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To: The Honorable Derek S.K. Kawakami, Chair
and Members of the House Committee on Economic Development and Business

Date: Tuesday, February 03, 2015
Time: 9:00 A.M.
Place: Conference Room 312, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 718, Relating to Liquor Tax

The Department of Taxation (Department) appreciates the intent of S.B. 705 and provides the following comments for your consideration.

H.B. 718 creates a new liquor tax category of "barrel beer" and imposes a graduated liquor tax rate on barrel beer. H.B. 718 defines barrel beer as beer in individual containers of not less than thirty and one-half gallons and not more than thirty one and one-half gallons. The bill amends the definition of draft beer to exclude barrel beer from the draft beer category. The bill imposes a rate of \$0.27 per gallon on the first 60,000 gallons of barrel beer sold per year; the draft beer rate of \$0.54 per gallon applies to barrel beer after the first 60,000 barrels of beer are sold.

The Department notes that though the preamble states that the intent of this bill is to assist the craft brewing industry in Hawaii, the reduced liquor tax rates will apply to both beer produced in Hawaii and to beer imported into Hawaii. Applying preferential rates to local brewers would run afoul of U.S. Supreme Court commerce clause jurisprudence.

However, the Department notes that although this bill appears to apply equally to in-state and out-of-state brewers, if the bill is found to apply only to local brewers that may be an unconstitutional interference with interstate commerce. The Department defers to the Department of the Attorney General for a determination of any constitutional issues with this bill.

Finally, the Department is concerned that imposing new liquor tax categories and graduated rates would complicate the liquor tax. Complications may create difficulties in the

administration of the tax, as well as potential compliance and enforcement issues. Currently, the liquor tax is a simple tax with a single rate per category of liquor. This bill would require the Department to overhaul the current liquor tax form, instructions, and require computer system enhancements.

Thank you for the opportunity to provide comments.

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SUBJECT: LIQUOR, Reduced rate on barrel of beer

BILL NUMBER: SB 759; HB 718 (Identical)

INTRODUCED BY: SB by Baker by request; HB by McKelvey, Brower, Evans, Kawakami, Lowen, Nishimoto

BRIEF SUMMARY: Amends HRS section 244D-4 to provide that the first 1,860,000 gallons of barrel beer sold annually shall be taxed at the rate of \$0.27 per wine gallon and \$0.54 per wine gallon of barrel beer sold thereafter.

Amends HRS section 244D-1 by defining “barrel beer” as an individual container of at least thirty and one-half gallons and not more than thirty-one and one-half gallons. Also amends the definition of “draft beer” to mean beer in an individual container of not less than seven gallons and not more than thirty and one-half gallons or more than thirty-one and one-half gallons.

EFFECTIVE DATE: January 1, 2016; applicable to tax years beginning after December 31, 2015

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. At the federal level, beer is subject to a tax of \$18 per 31 gallon barrel. Brewers who produce less than two million barrels are subject to a tax of \$7 on the first 60,000 barrels and \$18 after the first 60,000 barrels.

The proposed measure would establish a reduced rate of \$0.27 per wine gallon on barrel beer for the first 1,860,000 gallons of barrel beer sold annually. In a similar measure introduced in the last few years, the department of taxation estimated that the loss of revenue due to the reduced rate would be around \$1 million.

Digested 2/2/15