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

Date: March 1, 2016
Time: 11:02 A.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 1545, Relating to Taxation.

The Department of Taxation (Department) appreciates the intent of H.B. 1545, and offers the following comments for your consideration.

H.B. 1545 terminates the general excise tax (GET) and use tax exemptions for rental or lease of aircraft or aircraft engines used for interstate air transportation of passengers or goods. The proposed repeals become effective on December 31, 2017.

First, the Department notes that the bill repeals the exemptions by inserting a termination date into the language of the exemptions. Though this method will be effective, the Department recommends repealing the exemptions in the GET and use tax chapters rather than terminating them via a termination date. The Department believes this will be clearer and less confusing to taxpayers. The Department also notes that repealing the exemptions in this way will not have any retroactive effect on the exemptions.

Finally, the Department will be able to administer the proposed changes by the stated effective date of December 31, 2017.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, USE, Ends exemption for aircraft and aircraft leasing

BILL NUMBER: HB 1545

INTRODUCED BY: SAIKI

EXECUTIVE SUMMARY: Repeals general excise exemption for aircraft leasing, and use tax exemption for aircraft used in passenger service. The exemptions do appear to be there for practical reasons.

BRIEF SUMMARY: Amends HRS section 237-24.3(11) to provide that amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods are no longer exempt after December 31, 2017.

Amends HRS section 238-1, paragraph (6) of the definition of "use" subject to use tax, to provide that the acquisition or importation of any aircraft for commercial transportation of passengers and goods or aircraft engines by any lessee or renter engaged in interstate air transportation is no longer exempt after December 31, 2017.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: Act 210, SLH 2001, exempted any rent for aircraft or aircraft engines used for interisland air transportation of passengers and goods. This one was motivated because our GET applies differently to different financing mechanisms. Most airlines need to finance their major purchases such as aircraft and engines. If they borrowed from a mainland financial institution, the GET typically would not apply either to the principal or interest being paid by the airline. However, many lenders finance such equipment by way of operating leases. If the equipment is in Hawaii, or flying between our islands, the GET could apply to the lease rent that the airlines pay, and would apply if it weren't for Act 210.

The Use Tax exemption now in HRS section 238-1(6) also appears to be essential to our aircraft industry. Most passenger aircraft entering Hawaii will drop off passengers here and then leave. The Use Tax Law contains a temporary use exemption in HRS section 238-1(1), which means the airlines do not need to worry about paying Hawaii Use Tax on the value of the aircraft (which could be substantial) unless they are home ported in Hawaii. If the exemption is taken away, larger aircraft could quickly be home ported somewhere else, and the ground crews necessary to service those aircraft would be employed somewhere else.

Digested 2/27/2016

Testimony to the House Committee on Finance
Tuesday, March 1, 2016 at 11:02 A.M.
Conference Room 308, State Capitol

RE: HOUSE BILL 1545 RELATING TO TAXATION

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 1545, which ends the general excise tax and use tax exemptions for amounts received as rent for the rental or leasing of aircraft or aircraft engines used by lessees or renters for the interstate transportation of passengers and goods on December 31, 2017.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

HB 1545 targets and penalizes Hawaii-based airline companies by imposing a tax burden on them. This tax is not applied to competitors whose headquarters are located in jurisdictions which do not impose a general excise or sales tax on aircraft leases. Also, these competitor airlines do not possess a significant employee base in Hawaii; their benefit of transporting visitors to Hawaii accrues in their home states and not in Hawaii.

Thank you for the opportunity to testify.

1132 Bishop Street, Suite 2105 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

TESTIMONY OF HAWAIIAN AIRLINES ON HB1545 Relating to Taxation

House Committee on Finance

DATE: Tuesday, March 1, 2016

TIME: 11:02 am

PLACE: State Capitol, Room 308

Aloha Chair Luke, Vice-Chair Nishimoto and members of the House Committee on Finance,

Thank you for the opportunity to provide testimony in **opposition** to HB 1545 Relating to Taxation, which removes the General Excise Tax exemption on aircraft leases and aircraft engine leases at the end of calendar year 2017.

This measure represents a significant policy issue for the members of the Hawai'i State Legislature. The legislation as it is proposed would actually penalize Hawaii-based airlines by imposing upon them a tax burden not applied to other airlines based in other locations.

Neither Illinois (the home of United), Georgia (Delta), California (Virgin America), Texas (American), Washington (Alaska) nor Nevada (Allegiant) impose a Sales tax or GET equivalent on the purchase or leasing of aircraft and aircraft engines. Since the aircraft of these airlines only occasionally visit Hawaii while the aircraft operated by Hawaiian are based in the State, the practical impact of the proposed tax is to handicap Hawaii based airlines to the benefit of airlines based elsewhere.

Tourism is the economic lifeblood of the State and essentially all visitors to the islands arrive by air on a commercial airliner. Hawaiian competes with over a dozen airlines from around the Pacific for this business in an industry characterized by brutal competition. As a destination carrier, we are inextricably tied to our Islands. Every flight we operate touches this archipelago, 96 percent of our employees are based here in Hawai'i, and history shows that we can be relied upon to provide essential air services in good times and bad. Other airlines by contrast, add and remove flights based entirely on where the economic prospects look best. They employ a smattering of workers here in Hawai'i and the financial gains they reap from service to Hawai'i accrues to their home states.

Since emerging from our second bankruptcy reorganization a decade ago, Hawaiian Airlines has worked hard to build a solid foundation for long-term success. Since 2005, our workforce has increased by 65 percent to 5,500, with an average full-time wage of $73,000 per year. Our success not only provides job security for our workforce, but significant benefits to the state.

The Hawai'i Tourism Authority estimates that Hawaiian's international and North America routes provided $3.48 billion in visitor spending and $371 million in state tax revenue. We paid $356 million in gross wages to our Hawai'i-based employees in 2015 and collected state payroll taxes of $21 million.

In short, we are a strong, stable and proud employer in the state of Hawai'i and strive to remain so.

Additionally, HB 1545 seems to be "putting the cart before the horse". Your Committee just last week, passed out HB 1527, which would have the Department of Taxation (DoTax) review certain tax credits and tax exemptions, including the exemption on aircraft leases and aircraft engine leases. DoTax would then report back to the 2018 Legislature with any recommendations. The prudent tax policy would be to have DoTax do its review under HB 1527, rather than singling out the aircraft leasing exemption with HB 1545.

The current excise tax exemption on aircraft purchases and leases removes a cost inequity between Hawai'i-based airlines and our competitors outside of the state. Eliminating it would amount to a targeted levy on companies that have made a commitment to the economy and people of Hawai'i. I urge you to hold this measure in committee.

Ann Botticelli
SVP Corporate Communications and Public Affairs
Hawaiian Airlines

LATE

OUR BUSINESS IS MAUI BUSINESS

TESTIMONY IN OPPOSITION TO HB1545
RELATING TO GET EXEMPTION FOR AIRCRAFT AND AIRCRAFT ENGINE LEASES

TO THE HOUSE COMMITTEE ON FINANCE
Hawaii State Capitol, Conference Room 308
March 1, 2016
11:02 a.m.

Dear Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

Mahalo for the opportunity to testify in opposition to HB1545 that ends the general excise tax and use tax exemptions for amounts received as rent for the rental or leasing of aircraft or aircraft engines used by lessees or renters for the interstate transportation of passengers and goods on December 31, 2017.

The Maui Chamber of Commerce is the voice of Maui businesses, representing about 600 businesses of which roughly 95% are small businesses with fewer than 25 employees. We work on behalf of our members and the entire business community to fulfill our mission of advancing and promoting a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics. We serve as an effective non-partisan, non-sectarian voice for business on legislative, business, social, governmental and community issues affecting Maui.

Living in an island state, access to the US mainland and other countries is extremely important and affordable rates are essential. As taxes, fees, and other costs go up for the airline carriers, they get passed on to consumers and we end up paying extremely high rates to visit other areas as it is.

Therefore, we are concerned by this initiative to end a helpful GET exemption for our home airlines – Hawaiian Airlines – as it will further increase rates for residents and disadvantage our local carrier.

This bill would penalize Hawaii based airlines by imposing a tax burden on them that is not applied to competing airlines based elsewhere, such as United, Delta, American, Allegiant, Virgin America and Alaska. Our local airlines, which make islands in Hawaii their hubs and employ more people here should not be so disadvantaged. At a minimum, they should at least be afforded a level playing field.

Further HB1527 offers a better approach to reviewing GET exemptions as it seeks to audit all GET exemptions, to evaluate the impact of each. This is appreciated as many exemptions were created to spur economic activity, growth, and jobs in Hawaii. We believe such a review will demonstrate the benefits of keeping this exemption and will further lead to improved tax policies overall, without harming specific companies who have made substantial positive economic impacts in our state.

Therefore, we oppose HB1545 and ask that you let this measure die.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

LATE

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Finance
Tuesday, March 1, 2016 at 11:02 A.M.
Conference Room 308, State Capitol

RE: HOUSE BILL 1545 RELATING TO TAXATION

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

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The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Bill Would Increase the Cost of Air Travel within and to Hawaii

HB 1545 targets and penalizes Hawaii-based airline companies by imposing a tax burden on them. This tax is not applied to competitors whose headquarters are located in jurisdictions which do not impose a general excise or sales tax on aircraft leases. Also, these competitor airlines do not possess a significant employee base in Hawaii; their benefit of transporting visitors to Hawaii accrues in their home states and not in Hawaii. The bill disproportionately affects local carriers and customers and would significantly impact carriers, such as Island Air or Mokulele, whose aircraft spend potentially all of their time in the State of Hawaii.

Disproportionately impact local carriers and their customers

The State of Hawaii would be virtually alone in imposing this type of tax. Due to Hawaii's geographic isolation and economy, this state is far more dependent on the interstate transportation of goods and passengers than any other. Hawaii should accordingly do everything it can to reduce the cost of bringing people and goods to the islands. If these exemptions were eliminated, the aircraft lessors would pass the tax onto the airlines, which would in turn pass the cost onto passengers.

Potentially unconstitutional

Finally, certain taxes on interstate commerce are unconstitutional under the "Dormant Commerce Clause" of the 14th Amendment. That provision reserves to the federal government the ability to tax interstate commerce. The current exemptions were originally crafted to avoid impermissibly burdening interstate commerce in violation of the U.S. Constitution. Doing away with those exemptions would thus potentially create a constitutional problem.

Chamber of Commerce HAWAII
The Voice of Business

We ask that this bill be deferred. Thank you for the opportunity to testify.