

DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE  
DEPUTY DIRECTOR

To: The Honorable Della Au Belatti, Chair  
and Members of the House Committee on Health

Date: Thursday, February 16, 2017

Time: 9:00 A.M.

Place: Conference Room 329, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 263, Relating to Medical Marijuana

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

H.B. 263 amends the general excise tax (GET) law to impose a new rate of GET on medical marijuana dispensaries. The new tax rate would become effective July 1, 2017.

First, the Department notes that dispensaries are already subject to GET on their gross income as a 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 wholesale 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 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.

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

INTRODUCED BY: SAIKI

EXECUTIVE SUMMARY: Establishes a separate general excise tax 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 treated like other medicine?

SYNOPSIS: Adds a new paragraph to HRS section 237-13 to establish a tax on licensed medical marijuana dispensers. The tax rate is currently \_\_\_%.

EFFECTIVE DATE: July 1, 2017.

STAFF COMMENTS: 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).

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.

Digested 2/14/2017



TESTIMONY ON HOUSE BILL 263  
RELATING TO MEDICAL MARIJUANA

by  
Keith Kamita  
Chief Compliance Officer  
Cure Oahu

COMMITTEE ON HEALTH  
Representative Della Au Belatti, Chair  
Representative Bertrand Kobayashi, Vice Chair  
Thursday, February 16, 2017, 9:00 AM  
State Capitol, Conference Room 329

Chair Au Belatti, Vice Chair Kobayashi and Members of the Committee:

Cure Oahu opposes House Bill 263, which amends section 237-13 HRS by adding a new tax at an unspecified rate on all marijuana and medical marijuana products sold by a DOH authorized dispensary. This tax is in addition to the general excise tax already assessed on all purchases made by patients and caregivers at dispensaries for their medicine. We are extremely concern that, by adding an additional tax on medical marijuana and marijuana containing products sold in dispensaries, we will ultimately add a financial burden to patients in the program and potentially push them to the black market to purchase illegal, un-taxed, untested and unregulated marijuana.

Thank you for this opportunity to testify on this important bill.

**LATE**

## PATIENTS WITHOUT TIME

TO: HAWAII STATE LEGISLATURE  
TESTIMONY

Aloha Legislators,

**LEGALIZE MARIJUANA NOW!**

The marijuana prohibition is founded on prejudice and paranoia. The CDC reports that 90,000 Americans die from alcohol every year, while marijuana kills ZERO Americans. How can Hawaii justify celebrating the success of Hawaii's wineries and microbreweries, even allowing tourists to visit tasting rooms for alcohol products, while cannabis production centers are required to be concealed from the public view and kept under 24/7 video surveillance.

In 2000, Hawaii rejected the federal prohibition on marijuana by establishing medical marijuana laws. Since then, Hawaii has protected registered patients from prosecution (because marijuana is medicine), while sending other citizens to jail for "marijuana" crimes (because marijuana has no medical value). There exists a clear, facial contradiction between marijuana's classification as a schedule I drug and its allowable use by qualifying patients for medical conditions. Hawaii is practicing **SELECTIVE PROSECUTION** against marijuana consumers.

The only just solution is to legalize marijuana. Tax and regulate Hawaii's estimated billion-dollar-a-year recreational marijuana industry, and raise over 100 million dollars every year in revenue. Legalization of cannabis will also decrease expenses incurred in fighting the failed prohibition, clear court dockets, save families broken by incarceration, and create thousands of new legal jobs and business. **WIN- WIN -WIN**

Mahalo for your kind consideration,

PATIENTS WITHOUT TIME  
Maui, HI Brian Murphy, Director

**LATE**

## HAWAII EDUCATIONAL ASSOCIATION FOR LICENSED THERAPEUTIC HEALTHCARE

To: Representative Della Au Belatti, Chair Health Committee  
Representative Bertrand Kobayashi, Vice-Chair Health Committee  
Members of the House Health Committee

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

Re: Testimony in **Opposition of House Bill (HB) 263**

RELATING TO MEDICAL MARIJUANA

Establishes a tax on all marijuana and marijuana related products sold by licensed medical marijuana dispensaries.

Dear Chair Belatti, Vice-Chair Kobayashi, 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 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 three (3) 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.



**LATE**

HAWAII EDUCATIONAL ASSOCIATION  
FOR LICENSED THERAPEUTIC HEALTHCARE

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Representative Bertrand Kobayashi, Vice-Chair Health Committee  
Members of the House Health Committee

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kobayashi2 - Jessi

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 14, 2017 11:06 PM  
To: HLTtestimony  
Cc: jamesjtz@aol.com  
Subject: \*Submitted testimony for HB263 on Feb 16, 2017 09:00AM\*

**HB263**

Submitted on: 2/14/2017

Testimony for HLT on Feb 16, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Gauer	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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**LATE**

February 16, 2017

On the following measure:

HB263, Relating to Medical Marijuana

Before the House Committees on Health and Finance

Date: February 16, 2017 Time: 9:00 am

Honorable Chairs Au Bellati, Kobayashi, Luke and Cullen and Members of the Committees:

Testimony in OPPOSITION of HB263

My Name is Kristin Wohlschlagel. I am a Registered Nurse and Certified Hospice and Palliative Nurse living and working on the Big Island for more than 12 years. I am providing testimony in OPPOSITION of HB263.

In addition to my qualifications as a nurse, I have also been a Hawaii Medical Marijuana (Cannabis) Patient since June, 2016.

I am deeply concerned that HB263 would impose a: "Tax on licensed medical marijuana dispensaries. Upon every person engaged as a licensed medical marijuana dispensary by the State pursuant to chapter 329D, there is hereby levied and shall be assessed and collected a tax equal to \_\_\_ per cent of the gross proceeds or gross income derived from sales on any marijuana or manufactured marijuana product dispensed."

This tax on Medical Cannabis (A.K.A. Medical Marijuana) would be discriminatory against providers (and thus PATIENTS) of a state-recognized medicine. Other medications that are available only by prescription are NOT subject to the G.E.T. (General Excise Tax).

**ACT 242, SB1291 SD2 HD2 CD1, 07/14/2015 (as per Governor Ige's website):**

**Prohibits discrimination against medical marijuana patients and their caregivers by schools, landlords, courts with regard to medical care or parental rights, planned community associations, condominium property regimes, or condominiums. (SB1291 CD1)**

It would seem only reasonable that this prohibition against discrimination against medical marijuana patients **with regard to medical care** (added emphasis mine) would apply in this case as well.

Medical Cannabis would be “Prescribed” instead of “Recommended” if the word “Prescribed” was allowed. But it is not because of the Federal Schedule 1 designation. By state standards, Medical Cannabis should not be taxed if prescription medications are not. I support the non-taxation of both.

The “Hawaii Tax Facts 98-01” revised April, 2016 and available here: <http://files.hawaii.gov/tax/legal/taxfacts/tf98-01.pdf> clearly explains how prescription drugs are handled with regard to the G.E.T.:

“Are there any exemptions from the GET that a provider can claim? Yes. The gross income from the sale of prosthetic devices and prescription drugs (including vaccines) to an individual by a hospital, infirmary, medical clinic, health care facility, pharmacy, physician, dentist, or other practitioner licensed to administer the drug to an individual is exempt from the GET. The exempt sale must be separately stated from any administrative and service fees. A provider cannot charge you GET on an amount for which the provider is claiming a GET exemption”

Again, I OPPOSE HB263.

Thank you for this opportunity to provide testimony.

Sincerely,

Kristin L. Wohlschlagel, RN, CHPN  
P.O. Box 616  
Honokaa, HI 96727

Phone: 808-747-3507  
Email: kristinredux@gmail.com

**LATE**

kobayashi2 - Jessi

From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, February 15, 2017 9:49 PM  
To: HLTtestimony  
Cc: mary@mauivortex.com  
Subject: Submitted testimony for HB263 on Feb 16, 2017 09:00AM

**HB263**

Submitted on: 2/15/2017

Testimony for HLT on Feb 16, 2017 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Whispering Wind	Individual	Oppose	No

Comments: Aloha Lawmakers, I STRONGLY OPPOSE HB985, because seriously ill patients should not pay tax on medicine. Furthermore, I urge the Hawaii Legislature to resolve the long-standing conflicts in the marijuana laws by LEGALIZING marijuana. The Hawaii government sells licenses to commercial "medical" marijuana dispensaries, while also listing marijuana as a Schedule One substance, without medical value. Good citizens are arrested, and clog our courts and jails. The current laws are SELECTIVE PROSECUTION, and I plead for equal justice for all. Sixteen years ago, Hawaii rejected the Federal government's (corporate sponsored "reefer madness" inspired) marijuana prohibition when forward-thinking Hawaii lawmakers passed vanguard legislation, which recognized the medical value of marijuana. Hawaii's compassionate "aloha-spirited" lawmakers took the lead in the nation, to be the first legislators in America, to pass medical marijuana by legislative action. I challenge the current legislators to take inspiration from your predecessors and again pass vanguard legislation to create a uniquely Hawaiian adult use Cannabis industry. Marijuana is far less harmful than alcohol, so legalize it and create thousands of new legal jobs and businesses. Hawaiian marijuana branding is already established worldwide, tourists would flock to Hawaii, in anticipation of enjoying eating a Maui Wowie brownie at sunset on South Shore, or drinking a tall, cool, Cannabis cooler in Kula, or sipping an orchid decorated, Marijuana Mai Tai in Waikiki, etc... Legislators, I STRONGLY urge you to LEGALIZE marijuana this session, or as soon as possible.

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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