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To: The Honorable Maile S. L. Shimabukuro, Chair
and Members of the Senate Committee on Hawaiian Affairs

The Honorable Mike Gabbard, Chair
and Members of the Senate Committee on Water, Land, and Agriculture

Date: February 5, 2016

Time: 1:15 P.M.

Place: Conference Room 016, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2973, Relating to the General Excise Tax.

The Department of Taxation (Department) appreciates the intent of S.B.2973, and offers the following comments for your consideration.

S.B. 2973 applies the General Excise Tax (GET) to the products of Hawaiian loko i'a at the wholesale rate of one-half of one percent. The measure has an effective date of July 1, 2016.

The Department notes that it does not have the expertise to differentiate the products produced by Hawaiian loko i'a from other similar products that may be produced and sold by other aquaculture systems. The Department suggests adding a provision that requires another government agency to certify that the taxpayer is a legitimate loko i'a prior to being eligible to claim this lower GET rate.

The Department also notes that the tax benefit proposed in S.B. 2973 may be impermissible under the Commerce Clause of the United States Constitution, which generally does not allow differential tax treatment for in-state and out-of-state products. The Department defers to the Department of the Attorney General regarding the constitutionality of this provision.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, Wholesale Rate for Products from Hawaiian Fishponds

BILL NUMBER: SB 2973; HB 2458 (Identical)

INTRODUCED BY: SB by RIVIERE, English, Kim, Shimabukuro; HB by KEOHOKALO, HAR, HASHEM, ICHIYAMA, ING, C. LEE, NAKASHIMA, NISHIMOTO

EXECUTIVE SUMMARY: Establishes a special 0.5% rate for products produced by Hawaiian loko i'a (fishponds). Approval of the exemption would have the potential of opening the barn door to all other businesses who want relief from our retail rate GET.

BRIEF SUMMARY: Adds a new section to HRS chapter 237 providing that the wholesale rate (presently 0.5%) shall apply to gross income from the sale of all products produced by Hawaiian fishponds.

EFFECTIVE DATE: July 1, 2016.

STAFF COMMENTS: Under the Hawaii GET law as it now exists, agricultural or aquacultural products are indeed eligible for the wholesale tax rate, but of course retail sales of such products are still taxable at the retail rate.

As proposed, it would grant a special preference to a select group of taxpayers at the expense of others who are not eligible for the exemption. The general excise tax is a tax that permits someone to operate a business in the state. Thus, businesses providing similar, if not identical, services should be treated equally as the tax is on the business and not on the customer. In this case, this proposal would grant the wholesale rate to the fishpond owner or operator whether or not the products sold were in fact sold at wholesale. This would discriminate against fishers or other food producers who do not qualify for the proposed exemption.

It should be remembered that businesses that qualify for the tax preferences proposed in this measure would utilize services funded by current taxpayers while being tax-exempt. The question that should be asked is why businesses other than those granted the limited exemption proposed by this measure should foot the bill to run state government. Thus, the limited tax preference granted under this measure would merely shift the burden of paying for public services to those not so favored.

Further, what can be the policy justification for giving a special rate to this type of business while others pay full freight to make up the difference? If this bill is approved, lawmakers should brace themselves for a deluge of requests by other businesses, large and small, who for whatever reason think they merit special treatment under the GET law.

Digested 2/2/2016