

TAXBILLSERVICE

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Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: SB 1360; HB 334 (Similar)

INTRODUCED BY: SB by Galuteria; HB by Brower, 3 Democrats and 1 Republican

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.

EFFECTIVE DATE: SB - Upon approval; HB - July 1, 2013

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 \$40,000. This measure would make this exemption permanent.

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.

Digested 2/1/13

February 22, 2013

The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

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

DECISION MAKING: Friday, February 22, 2013 at 9:00 a.m.

Aloha Chair Ige, Vice Chair Kidani, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, offering comments 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 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 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 offer comments.

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

DATE: February 20, 2013

TO: Senator David Ige
Chair, Senate Committee on Ways & Means
WAMtestimony@capitol.hawaii.gov

RE: **S.B. 1360 – Relating to General Excise Tax**
Hearing Date: Friday, February 22, 2013 at 9:00 a.m.
Conference Room 211

Dear Chair Ige and Members of the Committee on Ways & Means:

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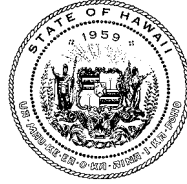
everyone's benefit that those sums be paid by the local operator to the local employees and local vendors.

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.

Thank you very much for the opportunity to submit comments.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



LATE

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To: The Honorable David Y. Ige, Chair
and Members of the Senate Committee on Ways and Means

Date: Friday, February 22, 2013
Time: 9:00 a.m.
Place: Conference Room 211, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 1360 Relating to General Excise Tax

The Department of Taxation (Department) appreciates the intent of S.B. 1360 and offers the following information and comments for your consideration.

S.B. 1360 would make permanent the changes enacted under Act 239, Session Laws of Hawaii 2007. Act 239 provides the following:

- Allows submanagers the same General Excise Tax (GET) exemption allowed to managers or boards of directors of associations of apartment owners (AOAOs) or homeowners associations for amounts received in reimbursement of sums paid for common expenses under HRS § 237-24.3(3).
- Allows timeshare associations and suboperators of hotels the same General Excise Tax exemption allowed to hotel operators for amounts received which are disbursed for employee wages, salaries, payroll taxes, insurance premiums and benefits under HRS § 237-24.7(1).

In both instances, Act 239 extends a GET exemption to transactions that are similar to those already exempted. A submanager of an AOAO is in a similar situation to a manager of an AOAO when it receives amounts which are in reimbursement for sums paid for common expenses such as common area maintenance of a condominium building. Likewise timeshare associations and hotel suboperators are in a similar situation to hotel operators when they receive amounts which are disbursed for employee wages.

Both amendments under Act 239 are intended to allow for consistent and uniform application of tax law for taxpayers in similar situations. Adoption of this measure will aid

administration of the tax law.

The Department notes that Part II, Section 6 of Act 196, Session Laws of Hawaii 2009, created an aggregate cap of \$400,000 for taxpayers eligible for the exemption due to the amendment of section 237-24.7 in Act 239. Act 239 also exempted amounts received by: (1) the operator of a hotel from the owner of a timeshare; and (2) the suboperator of a hotel from the owner of the hotel, timeshare association, or from the operator of the hotel. Only these new categories of exempted amounts qualify under the aggregate cap.

The administration of this aggregate cap is a challenge for both the Department and the taxpayers applying for the exemption, as it requires manual processing of eligible taxpayer returns so that the Department can ensure that the aggregate cap is not exceeded. Additionally, the amount of tax credit available to each taxpayer is dependent on the number of taxpayers applying for the tax credit each year; taxpayers receive a pro-rata share of the \$400,000 aggregate amount.

An aggregate cap also has the inadvertent effect of treating similarly situated taxpayers inconsistently, even though the amounts are all exempt income under the same subsection. In order to remedy this issue, the Department suggests the removal of the aggregate cap.

The Department estimates this measure would result in a revenue loss of \$200,000 for FY 2015 and \$400,000 for FY 2016 and thereafter. Removing the \$400,000 aggregate cap would result in an additional revenue loss of \$2.6 million annually.

Thank you for the opportunity to submit testimony.