



**Hawaii Chapter**

**2013 Executive Committee**

**Lee Lewis**  
Lewis Electric, LLC  
Chairman

**Jeffery Durham**  
C C Engineering & Construction, Inc.  
Chairman Elect

**Malcolm Barcarse Jr.**  
A & B Electric Co., Inc.  
Past Chairman

**Ross Kawano**  
ECA, LLP  
Secretary

**Chris Lee**  
ECA, LLP  
Treasurer

**2013 Board of Directors**

**Darren Wada**  
Quality Design / Build, Inc.

**David Tsuda**  
First Hawaiian Bank

**Paul Vierling**  
Hawaii Geophysical Services

**Lance Kakimoto**  
Morgan Stanley Smith Barney

**Doug Sangillo**  
Helix Electric, Inc.

**Steve Nelson**  
Jacobsen Construction Company

**Douglas Luiz**  
Diversified Plumbing & Air Conditioning

**Steve Jorgenson**  
Arita / Poulsen General Contracting, LLC

**2013 ABC Staff**

**Jonathan Young**  
President

**Renee Rosehill**  
Operations Manager

**Francis Ilan**  
Education Director

**Zenaida "Zee" Antonio**  
Administrative Clerk / Events

# LATE TESTIMONY

February 14, 2013

Committee on Finance  
Rep. Sylvia Luke, Chair  
Rep. Scott Y. Nishimoto, Vice Chair  
Rep. Aaron Ling Johanson, Vice Chair

## Associated Builders and Contractors, Hawaii Chapter Testimony in Opposition to HB 506

Chair Luke, Vice Chairs Nishimoto and Johanson, and members of the committee. My name is Malcolm Barcarse, Jr. I am the legislative committee chair for Associated Builders and Contractors, Hawaii Chapter. We are an organization of 165 members serving the merit shop construction industry through apprenticeship programs and other services. We also serve as the voice of the approximately 4500 merit shop construction companies in Hawaii.

While the preamble of this bill seems to suggest that this bill is a remedy for the problems with the contracts for school bus services we are concerned that the consequences of this bill will have far reaching effects that will harm all businesses that do business with State government in particular the construction industry.

The General Excise Tax while not a straight sales tax but a tax on a business transaction, functions like a sales tax insofar as sellers are allowed to pass this tax on to the customer who is the recipient of the goods and/or services provided by the seller. It is the common practice in the marketplace for customers of all varieties including the State of Hawaii in government contracting to pay the appropriate General Excise Tax on the contract.

If this bill passes, the State will be in effect taxing contractors for doing business with the State. This would be quite detrimental to the construction industry as it is still recovering for the last recession. Furthermore it would be detrimental to the State as this may cause a decrease in the amount of bidders on State projects which in turn will raise the price of public works projects. Therefore we ask the committee to look at the full consequences of this bill and ask that it be HELD.

Thank you for the opportunity to testify.

**America's Best Contractors**

NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TAXATION  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1530  
FAX NO: (808) 587-1584

FREDERICK D. PABLO  
DIRECTOR OF TAXATION

JOSHUA WISCH  
DEPUTY DIRECTOR

## LATE TESTIMONY

To: The Honorable Sylvia Luke, Chair  
and Members of the House Committee on Finance

Date: Thursday, February 14, 2013  
Time: 3:30 p.m.  
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: H.B. 506 Relating to the General Excise Tax

The Department of Taxation (Department) appreciates the intent of H.B. 506, but has serious concerns because it is contrary to long standing tax policy and is not enforceable.

H.B. 506 amends the general excise tax law by prohibiting the State from paying or reimbursing contractors for the general excise tax, and is effective upon approval.

The Department's position with regard to sales to an unlicensed person is that the vendor must pay the general excise tax at the full retail rate. This policy was adopted by the administration at the time that the general excise tax was first enacted in 1935, and is simply what the law states. Thus, a vendor making sales of goods or services to the federal government, state agencies, county agencies, and other unlicensed persons is required to pay the general excise tax at the full retail rate. This determination was upheld both by the Hawaii Supreme Court and the Ninth Circuit Court of Appeals. See e.g. Brodhead v. Borthwick, 174 F.2d 21 (9<sup>th</sup> Cir. 1949). To change the rules at this time would only upset the entire basis on which the general excise tax has been imposed on sales to unlicensed persons and invite other taxpayers to seek to avoid the imposition of the tax.

In addition, the Department notes that the measure would be virtually impossible to police. A taxpayer wanting to charge the tax would only need to increase the costs of other items in the contract price without stating that the costs include amounts for the general excise tax. The Department would be embroiled in constant litigation over whether or not the general excise tax was being passed on.

Thank you for the opportunity to provide comments.