For example, the renewable energy technologies tax credit—section 235-12.5, HRS, and the digital media, motion picture production and film production income tax credit, section 235-17, HRS, provide tax incentives for Hawaii-based economic activity. Both of these existing tax credits reward resident or nonresident taxpayers who either install and place in service in Hawaii a renewable energy technology system or who incur qualified motion picture or film production costs within Hawaii.

Like the existing tax credits discussed above, the proposed legislation does not facially discriminate in favor of resident Hawaii taxpayers or manufacturers. The proposed deduction can be claimed by resident and non-resident taxpayers alike, provided that the other requirements of the bill are satisfied.

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, Deduction for interisland landing fees and terminal facility lease rents

BILL NUMBER: SB 2978

INTRODUCED BY: Tsutsui and 9 Democrats

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim a deduction from gross income the amount of interisland airplane carrier landing fees and terminal facility lease rents paid by a taxpayer in any county with a population of less than 500,000 persons; provided that the deduction shall not exceed $_____ per taxable year.

Directs the director of taxation to prepare the necessary forms to claim the deduction, may require proof of the claim for the deduction, and may adopt rules pursuant to HRS chapter 91 necessary to effectuate this section.

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. Also defines "turbo propeller airplane" for purposes of the measure.

EFFECTIVE DATE: Tax years beginning after December 31, 2011

STAFF COMMENTS: This measure would allow an interisland turboprop airplane carrier to claim a tax deduction for the amount paid for landing fees and terminal facility lease rents in the counties of Hawaii, Maui and Kauai. While this measure would grant preferential tax treatment to a very select group of taxpayers, it would also do so without the taxpayer's need for tax relief.

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. An example is the 4% general excise tax food credit for purchases made by the poor. Inasmuch as there is absolutely no relationship between the landing fees and terminal facility lease rents, there is little justification for granting this tax preference.

It should be remembered that the airport system is statewide, that is unlike jurisdictions on the mainland where such airport facilities are generally constructed and operated by the local or municipal government. As such, Hawaii's statewide system allows the subsidy of those facilities where there are fewer landings. As a result, carriers landing in Honolulu are technically subsidizing the Neighbor Island airport facilities as the bulk of the landings occur at Honolulu Airport. Further, there are some airports that can only accommodate propeller drive airplanes. If this measure was adopted, those carriers landing at - for example, Kaanapali Airport - pay very little as they would be able to deduct their landing and facility fees.

Readers should also note that this is a deduction against the net income tax. Therefore, it is a cost to general fund tax collections for fees that are paid to the airport special fund. Thus, all general fund taxpayers would be subsidizing the state airport fund.

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.

Honolulu International Airport P.O. Box 30008 Honolulu, Hawaii 96820-0008 Phone (808) 835-3700 HawaiianAirlines.com