

SB2202

Measure Title: RELATING TO THE GENERAL EXCISE TAX.

Report Title: General Excise Tax; Medical Devices; Exemption

Description: Exempts gross receipts from the sale of mobility enhancing equipment, durable medical equipment, prosthetic devices, prescription drugs sold pursuant to a doctor's prescription, diabetic supplies, medical oxygen, and human blood and its derivatives from the general excise tax. Amends the definition of "prosthetic device" to include devices worn on the body. Amends the definition of "prescription drugs".

Companion:

Package: None

Current Referral: CPH, WAM

Introducer(s): BAKER, ENGLISH, ESPERO, GABBARD, HARIMOTO, INOUE, KEITH-AGARAN, NISHIHARA, RUDERMAN, S. Chang, Galuteria, Ihara, Kidani

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To: The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce, Consumer Protection, and
Health

Date: Thursday, February 1, 2018
Time: 9:30 A.M.
Place: Conference Room 229, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2202, Relating to the General Excise Tax

The Department of Taxation (Department) offers the following comments on S.B. 2202 for the Committee's consideration.

S.B. 2202 amends the general excise tax exemption for amounts received by hospitals, medical practitioners, etc., for the sale of prescription drugs and prosthetic devices to individuals under Hawaii Revised Statutes section 237-24.3(6). This measure expands and clarifies the exemption by providing an exemption specifically for eight types of medical items and including amended and additional definitions for those items. The bill is effective July 1, 2018.

The Department is able to administer the changes in this measure, but requests that any change to the general excise tax be made effective January 1, 2019 to allow the Department to make the necessary form and computer system changes.

Thank you for the opportunity to provide comments.



DISABILITY AND COMMUNICATION ACCESS BOARD

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February 1, 2018

TESTIMONY TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH

Senate Bill 2202 - Relating to General Excise Tax

The Disability and Communication Access Board (DCAB) supports Senate Bill 2202 to exempt gross receipts from the sale of mobility enhancing equipment such as durable medical equipment, prosthetic devices, prescription drugs sold pursuant to a doctor's prescription, diabetic supplies, medical oxygen, and human blood and its derivatives from the general excise tax. The bill also amends the definition of "prosthetic device" to include devices worn on the body, as well as it amends the definition of "prescription drugs."

According to the July 10, 2013 U.S. Census Bureau study, nationally there are approximately 20% of the national population who are people with disabilities and of those:

- 36 million people 15 and older who had difficulty walking or climbing stairs;
- 3.6 million nationally of people 15 and older who used a wheelchair to assist with mobility. This compares with 11.6 million people who used a cane, crutches or walker;
- 2.4 million people 15 and older who had Alzheimer's disease, senility or dementia; and
- 12 million people 15 and older who required the assistance of others in order to perform one or more activities of daily living or instrumental activities of daily living, such as bathing, dressing, doing housework, and preparing meals.

(Source: *Americans with Disabilities: 2010* www.census.gov/prod/2012pubs/p70-131.pdf)

The provisions of this bill will benefit individuals who have different types of disabilities and health needs in Hawaii, because many are on a fixed income.

Thank you for the opportunity to testify.

Respectfully submitted,

FRANCINE WAI
Executive Director

TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, Expand drugs and prosthetics exemption

BILL NUMBER: SB 2202

INTRODUCED BY: BAKER, ENGLISH, ESPERO, GABBARD, HARIMOTO, INOUE, KEITH-AGARAN, NISHIHARA, RUDERMAN, S. Chang, Galuteria, Ihara, Kidani

EXECUTIVE SUMMARY: Provides a GET exemption for sales of mobility enhancement equipment, durable medical equipment, diabetic supplies, medical oxygen, and other items relating to medical care. The proposed expansion of the exemption does seem to be in line with the original intent of the exemption as enacted in 1986.

SYNOPSIS: Modifies the current exemption for prescription drugs and prosthetic devices in HRS section 237-24.3(6), so as to exempt gross proceeds from the sales of the following for human use: (A) Prescription drugs sold pursuant to a doctor's prescription; (B) Diabetic supplies; (C) Prosthetic devices; (D) Medical oxygen; (E) Human blood and its derivatives; (F) Durable medical equipment for home use; (G) Mobility enhancing equipment sold by prescription; and (H) Repair and replacement parts for any of the foregoing exempt devices and equipment.

Defines "durable medical equipment" as in title 42 Code of Federal Regulations section 414.202 and includes repair and replacement parts; provided that the term includes bath and shower chairs, bed pans, and raised toilet seats but excludes mobility enhancing equipment.

Defines "mobility enhancing equipment" as equipment, including repair and replacement parts, other than durable medical equipment, that: (A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle; (B) Is not generally used by persons with normal mobility; and (C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

Redefines "prosthetic device" as a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body in order to: (A) Artificially replace a missing portion of the body; (B) Prevent or correct a physical deformity or malfunction; or (C) Support a weak or deformed portion of the body; provided that "prosthetic device" shall not mean any ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance. Examples of prosthetic devices are heart valves, hearing aids, pacemakers, and artificial limbs.

Amends the definition of "prescription drugs" to delete the proviso excluding cannabis or manufactured cannabis products. That would make sales of cannabis or cannabis products eligible for this exemption.

EFFECTIVE DATE: Taxable years beginning after December 31, 2018.

STAFF COMMENTS: Under the Hawaii GET law as it now exists, revenue for selling prescription drugs and prosthetic devices (including replacement parts) is exempt when received by a hospital, medical clinic, health care facility, pharmacy, or licensed health care practitioner for selling the drugs or devices to an individual. The Department of Taxation has carefully interpreted this exemption in Tax Information Release 86-4.

Under TIR 86-4, the following medical devices do not qualify for exemption: bandages, thermometers, hypodermic needles, diaphragm syringes, gauze, orthopedic support, inhalation extender devices, food products/supplements, dietary supplements, prophylactics, contact lens preparations, wheelchairs, crutches, canes, quad canes, and walkers. The expanded definitions in the bill would make a good portion of the above exempt, and appear to be consistent with the policy justification for the original exemption.

Digested 1/29/2018

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THE SENATE THE TWENTY-NINTH LEGISLATURE REGULAR SESSION OF 2018

COMMITTEE ON CONSUMER PROTECTION AND HEALTH Testimony on S.B. 2202 Hearing: February 1, 2018

Relating To The General Excise Tax

Chair Baker, Vice Chair Tokuda and members of the Committee. My name is Peter Fritz. I am an individual with a hearing disability and a tax attorney. I am testifying today in **strong support** of S.B. 2202.

This bill would amend Hawaii's General Excise Tax law ("GET") to exempt gross receipts from the sale of mobility enhancing equipment, durable medical equipment and hearing aids.

Presently, a seller often visibly passes on the GET to the consumer which increases the cost of the item. By exempting these items, this bill will benefit Hawaii's kupuna who may have a fixed income and the disabled. Most states provide exemptions (see attachment) for medical equipment, hearing aids and mobility enhancing equipment which may be necessities for daily living.

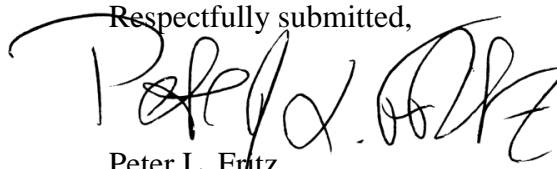
This bill adds a definition for mobility enhancing equipment. including repair and replacement parts, that is primarily and customarily used to provide or increase the ability to move from one place to another and is not generally used by persons with normal mobility. Some examples of mobility enhancing equipment are wheelchairs, canes, crutches, chair lifts, shower stools, and walkers.

This bill adds a definition durable medical equipment, including the repair of such equipment. Durable medical equipment is equipment that can stand repeated use; is primarily use to serve a medical purpose; is generally not useful to a person in the absence of an illness or injury and is not worn on the body. Examples of durable medical equipment alternating pressure pads, bed pans, compression sleeves, speech aids and chair lifts.

For many people, these items are necessities for daily living. Because many states current exempt these items from taxation, considerable guidance is available to the Department of Taxation to help administer the changes that will be made by this bill.

I respectfully ask for your support of this bill.

Respectfully submitted,



Peter L. Fritz

Attachment

The following states generally exempt medical devices from tax when they are sold on a written order (prescription) provided by an individual who is required to hold, and actively holds, a state license (physician, therapist, etc.):

Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia.

Specific state treatments of medical devices are provided below:

- **Alabama:** medical devices are subject to tax unless the item is used for the treatment of illness or injury or to replace all or part of a limb or internal body part, purchased by or on behalf of an individual pursuant to a valid prescription, and covered by and billed to Medicare, Medicaid, or a health benefit plan. The exemption includes, but is not limited to, any of the following: durable medical equipment, including repair parts and the disposable or single patient use supplies required for the use of the equipment; medical oxygen and related equipment and supplies; prosthetic and orthotic devices; and medical supplies, as defined and covered under the Medicare program, including, but not limited to, items such as catheters, catheter supplies, ostomy bags and supplies related to ostomy care, specialized wound care products, and similar items that are covered by and billed to Medicare, Medicaid, or a health benefit plan.
- **Connecticut:** medical devices are generally exempt with or without a prescription.
- **Georgia:** exemptions apply to the sale or use of any durable medical equipment or prosthetic device sold or used pursuant to a prescription, and to the sale or use of all mobility enhancing equipment prescribed by a physician.
- **Illinois:** medical devices are taxed at a 1% reduced rate.
- **Maine:** medical devices are generally exempt with or without a prescription.
- **Minnesota:** durable medical equipment is generally subject to tax unless it's sold for home use or is paid for or reimbursed by Medicare or Medicaid, regardless of whether sold for home use.
- **Mississippi:** exemptions allowed for: home medical equipment/supplies, prosthetics, orthotics, hearing aids, hearing devices, prescription eyeglasses, oxygen and oxygen equipment if prescribed and paid for under Medicare/Medicaid; durable medical equipment and home medical supplies if prescribed.
- **Missouri:** medical devices are generally exempt with or without a prescription.
- **Nebraska:** for mobility enhancing equipment, a prescription is required. For durable medical equipment, home medical supplies, oxygen equipment, and prosthetic devices, a prescription is required and they must be of the type eligible for coverage under the medical assistance program established pursuant to the Medical Assistance Act.
- **Nevada:** medical devices are generally exempt with or without a prescription.
- **New Jersey:** medical devices are generally exempt with or without a prescription.

- **New Mexico:** medical devices are exempt only if delivered by a licensed practitioner incidental to the provision of a service and the value of the device is included in the cost of the service.
- **New York:** medical devices are generally exempt with or without a prescription.
- **North Dakota:** medical devices are generally exempt with or without a prescription.
- **Ohio:** prescription is required for exemption unless the item is medical oxygen and medical oxygen-dispensing equipment, not sold for home use, and is purchased by hospitals, nursing homes, or other medical facilities.
- **Pennsylvania:** medical devices are generally exempt with or without a prescription.
- **Rhode Island:** medical devices are generally exempt with or without a prescription.
- **South Carolina:** medical devices are generally subject to tax unless the item is paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs, state or federal law or regulation authorizing the payment prohibits payment of the sales or use tax, and the equipment is sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in the state.
- **Tennessee:** medical devices are generally exempt with or without a prescription.
- **Vermont:** medical devices are generally exempt with or without a prescription.
- **Virginia:** medical devices are generally exempt with or without a prescription.
- **Washington:** medical devices are generally subject to tax unless they are ostomic items, prosthetic devices that are prescribed, furnished or fitted by a person licensed to do so, or medically prescribed oxygen components or systems.
- **Wisconsin:** medical devices are generally exempt with or without a prescription.
- **Wyoming:** medical devices are generally exempt with or without a prescription.