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To: The Honorable Henry J.C. Aquino, Chair
and Members of the House Committee on Transportation

Date: February 17, 2016

Time: 10:00 A.M.

Place: Conference Room 309, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 2692, Relating to Taxation.

The Department of Taxation (Department) appreciates the intent of H.B. 2692 and provides the following comments for your consideration.

H.B. 2692 provides a general excise tax exemption to businesses operating in a construction area of a county mass transit project. The exemption applies to gross income received by a business within half a mile from the construction area if the business demonstrates a decrease in annual gross income due to construction activity affecting vehicle accessibility. To qualify for the exemption, the bill requires that the business apply for certification with the Department. The bill is effective on July 1, 2016.

First, the Department notes that because the exemption applies to all gross income earned "for the duration of the construction" project and because the business need only show a decrease in annual income due to construction activity, the exemption may apply to income earned during times when construction is not being performed anywhere near the business. If this is not the intent, the Department suggests amending the language to narrow the exemption.

Second, the Department does not have the personnel and resources necessary to make determinations as to whether a business' decrease in annual gross income is due to construction activity or other factors, such as decrease in demand, economic decline, competition, or poor service. The reason for a business' decrease in gross income will be a highly factual analysis that will need to take into account internal and external factors. The Department also does not have direct access to information such as the boundaries of the mass transit construction area, the duration of the construction project, and road closures that would affect vehicle accessibility. Accordingly, the Department requests that the bill is amended to require another appropriate government agency to certify the exemption.

Third, the Department notes that because a business will not be able to claim the exemption until after it demonstrates a loss of income, there may be a consumer protection issue if the business passes on the general excise tax to its customers but later claims an exemption for said tax. It is the Department's understanding that a taxpayer may pass on no more tax than is actually owed on the transaction. However, the Department defers to the Department of Commerce and Consumer Affairs on this issue.

Finally, the Department notes that this bill will require a change in forms and system programming and requests that the bill apply to taxable years beginning after December 31, 2016.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, Exemption for Businesses Affected by Rail Construction

BILL NUMBER: HB 2692

INTRODUCED BY: AQUINO, CULLEN, TAKAYAMA

EXECUTIVE SUMMARY: Exempts from the GET gross income earned by a business within the construction area of a county mass transit project for the duration of the construction. This special treatment is difficult to justify when businesses disrupted because of other construction get no breaks.

BRIEF SUMMARY: Adds a new section to HRS chapter 237 to provide an exemption for gross income earned by a business operating in a construction area of a county mass transit project for the duration of construction. Limits the exemption to (1) the gross income principally earned by that business within the boundaries of the construction area of a county mass transit project, (2) businesses demonstrating an aggregate ___% or greater decrease in annual gross income relative to the year immediately preceding the start of construction in the area. (It's not clear whether one or both prongs need to be satisfied.)

Provides that a business needs to apply for this exemption to the department of taxation on an annual basis, and that the department is to certify eligibility for the credit.

Provides that the department shall prepare any necessary forms, and adopt rules under chapter 91 to effectuate the law.

Defines "operating in a construction area" to mean that the physical premises of the business is located within a half mile of a construction area. Defines "county mass transit project" means a project for which a county has established a county surcharge on the GET.

EFFECTIVE DATE: July 1, 2016.

STAFF COMMENTS: The reason this exemption is being asked for is straightforward enough. Rail construction causes diversion of traffic. Diversion of traffic means that people who could easily get to their favorite store for midday shopping or a bite to eat can't do that any more, and the stores in this position are reporting precipitous drops in business. No, we don't have power to resurrect businesses who have failed or were shuttered as a result, but we do have power to give them a GET exemption.

Note well, that any exemption granted to a select group of users requires that the lost revenues be made up by those who must continue to pay. And why are we wringing our hands over the businesses that are being impacted by rail construction while other businesses similarly impacted by construction, such as the Ala Moana Center merchants who had to endure a year of traffic redirection and restricted parking, get the cold shoulder?

Technical concerns with the current draft of the bill include these:

- Paragraphs (a)(1) and (2) of the bill state prerequisites to the exemption. It is unclear if both need to be satisfied to get the exemption (“and” test) or if only one is (“or” test).
- It is unclear whether the department of taxation has the resources or the institutional expertise to certify eligibility for the exemption.

Digested 2/12/16



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Transportation
Wednesday, February 17, 2016 at 10:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 2692 RELATING TO TAXATION

Chair Aquino, Vice Chair LoPresti, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2692, which establishes a general excise tax exemption for businesses affected by construction from a county mass transit project.

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.

Many local businesses along the rail project alignment are currently being impacted by the construction activities directly associated with the rail project to the point where the economic viability of certain business establishments is being questioned. While HART and the city are working to provide some relief within federal guidelines, this assistance may not be adequate. We support any assistance to help these businesses being impacted by this large government project.

Thank you for the opportunity to testify.