

# SB 3041

Measure Title: RELATING TO LIQUOR TAX LAW.

Report Title: Liquor Tax; Small Breweries or Brewpubs; Small Wineries; Small Manufacturers

Description: Defines "barrel", "small brewery or brewpub", "small winery", and "small manufacturer". Establishes a tax rate of 23 cents per wine gallon on draft beer and beer other than draft beer that are brewed or produced by a small brewery or brewpub. Establishes a tax rate of 59 cents per wine gallon on still wine and sparkling wine produced by a small winery. Establishes a tax rate of \$2.57 per wine gallon on distilled spirits produced by a small manufacturer.

Companion:

Package: None

Current Referral: CPN, WAM

Introducer(s): BAKER, Espero, Galuteria, Ruderman, Taniguchi

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

To: The Honorable Rosalyn H. Baker, Chair  
and Members of the Senate Committee on Commerce and Consumer Protection

Date: Wednesday, February 5, 2014  
Time: 9:00 A.M.  
Place: Conference Room 229, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. No. 3041 Relating to Liquor Tax Law

The Department of Taxation (Department) provides the following comments regarding S.B. 3041 for your consideration.

S.B. 3041 applies a reduced liquor tax rate upon: all beer brewed by small breweries; all liquor produced by small manufacturers; 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 the proposed amendments to the liquor tax law that reflects interference with interstate commerce, some of Hawaii's prior attempts to assist its liquor industry with tax incentives have failed 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

126 Queen Street, Suite 304

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



Katie Jacoy  
Western Counsel  
31 West Road N  
Tacoma, WA 98406  
[www.wineinstitute.org](http://www.wineinstitute.org)  
[kjacoy@wineinstitute.org](mailto:kjacoy@wineinstitute.org)  
360-790-5729

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
Wednesday, February 5, 2014 at 9:00 am

**Testimony in Opposition to  
SB 3041 Relating to Liquor Tax Law**

Dear Chair Baker 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** S.B. 3041, 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.

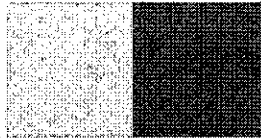
This bill proposes to lower the excise tax rate on still wine for the "small" winery from \$1.38 per gallon to \$0.59 per gallon, and lower the excise tax rate on sparkling wine from \$2.12 per gallon to \$0.59 per gallon. These are significant tax reductions, which would likely affect the price of wine 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.



**MANULELE DISTILLERS, LLC**

808.224.7505    rdawson@manuleleholdings.com    PO Box 227 - Kunia, Hawaii 96759

February 3, 2014

Robert Dawson  
Manulele Distillers, LLC  
PO Box 227  
Kunia, Hawaii 96759

Distinguished Legislators,

I am writing in support of Senate Bill 3041. I am a small manufacturer of distilled spirits in Kunia on Oahu. My business is a true farm-to-bottle operation. We grow all of our own sugar cane to produce a hand-crafted rum. We employ local farmers and maintain our own farm for production. The State of Hawaii has been very supportive of the distilled spirits industry, and I hope the current session continues to show the support seen in previous sessions.

I strongly believe that there is a real opportunity for outstanding growth in the Hawaiian spirits industry. Reducing our operational costs through the proposed tax cut will provide much needed economic relief to small businesses like mine so that I may grow my company and employ more people in agriculture and create a new world-class industry to showcase around the globe. Additionally, sales, marketing, and tourism employment will quickly follow, thereby increasing the tax base. Hawaii has perhaps the best growing conditions in the world for not only sugar cane, but also tropical fruits and starches that can be processed into distilled spirits. The ability to convert these locally grown plants into high value products is essential to the long term success of small farms like mine. Hawaii's distilled spirits industry can be a vibrant part of the local and agricultural economy.

Thank you for your support

Mahalo Nui Loa,

Robert Dawson - Founder/Distiller

**SB3041**

Submitted on: 2/3/2014

Testimony for CPN on Feb 5, 2014 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
dave flintstone	Island Distillers	Support	Yes

Comments: aloha Island Distillers, a licensed distillery in Honolulu, supports SB3041. This bill to provide a reduced alcohol tax rate to small producers will provide a much needed opportunity for our industry to grow, supporting job creation, diversified local agriculture, and ultimately leading to a net increase in taxes collected. Providing a fair and equitable rate reduction for small beer, distilled spirits, and wine producers is an important step in securing a sustainable future for our growing industry. mahalo Dave Flintstone President, Island Distillers

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# THE LEGISLATIVE CENTER

1188 BISHOP STREET, SUITE 1003  
HONOLULU, HAWAII 96813-3304  
PHONE: (808) 537-4308 • FAX: (808)533-2739

February 5, 2014

Testimony To: Senate Committee on Commerce and Consumer Protection  
Senator Rosalyn H. Baker, Chair

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

Subject: S.B. 3041 - RELATING TO LIQUOR TAX LAW

Chair Baker 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.

Aloha,

As the founder of the oldest distillery in Hawai'i, Haleakala Distillers, I am grateful the Legislature has undertaken to update state liquor taxation in line with what we see occurring nationally. I assure the members of the Legislature that, if enacted, this legislation, SB3041, will create economic growth of the best kind. Good clean, high-value-added industry which can employ well-paid and highly trained kama'aina is what the state's economy needs most, and with this Act, we can help deliver such growth on an ongoing basis.

As almost no one in Hawai'i is aware, the US Federal Government refunds the excise taxes paid on rum entering the 50 states from the Caribbean. Rum producers in the Virgin Islands and Puerto Rico, our competitors, receive what is essentially a tax subsidy which is in most cases MORE THAN THEIR COST OF PRODUCTION, and which in every case makes their products more cost-competitive on Hawai'i supermarket shelves. By reducing the tax levied on our sales in Hawai'i, you can help make our 100% locally-produced products more attractive to visitors and locals alike. As our volume grows we can provide more jobs and the taxes paid, while less in the liquor tax category on a per-unit basis, are likely to increase overall, since we also pay GET, property, income, vehicle, fuel and many other taxes, all of which will remain at full rate if this ACT passes.

We have suggestions as to the unfinished elements SB3041:

1. The threshold annual gallons for a Small Manufacturer, a blank in the Definitions Section, would best be filled in at the level of 50,000 gallons annually. Further, to qualify as a Small Manufacturer, the distillery's source for spirits should be 100% local, with all distillation done onsite. This way the state's farmers stand to benefit by supplying crops to meet local distilling demand.
2. There should be clarification as to the scope of "Cooler Beverages". Right now a cooler made with imported malt liquor base is taxed much lower than a cooler made with locally-produced spirits, even though the alcohol content is identical. This past error has effectively created a barrier to entry in the premixed cocktail business for all of Hawai'i's distilleries. If the definitions were clarified such that all "Cooler Beverages" made with local ingredients, whether malt, wine or spirit, would be taxed the same, a great benefit would accrue to many Hawai'i producers and consumers in the state would enjoy a greater selection of locally-sourced premixed cocktails at the retail level.

Your consideration of our testimony is greatly appreciated.

H. J. Sargent  
Founder  
Haleakala Distillers  
[www.haleakaladistillers.com](http://www.haleakaladistillers.com)

**SB3041**

Submitted on: 2/1/2014

Testimony for CPN on Feb 5, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
H. J. Sargent	Individual	Support	No

Comments: I am a consumer. I would buy more locally made products from microbrewers/craft brewers, small wineries and microdistillers/craft distillers if the Hawaii tax were lowered as this Bill envisions. Everyone would.

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**SB3041**

Submitted on: 2/1/2014

Testimony for CPN on Feb 5, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jane Mears	Individual	Comments Only	No

Comments: We are supportive of this bill SB 3041 which will reduce the cost of local products to visitors who help support the Hawaii economy. Thank You

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