

NEIL ABERCROMBIE
GOVERNOR

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LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

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To: The Honorable Angus L. K. McKelvey, Chair
and Members of the House Committee on Consumer Protection and Commerce

Date: Wednesday, February 5, 2014
Time: 2:10 P.M.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 2483 Relating to Liquor Tax Law

The Department of Taxation (Department) provides the following comments regarding H.B. 2483 for your consideration.

H.B. 2483 applies a reduced liquor tax rate upon all beer brewed by small breweries, all liquor produced by small manufacturers, and all wine produced by small wineries; and defines small breweries, manufacturers, and wineries. The bill would take effect July 1, 2014 and would apply to taxable years beginning after December 31, 2014.

The Department notes that, while there is nothing on the face of this change in liquor tax law that would indicate that the changes would interfere with interstate commerce, some of Hawaii's prior attempts to assist its liquor industry with tax incentives have been ill-fated due to *de facto* discrimination against interstate commerce, even when the statute was facially neutral. See Bacchus Imports Ltd. v. Dias, 468 U.S. 263 (1984). The Department defers to the Department of the Attorney General for a determination of any potential constitutional problems with S.B. 3041.

The Department additionally notes that liquor taxes in Hawaii are paid on a monthly basis without the requirement on an annual reconciliation. Thus, the Department suggests Section 5 of this measure be amended to read:

SECTION 5. This Act shall take effect on July 1, 2014, and apply to taxable [~~years~~] periods beginning after December 31, 2014.

Thank you for the opportunity to provide comments.

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: LIQUOR, Small breweries and brewpubs

BILL NUMBER: SB 3041; HB 2483 (Identical)

INTRODUCED BY: SB by Baker and 4 Democrats; HB by McKelvey

BRIEF SUMMARY: Amends HRS section 244D-4 to provide that effective January 1, 2015: (1) draft beer and beer produced by a small brewery or brewpub shall be taxed at 23 cents per wine gallon; (2) still wine and sparkling wine produced by a small winery shall be taxed at 59 cents per wine gallon; and (3) distilled spirits produced by a small manufacturer shall be taxed at \$2.57 per wine gallon.

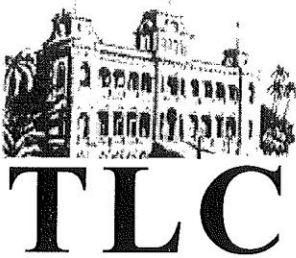
Amends HRS section 244D-1 to define “barrel” as a barrel containing not more than thirty-one gallons or wine gallons of liquor. Defines “small brewery or brewpub” as a brewery or brewpub that brews or produces not more than sixty thousand barrels of beer per taxable year; “small manufacturer” as a distillery that produces not more than _____ gallons of distilled spirits per taxable year; and “small brewery or brewpub” as a brewery or brewpub that brews or produces not more than two million barrels of beer per taxable year.

EFFECTIVE DATE: July 1, 2014; applicable to tax years beginning after December 31, 2014

STAFF COMMENTS: Currently, beer is subject to a state tax of \$0.93 cents per wine gallon while draft beer is subject to a tax of \$0.54, still wine is taxed at \$1.38 per wine gallon; sparkling wine is taxed at \$2.12 per win gallon and distilled spirits are taxed at \$5.98 per wine gallon.

While the proposed measure would establish a reduced liquor tax rate for draft beer, beer, still wine, sparkling wine, and distilled spirits produced by a small brewery or brewpub, it is questionable whether the preferential rates proposed in this measure for will be construed as discriminatory as they would favor “locally brewers and brewpubs” as compared to products that are imported. If nothing else, lawmakers should secure a legal opinion as to the constitutionality of conferring a preferential rate for brewers and brewpubs located “in the state.”

Digested 2/3/14



THE LEGISLATIVE CENTER

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February 5, 2014

Testimony To: House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, Legislative Liaison
Anheuser Busch Companies LLC

Subject: H.B. 2483 - RELATING TO LIQUOR TAX LAW

Chair McKelvey and Members of the Committee:

I am Tim Lyons, Legislative Liaison for Anheuser Busch Companies and we oppose this bill.

This Committee is not foreign to the overall subject of alcohol taxes and you probably remember that every time the subject comes up we feel compelled to point out that we are extraordinarily high compared to all the other states. In fact, as of January 1, 2014 the beer tax rate for Hawaii is the second highest in the nation. We are at \$.93 cents per wine gallon. The low (our hero) is Wyoming at \$.02 and the median for all states is \$.20 cents. Between the federal and state government, you already make more off the

sale of a can of beer than we do! So the subject then of this bill, which is to reduce the "tax load" on alcohol products, is an appropriate one.

The problem with this bill is that it "hand picks" certain types of producers and affords them a tax reduction that far exceeds any sense of reasonableness. To be sure, the taxes are high but we all need relief, not just certain sectors and we feel that when you provide only certain sectors with that relief, it is not only discriminatory in nature, but it also makes it extremely difficult to compete in what is, without argument, a very competitive industry. Not only does beer compete with beer...but beer also competes with wine and distilled spirits. Changing the tax rate for any of those products tends to upset the "apple cart".

As noted, the current rate for beer is \$.93 per wine gallon. The proposed new rate for brew pubs would be \$.23 per wine gallon. We are not sure that we understand the logic for a 70% reduction. We already know that alcohol is taxed fairly heavily on the federal side, as well as the state side. The feds provide a lower tax rate for brew pubs at 50% of the current rate so our competition is already enjoying a 50% tax break from the federal government and under this bill, it would also get a 70% tax break from state government. We submit that this is unfair and, therefore, we would highly recommend to this Committee that you not establish such a discriminatory rate.

Thank you.



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House COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Wednesday, February 5, 2014 at 2:10 pm

Testimony in Opposition to H.B. 2483 Relating to Liquor Tax Law

Dear Chair McKelvey and Members of the Committee on Commerce and Consumer Protection:

Wine Institute ("WI") is a public policy association representing 816 California wineries of all sizes. WI **opposes** H.B. 2483, which establishes a preferential tax rate based on the size of a winery. In the wine industry, size does not equate to profitability. The bill proposes to give a tax advantage to small (not yet defined) wineries, resulting in an opportunity for the price of the products of these small wineries to be reduced at retail. This gives an unwarranted market advantage to small wineries.

Small wineries already enjoy a Federal tax advantage. Wineries producing up to 250,000 wine gallons per year are eligible for a tiered tax credit on their Federal excise taxes for the first 100,000 gallons removed by the winery. The proposed State tax advantage would compound the existing Federal tax advantage.

This bill proposes to lower the excise tax rate on still wine for the "small" winery from \$1.38 per gallon to \$0.59 per gallon, and lower the excise tax rate on sparkling wine from \$2.12 per gallon to \$0.59 per gallon. These are significant tax reductions, which would likely affect the price of wine in the marketplace. Since excise taxes are levied at the producer level, they are marked up by the distributors and retailers as the wines move through the three-tier system. Excise taxes, therefore, usually double by the time they reach the consumer. Since consumers are very price sensitive, especially in the competitively priced ranges below \$15 per bottle, these reductions would have a discriminatory effect where gallonage taxes are most impactful.

In addition, the intended outcome of these tax reductions is not clear. The wine industry has many small wineries with well-established businesses that have no desire to grow into larger wineries. In the wine industry, a small winery is not necessarily a struggling, start-up. Many boutique wineries produce a limited quantity of high quality wine, which helps keep market demand for their wine high and prices up. In fact the vast majority of the highest priced wines in the world, produced by the most successful wineries, would ironically be the beneficiaries of the tax decrease being proposed.

Over 90% of the wineries in the United States produce less than 50,000 cases of wine. Depending on the gallonage limit defining a small winery, these tax reductions could have a significant negative impact on State revenue.

Furthermore, taxing smaller wineries at a lower tax rate may lead to continued requests for the gallonage limits to be raised as "small" wineries, which want the continued tax advantage, grow larger.

For these reasons, we respectfully urge the Committee to hold this measure.

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I am often asked why my beers sell for the same price, and in some instances cheaper, on the west coast than in Hawaii, as exported beer should be more expensive. Sadly, the State taxation in Hawaii is so high that we can ship our beer AND pay taxes to the Western States for less than just the tax in Hawaii. For example, CA is approx \$.45 per case versus Hawaii at \$2.09 per case.

This disincentive to local sales has encouraged an outward migration of jobs, taxes, and manufacturing. We want to be encouraged to sell and brew our products in Hawaii, and the support of our government officials with a decrease in tax for in-state produced product is the only way. We are not asking to pay the lowest tax, but a tax competitive to other States. It is time to create a small brewers tax provision that will allow us to bring back and create more jobs through growth. We believe in a strong Hawaii, this starts with small businesses which are the backbone of any strong community.

Maui Brewing Co. currently employs 62 employees in the State. These employees live in Hawaii, raise their children here, pay taxes, and contribute to the community. Forty-one employees are full-time employees with family-level wages, insurance benefits including health (medical, drug, dental, vision and preventative care), life insurance, and 401(k). We currently match contributions to 401(k), and we have implemented a profit sharing plan as we believe in employee appreciation; we simply would not be where we are without our staff.

We need to create a Small Brewers classification in order to support the growing craft beverage industry in Hawaii. In speaking with others in our local industry, we collectively agree that the small brewers tax provision we are seeking would be utilized by us all to invest in new equipment and people in order to continue growing our companies locally. This would serve to bring local jobs to market and help get workers looking for jobs off unemployment and government assistance. Our growth would allow us to actually pay more in taxes as a result of increasing sales.

The Craft Brewing industry has proven a direct correlation of lower taxation and an increase in jobs and economic activity. Take note of the many States, CA, CO, WA, OR, AK that have thriving craft beverage industry, even Federally a bill is in progress to support a Small Brewers Tax Provision and stimulate the industry. You can look at the brewing industry by State relative to the tax rates charged and will see the direct positive impact. Growth of our industry in Hawaii means more jobs and more diversification in job opportunities. SB 3041 provides a way to immediately support the industry.

I'd like to point out that American Craft Brewers collectively employ approximately 108,000 people and represent only 6.5% of beer sold in the country. By comparison, large brewers produce far more beer with far less people. For example, AB Inbev (bud) has approximately 14,000 employees in the US and accounts for over 49% of the beer sold in America. This illustrates the important power of this legislation in supporting the growth of small brewers and in turn job creation.

Lastly, the opposition would have you believe that there is a "50% tax break from the federal government", this is an outright lie. We are a small producer in the eyes of the Fed. ALL breweries pay \$7 per barrel of beer on "the first 60,000 barrels". AB InBev enjoys the same structure. SB 3041 does not create any further competitive advantage or "discriminatory rate".

The small brewers tax provision proposed under HB2483 helps put Hawaii on a solid foundation and on track to a healthy and prosperous future. I respectfully request your support of HB2483 in the creation of a Small Brewers Tax provision to decrease the tax to .23 cents per gallon for brewers 60,000 barrels and under.

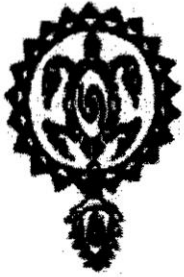
Thank you for your time, please feel free to call me with any questions.

Mahalo,



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LATE

MAUI BREWING CO.

LATE

February 5, 2014

State of Hawaii
Committee on Consumer Protection & Commerce
Rep. Angus L.K. McKelvey, Chair
Rep. Derek S.K. Kawakami, Vice Chair

Re: Testimony in Strong Support of HB2483

Aloha Ladies and Gentlemen of the Committee:

I am writing to you in strong support of HB2483. This bill will serve to support and promote the burgeoning Craft Brewing industry in Hawaii, currently there are 10 operational breweries with 8 more "breweries in planning". These business will create jobs and promote Hawaii.

I support this measure as it allows for the creation of a Small Brewers Tax provision which exists currently under federal law. The truly "Local" brewers, brewers that brew 100% of our product in Hawaii with local labor, myself at Maui Brewing Co. and our bretheren at Hawaii Nui Brewing Co. in Hilo, Kauai Island Brewing and Kauai Beer Company on Kauai, and Big Island Brewhaus on Hawaii stand united on this cause. The passage of this provision will allow for job creation, reinvestment in our communities, and allow us to be competitive with large breweries from the mainland where costs of production can be almost half as much. We have also spoken with local small wineries and distilleries and are all in agreement.

Collectively, Hawaii's local brewers account for less than 2% of beer sold in Hawaii, approximately 20,000 barrels versus the 1,000,000 barrels imported into the State. The tax provision as proposed results in a very small, almost insignificant decrease in the amount collected by State taxes. We need to view this as an investment in job creation and supporting Hawaii manufacturing. At the same time, the resulting increases in production volume and removing burden from unemployment will result in a net gain to the State.

In 2005 when I started Maui Brewing Co. I did so with the vision of producing the highest quality ales and lagers available in the State, and doing so with a strong commitment to always brewing in Hawaii. At that time most so-called "Hawaiian" beers were being brewed in the mainland and shipped to Hawaii; it was my goal to bring truth and authenticity to Hawaiian Beer. We have stayed true to our vision and have brought attention to craft beer in Hawaii for the first time in history. We have won more awards at all levels of competition for our beers than any other brewery in the State. We are proud that in the craft brewing community around the world the name "Maui Brewing Co." is synonymous with world-class beer of a truly local Hawaiian origin. It has become increasingly difficult to grow and remain competitive with the extremely high cost of production in Hawaii relative to our mainland counterparts, this compiled with the highest taxes in the Nation result in a disincentive to manufacturing in the State and a complete lack of competitive capability. One look at the store shelves will show you that our true Hawaiian beers are the most expensive beers on the shelf. Unfortunately this keeps them out of the reach of the average hawaiian family. This is a sad state of affairs.

Maui Brewing Co. is Hawaii's largest craft brewery, we are also the only brewery canning our beer in the State. We purchase our cans from a local Ball Corporation plant in Kapolei further supporting local labor. We hope to see other new local breweries canning here soon. Bottles are not made in Hawaii and we, as do many others, believe the can is better for beer. One reason for our growth is we have begun to sell our beer in the mainland and international markets. Additionally our cardboard tray manufacturer has announced plans to break ground (April 29th) in Kapolei on a new facility in Hawaii to bring local cardboard manufacturing back. This is directly related to the growth of industry in Hawaii, more beer brewed here means more jobs for the economy.

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