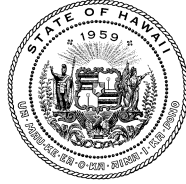


DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

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

Date: Wednesday, March 1, 2017
Time: 1:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 263, Proposed S.D. 2, Relating to Medical Marijuana

The Department of Taxation (Department) has concerns about H.B. 263, Proposed S.D. 2, and provides the following comments for your consideration.

H.B. 263, Proposed S.D. 2, amends the general excise tax (GET) law to impose a new rate of GET on medical marijuana dispensaries. The bill also allocates an unspecified percentage of GET revenues collected from medical marijuana dispensaries into the medical marijuana registry and regulation special fund. The bill has a defective effective date of July 1, 2090.

First, the Department notes that dispensaries are already subject to GET on their gross income as sellers of tangible personal property and possibly as producers. The bill does not make it clear whether the proposed tax is in lieu of the current tax on dispensaries, or if instead, the proposed tax is meant as a surcharge on the gross income of dispensaries on top of their current GET liability. The Department recommends the bill be amended to clarify whether the proposed rate is in lieu of any other imposition under the GET, or if the proposed rate is to be a surcharge on top of dispensaries' current liabilities.

Second, the Department notes that the imposition of the new rate does not allow dispensaries to qualify for the one-half of one percent rate on any wholesale sales. If it is the intent of the legislature to allow dispensaries to qualify for the wholesale rate, the Department recommends moving the proposed special rate of GET into section 237-13(2)(A), HRS. Section 237-13(2)(A), HRS, as amended, would read as follows:

- (A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and

collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that in the case of a medical marijuana dispensary licensed under chapter 329D, there is hereby levied and shall be assessed and collected, a tax equal to _____ per cent of the gross proceeds of sales of the business; provided further that, in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business; and provided further that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the tax shall be one-half of one per cent of the gross proceeds. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).

The Department understands that the current law and administrative rules regulating medical marijuana dispensaries may require vertical integration of all of a licensee's operations, in which case the wholesale rate would not apply. However, the Department believes the amendment is necessary to clarify the dispensaries' liability and to avoid any disputes if the legal or regulatory landscape changes in the future. The Department also notes that this amendment will make clear that the special rate is to be applied in lieu of any other imposition under the GET.

Third, the Department has concerns about the calculation of the allocation required by this measure. In general, all taxpayer information reported to the Department is confidential, including the amount of tax collected from a specific taxpayer. Because there are only eight licensed medical marijuana dispensaries at this time, even aggregated data provided by the Department may violate confidentiality.

To alleviate this, the Department recommends either allocating a specific dollar amount to the special fund or basing the calculation on Department of Health data collected directly from the dispensaries. This data, in the hands of the Department of Health, would not be subject to the same non-disclosure requirements as data held by the Department of Taxation because the information was not submitted to the Department of Health for tax purposes.

Finally, if the Committee wishes to move this measure forward, the Department requests that the effective date be amended to apply the new tax rate to tax periods beginning on January

1, 2019. This will give the Department sufficient time to make the form, instruction, and computer system changes necessary to implement a new GET rate on dispensaries.

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, Special Rate for Medical Marijuana Sales

BILL NUMBER: HB 263, HD-1

INTRODUCED BY: House Committee on Health

EXECUTIVE SUMMARY: Establishes a separate general excise tax (GET) classification for medical marijuana sales, at an unspecified tax rate. These are not recreational marijuana sales. If the marijuana is for medicinal use, then why is it not exempt like other medicine?

In addition, earmarking the GET to feed the medical marijuana registry and regulation special fund would perpetuate the practice of earmarking taxes and would decrease transparency and accountability.

SYNOPSIS: Adds a new paragraph to HRS section 237-13 to apply the GET to licensed medical marijuana dispensers, with a tax rate of ____%.

Adds a new section to HRS chapter 329D which states that of the tax revenues received from medical marijuana dispensaries, __% shall be deposited into the medical marijuana registry and regulation special fund, to be used for public health and health purposes, including drug recognition expert training for law enforcement officers and other public health education efforts.

Makes conforming amendments to HRS section 321-30.1, which had established the medical marijuana registry and regulation special fund.

Part II of the bill authorizes and regulates the sale of edible cannabis products.

EFFECTIVE DATE: July 1, 2090; part II takes effect on July 1, 2019.

STAFF COMMENTS: Our comments relate to part I exclusively.

Act 241, SLH 2015, established a licensing scheme for a statewide system of medical marijuana dispensaries to ensure access to medical marijuana for qualifying patients.

Act 306, SLH 1986, provided that sales of prescription drugs and prosthetic devices are exempt from the Hawaii general excise tax. This exemption, codified at HRS section 237-24.3(6), provides an exemption from the GET for those amounts received by a hospital, infirmary medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual. This exemption does not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices.

A study prepared for the 2005-2007 Tax Review Commission examined the need for this exemption:

Hawaii and all other sales taxing states except Illinois exempt prescription drugs from the sales tax. Illinois levies a 1 percent rate on the sales of prescription drugs. A comprehensive list is not available of sales tax treatment for prosthetic devices, but they are likely exempt in essentially every state as well. Hawaii could choose to eliminate exemptions for these transactions, in keeping with the generally broad tax base imposed in the state. Expanding the base to drugs and prosthetics would allow additional revenue or a lower tax rate. The potential tax base from drugs and prosthetics is estimated to be at least \$845 billion in 2006, which would generate \$33.8 million if fully taxable. Taxation of these transactions would allow the GET rate to be reduced to 3.94 percent and still raise the same revenue.

As with other exemptions, taxation would eliminate the incentive to purchase these goods rather than other currently taxed items. However, the distortion in consumption is probably very small because people are likely to buy nearly the same quantities of drugs and prosthetic devices even with reasonable levels of taxation because of the limited degree of substitutes and the view that many of these are necessities. On the other hand, there are opportunities to purchase some drugs remotely, and taxation could encourage some additional remote purchases.

The argument for exemption lies mainly in equity, with many people believing that it is unfair to sales tax necessities such as drugs and prosthetics. The perception is that a tax on drugs and prosthetics is a tax on suffering. Of course, some other necessities, such as food, are sales taxed in Hawaii and in many states, and all prescriptions may not be viewed as necessities depending on one's perception. Thus, the case for exemption presumes that drugs and prosthetics devices are more worthy of exemption than many other possible candidates.

Fox, William, "Hawaii's General Excise Tax: Should the Base Be Changed?" (2006) (footnotes omitted) (Appendix C to the Report of the 2005-2007 Hawaii Tax Review Commission, available at http://files.hawaii.gov/tax/stats/trc/docs2007/Final_Report-Appendix_C.pdf).

The underlying policy behind the exemption supports application to medical marijuana. After all, it is prescribed by a health care professional to treat disease. If it is decided that the exemption should be denied, policymakers need to ask why medical marijuana needs to be treated differently from all other prescription drugs, including such substances as Viagra and Cialis.

These comments, of course, do not apply to marijuana for recreational use, which is heavily taxed in those states that have legalized it.

Regarding the proposed earmark on the GET, the bill would add another siphon of revenues and would perpetuate the earmarking of barrel tax revenues. Yes, our law enforcement personnel and the public needs to be educated. But does that justify grabbing a pot of GET money without going through the normal appropriation and budgeting process that also considers sweltering primary schools, underfunded state pensions, or the unique costs of intercollegiate athletics?

Rather than the continual earmarking of revenues, a direct appropriation of general funds would be preferable. Earmarking revenues from any tax type decreases transparency and accountability.

Next, it should be remembered that revenues diverted for a special purpose, in this case to fund public health and health education, will not be counted against the state's spending ceiling or debt limit and will obscure the state's true financial condition.

Digested 2/27/2017

HAWAII EDUCATIONAL ASSOCIATION FOR LICENSED THERAPEUTIC HEALTHCARE

To: Representative Sylvia Luke, Chair Finance Committee
Representative Ty Cullen, Vice-Chair Finance Committee
Members of the House Finance Committee

Fr: Blake Oshiro, Esq. on behalf of the HEALTH Assn.

Re: Testimony in **Opposition of House Bill (HB) 263, PROPOSED HD2**
RELATING TO MEDICAL MARIJUANA

Proposed HD2: Amends provisions related to licensing medical marijuana dispensaries by imposing Use Tax on dispensaries gross income and allocating a portion of GET revenues received from dispensaries to the Medical Marijuana Registry and regulation Special Fund.

Dear Chair Luke, Vice-Chair Cullen, Members of the Committee:

HEALTH is a recently formed trade association made up of the eight (8) licensed medical marijuana dispensaries under Haw. Rev. Stat. (HRS) Chapter 329D. HEALTH's members are all committed to ensuring the goals of patient safety, product safety and public safety.

HEALTH respectfully **opposes** HB263 Proposed HD2, which would establish a new tax at an unspecified rate on all marijuana and medical marijuana products sold by a licensed dispensary. This tax is premature, unwarranted, and will only end up affecting product affordability and therefore, qualified patient access.

Act 241, Session Laws of Hawaii 2015 provided certain deadlines to effectuate a system that would balance product, patient and public safety with reasonable access for qualified patients. And although licenses were awarded somewhat timely, shortly after the April 15, 2016 deadline, the law's allowance for retail dispensing of medical marijuana on July 15, 2016 will likely be about 1 year late. To date, only four (4) dispensaries have been issued a notice to proceed on cultivation of medical marijuana, there will have several months before such plants are ready for harvest, production and then retail sale. Based on this delayed time table, imposing a new tax on the medical marijuana industry is premature since these delays have not been attributable to the licensed dispensaries and most are already tapping into their capital investments during this time of late start-up.

Secondly, medical marijuana and marijuana products would already be subject to the existing general excise tax. Licensees are already assessed an annual \$50,000 fee which will be due in a couple of months and as stated above, that is before any licensee will reasonably be able to sell any products in their retail facility due to the delays.

Finally, HEALTH opposes a new tax on medical marijuana and marijuana products because this will ultimately affect the cost to the qualified patient. Qualified patients are suffering from diagnosed conditions, most of which are severe and debilitating. This sensitive population is already under physical and emotional stress and so increased costs, only add a potential financial burden and stress. As such, we oppose this bill since it would result in unaffordable medical marijuana for patient use.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 2:46 PM
To: FINTestimony
Cc: brendonf@hawaii.edu
Subject: *Submitted testimony for HB263 on Mar 1, 2017 13:00PM*

HB263

Submitted on: 2/27/2017

Testimony for FIN on Mar 1, 2017 13:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Brendon Friedman	B Wellness Services	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 12:11 PM
To: FINTestimony
Cc: ms_tapiz@hotmail.com
Subject: *Submitted testimony for HB263 on Mar 1, 2017 13:00PM*

HB263

Submitted on: 2/27/2017

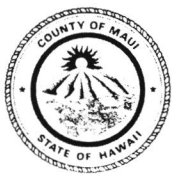
Testimony for FIN on Mar 1, 2017 13:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Frances	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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POLICE DEPARTMENT

COUNTY OF MAUI



ALAN M. ARAKAWA
MAYOR

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411

TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

OUR REFERENCE

YOUR REFERENCE

March 1, 2017

LATE

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
And Members of the Committee on Finance

The House of Representatives
State Capitol
Honolulu, Hawaii 96813

RE: House Bill 263, House Draft 1, RELATING TO MEDICAL MARIJUANA

Dear Chair Luke and Members of the Committee:

The Maui Police Department (MPD) **supports** H.B. 263 H.D.2 relating to medical marijuana. The bill amends provisions related to licensed medical marijuana dispensaries by imposing Use Tax on dispensaries' gross income and allocating a portion of GET revenues received from dispensaries to the Medical Marijuana Registry and Regulation Special Fund.

Marijuana-impaired driving is already a problem in Hawaii, with 18 percent of fatal crashes from 2013 through 2015 involving tetrahydrocannabinol (THC). We expect this number to increase with the opening of medical marijuana dispensaries and the potential for more medical marijuana registration card holders. There was a significant increase in marijuana-impaired driving in Hawaii following the legalization of medical marijuana in our state in December 2000. Funding will be necessary to ensure that law enforcement officers are properly trained on the detection and recognition of marijuana-impaired drivers. This training also requires period refreshers. Advanced training is required in order to legally remove drug impaired drivers from our roadways.

For the reasons stated above, MPD supports H.B. 263 H.D.2. Thank you for the opportunity to testify.

Sincerely,

TIVOLI S. FAAUMU
Chief of Police

DAVID Y. IGE
GOVERNOR



WESLEY K. MACHIDA
DIRECTOR

LAUREL A. JOHNSTON
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 263, H.D. 1, PROPOSED H.D. 2

LATE

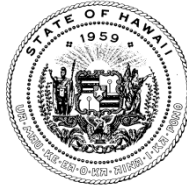
March 1, 2017
1:00 p.m.
Room 308

RELATING TO MEDICAL MARIJUANA

House Bill No. 263, H.D. 1, Proposed H.D. 2, amends provisions related to licensed medical marijuana dispensaries by imposing Use Tax on dispensaries gross income and allocating a portion of GET revenues received from dispensaries to the Medical Marijuana Registry and Regulation Special Fund.

As a matter of general policy, the Department of Budget and Finance does not support the dedication of general fund tax revenues to a specific purpose. We believe that the diversion of general fund revenues via carve-outs for specific purposes hinders the orderly prioritizing and funding of State goals and objectives that the budgeting process is designed to achieve. Moreover, special funds should meet the requirements of Section 37-52.3, HRS, which includes the capacity to be financially self-sustaining.

Thank you for your consideration of our comments.



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 1, 2017
1:00 p.m.
State Capitol, Room 308

H.B. 263, Proposed H.D.2
RELATING TO MEDICAL MARIJUANA

House Committee on Finance

The Department of Transportation (DOT) **supports** H.B. 263, proposed H.D.2 relating to medical marijuana. The bill amends provisions related to licensed medical marijuana dispensaries by imposing Use Tax on dispensaries gross income and allocating a portion of GET revenues received from dispensaries to the Medical Marijuana Registry and Regulation Special Fund.

Marijuana-impaired driving is already a problem in Hawaii, with 19 percent of fatal crashes from 2013 through 2015 involving tetrahydrocannabinol (THC).

Based on prior years' data, we expect this number to increase with the opening of medical marijuana dispensaries and the potential for more medical marijuana registration card holders. There was a significant increase in marijuana-impaired driving in Hawaii following the legalization of medical marijuana in our state in December 2000. During the pre-medical marijuana period (1991-2000), 4.89 percent of fatally injured drivers tested positive for having marijuana in their systems. After the medical marijuana program went into effect (and before the opening of dispensaries), the proportion of fatally injured drivers who tested positive for THC increased to 14.61 percent during the post-medical marijuana period (2001-2011).

Funding will be necessary to ensure that law enforcement officers will be properly trained on the detection and recognition of marijuana-impaired drivers in order to remove those drivers from our roadways, thus making our roads safer.

For the reasons stated above, DOT supports H.B. 263 H.D.2.

Thank you for the opportunity to provide testimony.



From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 4:44 PM
To: FINTestimony
Cc: wendygibson9@gmail.com
Subject: Submitted testimony for HB263 on Mar 1, 2017 13:00PM

HB263

Submitted on: 2/28/2017

Testimony for FIN on Mar 1, 2017 13:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy Gibson	Individual	Oppose	No

Comments: Medical Cannabis patients should not be subjected to paying more tax on their medications than any other type of patient.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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