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To: The Honorable Chris Lee, Chair
and Members of the House Committee on Energy and Environmental Protection

Date: Thursday, February 12, 2015
Time: 8:30 A.M.
Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B.1243, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 1243 and offers the following comments.

H.B. 1243 deletes the sunset provisions applicable to the special fuel tax rate for naphtha fuels sold to a power generating facility, making the special rate imposed on naphtha fuel permanent. The Department notes that, if the special rate for naphtha fuel is allowed to sunset, the rate of tax on naphtha fuel may revert to the default fuel tax rate for liquid fuel of 17 cents per gallon.

The repeal of the sunset provision in Act 103, Session Laws of Hawaii 2007 (Act 103) is somewhat confusing. Act 103 was subsequently amended by Act 198, Session Laws of Hawaii 2009, and Act 188, Session Laws of Hawaii 2012. Each of the subsequent amendments to Act 103 extended the sunset provision. Act 103 initially set the rate of tax on naptha fuel at one cent per gallon. The Department is uncertain whether the rate increase to two cents per gallon enacted in Section 2 of Act 198, Session Laws of Hawaii 2009, actually has a sunset date since the rate was not increased through an Amendment of Act 103.

Thank you for the opportunity to provide comments.

Testimony Before the House Committee on
Energy and Environmental Protection

By Michael Yamane, P.E.
Chief of Operations
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1, Lihue, Hawaii, 96766-2000

Thursday, February 12, 2015, 8:30 a.m.
Conference Room #325

House Bill No. 1243 – Relating to Taxation

To the Honorable Chris Lee, Chair; Nicole E. Lowen, Vice-Chair, and Members of the Committee:

Thank you for the opportunity to testify on this measure. I am Michael Yamane, Chief of Operations at Kauai Island Utility Cooperative ("KIUC"). KIUC stands in strong support of House Bill No. 1243, that removes the sunset date initially established in Act 103, Session Laws of Hawaii 2007, as further extended until December 31, 2012 by Act 198, Session Laws of Hawaii 2009, and most recently extended until December 31, 2015 in Act 188, Session Laws of Hawaii 2012.

Act 103 was the result of a question raised regarding interpretation of language contained in HRS §243 pertaining to which types of liquid fuels are subject to which types of taxes.

Specifically at issue is how naphtha should, or should not, be taxed.

KIUC continues to believe that the primary purpose of the fuel tax is to provide funds for highway construction and maintenance (or in the case of aviation fuels, funds for airport construction and maintenance). This has been accomplished over the years by imposing the tax on fuel sold for on-highway use. KIUC believes that the intent of the law is to exclude naphtha sold and used for power generation purposes from the State vehicle transportation and respective County fuel taxes.

Act 103 clarified this interpretation.

KIUC annually uses approximately 15 million gallons of naphtha annually in the generation of electricity, which represents approximately 50% of KIUC's yearly electrical energy production.

This would result in an additional $4.4 million tax expense which would have increased KIUC's cost of purchased fuel and raised KIUC member s' energy bills by approximately 7%.

As you know, KIUC is a member-owned electric cooperative. Unlike for-profit corporations (i.e. investor owned utilities), cooperatives are not-for-profit and member-run. Without the need for profits and shareholder dividends, cooperatives are free to invest what would normally be profits (cooperatives call them "margins") in the business by allocating margins to the cooperative's members as capital credit contributions, or, eventually, by making patronage capital refunds to its members; and otherwise generally using the monies collected for the general welfare of the cooperative members. Any additional expenses would be passed through to our members and reduce KIUC margins that would impact patronage capital refunds back to our members.

KIUC is also committed to reducing its dependency on imported fossil fuels as KIUC's Strategic Plan calls for 50% renewable generation by 2023.

For these reasons, KIUC supports House Bill No. 1243 and, therefore asks that this bill be passed.

Thank you again for the opportunity to inform you of KIUC's position on this matter.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, Rate on naphtha used for power generation

BILL NUMBER: SB 402; SB 1150; HB 1243 (Identical)

INTRODUCED BY: SB 402/SB 1150 by Kouchi; HB by Kawakami, Morikawa & Tokioka

BRIEF SUMMARY: Makes permanent the 2 cents per gallon fuel tax on naphtha sold for use in a power-generating facility.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: The legislature by Act 103, SLH 2007, provided that naphtha used in a power generating facility shall be taxed at the rate of one cent per gallon until December 31, 2009. The legislature by Act 198, SLH 2009, increased the tax on naphtha fuel used in a power generating facility from 1 cent to 2 cents per gallon effective 7/1/09 and extended the sunset date of Act 103, SLH 2007, from 12/31/09 to 12/31/12. Act 188, SLH 2012, extended the sunset from 12/31/12 to 12/31/15. This measure would make this provision permanent by repealing the sunset provision of Act 188, SLH 2012.

It should be remembered that receipts of the fuel tax are realizations of the state's transportation funds, largely the state highway fund. Naphtha used to generate electricity does not utilize the highway infrastructure, so it makes sense for such fuel to be exempt from the state fuel tax, which it was before 2007. The tax was supposed to be temporary (where have we heard this before?). Instead, the cost of the additional tax on naphtha fuel used to generate electricity has contributed to rising energy costs for all taxpayers including government. Passage of this bill would make this anomaly permanent.

Digested 2/2/15