

# TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, Exempt mobility enhancing and durable medical equipment

BILL NUMBER: SB 222, SD-1

INTRODUCED BY: BAKER, S. Chang, Gabbard, Ruderman

EXECUTIVE SUMMARY: Expands the current exemption for prescription drugs and prosthetic devices to include more items specific to health care. The expanded list of items appears to be consistent with the policy justification for the original exemption. In addition, some of the changes in this bill would rectify an anomaly that exists under current law.

BRIEF SUMMARY: Modifies the current exemption for prescription drugs and prosthetic devices in HRS §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” with reference to 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.

EFFECTIVE DATE: Taxable years beginning after December 31, 2017.

STAFF COMMENTS: Under the Hawaii GET law as it now exists, prescription drugs and prosthetic devices (including replacement parts) are 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.

The bill states that it is intended to benefit individuals with disabilities and kupuna on limited income by exempting necessary medical devices and the repair of those devices from GET. There is nothing in the bill that limits the exemption to these classes of individuals, so lawmakers should realize that anyone needing these items and devices could benefit from the exemption.

In addition, it may be misleading to state in the preamble that “repair of” the devices is exempt. Only the replacement parts are exempt; the repair service or labor is still taxable.

The bill proposes to expand the exemption without regard to who is selling the articles. This may help to correct an anomaly that now exists in the law. Compare the following situations:

1. Drug manufacturer M sells a drug to retail pharmacy R who sells it to patient P. The sale from R to P is exempt and the sale from M to R is a wholesale sale taxed at 0.5%. Total tax: 0.5%.
2. Drug manufacturer M sells a drug to GET-exempt hospital H who sells it to patient P. The sale from H to P is exempt because H is a tax-exempt organization. The sale from M to H does not qualify as a wholesale sale because an exempt organization is not a “licensed seller” and the exemption doesn’t apply because the sale is not to a patient. The sale is a retail sale taxed at 4%. Total tax: 4%.

Businesses providing similar, if not identical, goods or services should be treated equally as the tax is on the business and not on the customer. The law now discriminates against tax-exempt hospitals, infirmaries, and sanitarium (HRS §237-23(a)(6)).

# HAPTA



**HAWAII CHAPTER - AMERICAN PHYSICAL THERAPY ASSOCIATION**

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**SB 222sd1, Relating to General Excise tax  
WAM Decision Making Committee Hearing  
Wednesday, Feb 21, 2018 – 10:08 am  
Room 211  
Position: Support**

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Senate Ways and Means Committee:

I am Gregg Pacilio, PT and Board President of the Hawaii Chapter of the American Physical Therapy Association (HAPTA), a non-profit professional organization serving more than 340 member Physical Therapists and Physical Therapist Assistants. Our members are employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are movement specialists and are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

HAPTA **supports** that the sale of mobility enhancing equipment, durable medical equipment, and prosthetic devices, sold pursuant to a doctor's prescription, be exempt from the general excise tax.

Physical Therapists recommend and order equipment for patients daily, based on thorough evaluation of individual medical need. The patients that require mobility devices are those injured or with disability, and tend to be hospitalized, homebound, on a fixed income, or unable to work at that time. Commonly, patients and families are unable to afford the medically necessary equipment such as Bedside Commodes, Shower Chairs, or Rollator Walkers. A high cervical spinal cord injury may require a shower chair that costs \$3500 + shipping, and excise tax around \$150. Insurances only cover some equipment costs, but do not usually cover the excise tax.

Your support of SB 222sd1 is appreciated. Thank you for the opportunity to testify. Please feel free to contact Abi Leddy, HAPTA's Aging Adults Issue Lead at (214) 883-8329 for further information.

**SB-222-SD-1**

Submitted on: 2/18/2018 8:21:55 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawaii	Support	No

Comments:

**PRESENTATION OF THE  
OAHU COUNTY COMMITTEE ON LEGISLATIVE PRIORITIES  
DEMOCRATIC PARTY OF HAWAII'**

TO THE COMMITTEE ON WAYS AND MEANS

THE SENATE

TWENTY-NINTH LEGISLATURE

REGULAR SESSION OF 2018

Wednesday, February 21, 2018

10:08 a.m.

Hawaii State Capitol, Conference Room 211

RE: Testimony in Support of SB 222 SD1 RELATING TO THE GENERAL EXCISE TAX

To the Honorable Donovan M. Dela Cruz, Chair; the Honorable Gilbert S.C. Keith-Agaran, Vice-Chair, and Members of the Committee on Ways and Means:

Good morning. My name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on Senate Bill No. 222 SD1 relating to a general excise tax exemption for medical devices.

The OCC Legislative Priorities Committee is in favor of Senate Bill No. 222 SD1 and supports its passage.

Senate Bill No.222 SD1 is in accord with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it 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 and amends the definition of "prosthetic device" to include devices worn on the body,

The DPH Platform states that "[a]ccess to health care is a basic human need. Our citizens and visitors have an inherent right to high quality, high standard health care. The state legislature and the federal government should take all appropriate steps to create and support a health care system of public, for-profit, and nonprofit hospitals and other medical facilities that follow best practices to enhance and protect and preserve life. (Platform of the DPH, P.7, Lines 361-364 (2016)).

Given that Senate Bill No.222 SD1 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 and amends the definition of "prosthetic device" to include devices worn on the body, it is the position of the OCC Legislative Priorities Committee to support this measure.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Tel.: (808) 258-8889

**SB-222-SD-1**

Submitted on: 2/18/2018 1:04:13 PM

Testimony for WAM on 2/21/2018 10:08:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brett Kulbis	Testifying for Honolulu County Republican Party	Support	No

Comments: