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SUBJECT: GENERAL EXCISE, Exempt amounts received by submanager and suboperators

BILL NUMBER: SB 1360, SD-1

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Amends Act 239, SLH 2007, as amended by Act 196, SLH 2009, as amended by Act 91, SLH 2010, to make the exemption permanent.

Also amends Act 197, SLH 2009, to repeal the provision limiting the aggregate amount of tax exempted under this exemption to \$400,000 per calendar year applicable to tax years beginning after December 31, 2012.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: Act 239, SLH 2007, provided that amounts received by a submanager of an association of apartment owners of a condominium property regime or nonprofit homeowners or community association as reimbursement for payment of common expenses shall not be subject to general excise taxation. Act 239 also provided that the general excise tax shall not be applicable to amounts received by a timeshare association and by the suboperator of a hotel from a timeshare association or from the operator of the hotel which are disbursed for employee wages, salaries, payroll taxes, insurance premiums and benefits. While Act 239, SLH 2007, was scheduled to sunset on 12/31/09, Act 196, SLH 2009, extended this exemption until 12/31/10. Act 191, SLH 2010, extended the sunset date of the exemption to 12/31/14 and clarified that the aggregate amount of the tax exempted shall not exceed \$400,000. This measure would make this exemption permanent and repeal the \$400,000 limitation.

Note well that any amounts paid as remuneration to the person or persons undertaking the maintenance or common area expenses are still subject to the general excise tax. The exemption that this bill proposes to make permanent recognizes that imposing the tax on such reimbursed costs merely increases the cost of the shelter being maintained. Given that the exemption has been in place for more than five years, making the exemption permanent will lend certainty to the tax treatment of this particular provision.

It should be remembered that amounts reimbursed where there is no additional fee or emolument accruing to the person who handles the reimbursement would already be exempt under HRS Section 237-20. However, because the manager or submanager of the association or time share probably receives some sort of compensation for handling the reimbursed amounts, the entire transaction is tainted, necessitating a specific exemption such as this.

Digested 3/12/13

March 14, 2013

The Honorable Sylvia Luke, Chair

House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: S.B. 1360, S.D. 1, Relating to General Excise Tax

HEARING: Thursday, March 14, 2013, at 2:00 p.m.

Aloha Chair Luke, Vice Chair Nishimoto, Vice-Chair Johanson, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,000 members. HAR **supports** S.B. 1360, S.D.1, to the extent that it makes permanent the reference to HRS Chapter 514A in HRS Section 237-24.3(3)(A) as amended in Section 1 of Act 239, Session Laws of Hawai'i ("SLH") 2007, as amended by Act 196, SLH 2009, and Act 91, SLH 2010.

Section 1 of Act 239, SLH 2007, amends HRS 237-24.3 by extending the General Excise Tax ("GET") exemption for amounts received by certain Associations of Apartment Owners ("AOAOs") in reimbursement for common expenses to submanagers. Act 239 took effect on January 1, 2008, and was scheduled to be repealed on December 31, 2009. Act 196, SLH 2009, extended the repeal date to December 31, 2010, and Act 91, SLH 2010, further extended the repeal date to December 31, 2014.

Section 1 of Act 239 also includes a housekeeping amendment which was intended to clarify that amounts received by AOAOs of condominium property regimes established under HRS Chapter 514A as well as under HRS Chapter 514B are exempt from the GET. HRS Chapter 514A applies to condominium property regimes established prior to July 1, 2006, and HRS Chapter 514B applies to condominiums established after July 1, 2006.

HAR supports S.B. 1360, S.D.1, to the extent that it permanently retains the GET exemption for amounts received by AOAOs established under both HRS Chapter 514A and HRS Chapter 514B.

For this reason, we respectfully request that the Committee pass this measure.

Mahalo for the opportunity to testify.

SB1360

Submitted on: 3/12/2013

Testimony for FIN on Mar 14, 2013 14:00PM in Conference Room 308

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|-----------------------------|---------------------------|---------------------------|
| Bruce Howe | Hawaiiana Management Co Ltd | Support | No |

Comments: We strongly support making permanent the exemption of maintenance fees for common interest community associations; and for locally managed timeshare and condotel management companies since it allows local companies to compete on a more level playing field with larger off shore management companies.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**Testimony
Hawaii Community Associations Institute (CAI)**

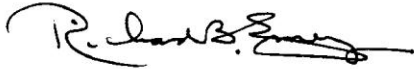
**SB1360
IN SUPPORT**

I am Richard Emery a 20-year condominium association leader and member of the local Legislative Action Committee.

For about 5 years, associations have been exempt from paying general excise tax on fees paid to the association by its homeowners. These fees typically covers common expenses, or the basics of living in an association to include insurance, utilities, wages & benefits, other expenses to the common benefit of all homeowners. Of course, these providers to the association pay general excise tax or other taxes as required by current law on its billing to the association.

The current general excise tax exemption for condominium owners will sunset and should be made permanent. As a comparison, a single family homeowner would pay its electricity bill including taxes. In a condominium, the electricity bill is shared and paid by all of the homeowners, like a Hui. To impose a general excise tax on their payment of a shared association obligation would result in unfair treatment and additional costs to homeowners who live in condominiums as they would be taxed twice.

Hawaii Community Associations Institute strongly supports SB 1360 and urges that the long existing exemption be made permanent. Thank you for the opportunity to testify.



Richard Emery
March 12, 2013



March 13, 2013

TO: HOUSE COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Scott Nishimoto, Vice Chair
Representative Aaron Ling Johanson, Vice Chair

FROM: Daniel Dinell ARDA–Hawaii, Chair
RE: SB 1360 SD1, Relating to General Excise Tax
Position: Support

Dear Chair Luke, Vice Chairs Nishimoto, Johanson, and members of the Committee:

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association supports S.B. 1360 SD1 making permanent certain exemptions from General Excise Tax for common expenses of hotel operators and timeshare projects.

We support elimination of the aggregate cap in order to ensure that suboperators receive the same tax treatment as operators and levels the playing field and simplifies the administration of the GET for the State. Further, we welcome the certainty that making this measure has to our industry by making the changes permanent.

Thank you for this opportunity to provide testimony.

“Timeshare With Aloha”

**Testimony of
Gary M. Slovin/Mihoko Ito
on behalf of
Wyndham Vacation Ownership**

DATE: March 13, 2013

TO: Representative Sylvia Luke
Chair, Committee on Finance
FINtestimony@capitol.hawaii.gov

RE: **S.B. 1360 S.D.1– Relating to General Excise Tax
Hearing Date: Thursday, March 14, 2013 at 2:00 p.m.
Conference Room 308**

Dear Chair Luke and Members of the Committee on Finance:

We present this testimony on behalf of Wyndham Vacation Ownership.

Wyndham Vacation Ownership offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham has a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham brands.

Wyndham **supports** S.B. 1360 S.D. 1 which makes permanent the general excise tax exemptions for condominium common expenses paid by managers, submanagers, and suboperators and for hotel employee expenses paid by hotel operators and timeshare projects.

These amounts are presently exempted from GET, as a result of a law first enacted by Act 239, SLH 2007, extended in Act 196, SLH 2009, and further extended in Act 91, SLH 2010. This exemption applies to certain sums that are transferred from the owner of the properties to the operator of the properties. Included in these sums are amounts paid that reflect what is owed to employees in the way of salary and benefits. The loss of the exemption from tax on these amounts would either take away from the amounts available to be paid to employees both in salary and benefits and, in most cases, actually result in the owner paying sums directly to employees and other persons to whom these sums are due rather than having those sums paid by the operator here in Hawaii. It is to

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everyone's benefit that those sums be paid by the local operator to the local employees and local vendors.

We support making this measure permanent because it will level the playing field with regard to similarly situated entities for the payment of monies to a hotel operator for employee wages and benefits. We also support the amendment of the Senate Committee on Ways and Means to eliminate the aggregate cap on the exemption. Finally, we respectfully request that this measure be effective upon approval.

Thank you very much for the opportunity to submit testimony.