

DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

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DEPUTY DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF TAXATION**

830 PUNCHBOWL STREET, ROOM 221  
HONOLULU, HAWAII 96813

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

Date: Tuesday, February 26, 2019  
Time: 1:30 P.M.  
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: H.B. 343, H.D. 1, Relating to Taxation of a Small Craft Beer Producer Tax Credit

The Department of Taxation (Department) provides the following comments regarding H.B. 343, H.D. 1, for your consideration.

H.B. 343, H.D. 1, amends Hawaii Revised Statutes (HRS) chapter 235 by creating a new, nonrefundable income tax credit for qualified taxpayers who are small craft beer producers. The measure's key provisions:

- Provides that the amount of the credit at 25% of the qualified expenses incurred by the qualified taxpayer during a taxable year;
- Sets an aggregate cap of \$1,000,000 in total tax credits allowed for all qualified taxpayers in any taxable year;
- Sets a cap of \$100,000 on the annual tax credit allowed to any individual qualified taxpayer;
- Defines "qualified expenses" as expenses incurred by a qualified taxpayer to manufacture beer;
- Requires qualified expenses to be calculated in accordance with the uniform capitalization rules of section 263A of the Internal Revenue Code;
- Defines "qualified taxpayer" as a person who:
  - Has a valid class 1, class 14 or class 18 license as described in section 281-31, HRS;
  - Complies with any manufacturing limitations established in section 281-31(r)(1); and
  - Produces 100% of its beer products in the State;

- Directs the Department of Business, Economic Development, and Tourism (DBEDT) to:
  - Maintain records of the names and addresses of qualified taxpayers claiming the credit and the total amount of their qualified expenses;
  - Verify the nature and amount of qualified expenses
  - Calculate the total amount of all qualified and cumulative expenses that DBEDT certifies;
  - Certify the amount of the tax credit for each taxpayer for each taxable year and the cumulative amount of the tax credit for all years claimed; and
  - Issue a certificate to the taxpayer verifying the above information that the taxpayer will file along with the taxpayer's return;
- Allows DBEDT to assess and collect a fee to offset certification costs;
- Appropriates \$1,000,000 to DBEDT out of the general fund for monitoring, verification, and certification of the tax credit claims; and
- Has a defective effective date of July 1, 2112 and apply to taxable years beginning after December 31, 2019.

First, the Department notes that the measure's definition of "qualified expenses" for the credit is quite broad and ambiguous. As currently written, the credit amount may be based on expenses incurred at every step of the beer-making process, with no distinction between equipment, capital, and labor, as long as those expenses were incurred within the State. The Department suggests being more specific as to the expenses that qualify for the credit.

Second, the Department notes that the third prong in the definition of "qualified taxpayer" which requires 100% of the taxpayer's beer to be produced in Hawaii may violate the Commerce Clause. The Department ultimately defers to the Department of the Attorney General on this issue.

Thank you for the opportunity to provide comments.



DAVID Y. IGE  
GOVERNOR

MIKE MCCARTNEY  
DIRECTOR

## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of  
**MIKE MCCARTNEY**  
Director

Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON FINANCE**

Wednesday, February 26, 2019  
1:30pm  
State Capitol, Conference Room 308

In consideration of  
**HB 343, HD1**  
**RELATING TO SMALL CRAFT BEER PRODUCER TAX CREDIT.**

Chair Luke, Vice Chair Cullen, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) **offers comments** on HB 343, HD1 which establishes a tax credit for small craft beer producers:

- The cost to implement the process to monitor and certify the tax credit, at a minimum, would cost \$50,000 on a recurring basis; and
- The impact to state tax revenues is unknown.

Thank you for the opportunity to provide these comments.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Establish Small Craft Beer Producer Credit

BILL NUMBER: HB 343, HD-1

INTRODUCED BY: House Committee on Economic Development & Business

EXECUTIVE SUMMARY: Establishes a tax credit for 25% of qualified expenses by a small craft beer producer, up to \$100,000. The adoption of this credit would provide tax relief to taxpayers regardless of their need for tax relief. It also would shift the burden of paying for government to the rest of us. There also may be constitutional problems and technical issues.

SYNOPSIS: Adds a new section to HRS chapter 235 to allow a credit of 25% of qualified expenses by a small craft beer producer, with a per-taxpayer limit of \$100,000 per year.

DBEDT is tasked with receiving expense reports of small craft beer producers and certifying the tax credit amount for each taxpayer for each taxable year, like the process now employed for the movie production credit in section 235-17, HRS.

Qualified expenses are defined as expenses incurred by a qualified taxpayer to manufacture beer. Qualified expenses shall be calculated in accordance with the uniform capitalization rules of section 263A of the Internal Revenue Code of 1986, as amended, and the federal rules and regulations adopted pursuant thereto.

A qualified taxpayer is defined as a person that: (1) has a valid class 18 small craft producer pub license as described in section 281-31(r); (2) complies with any manufacturing limitations established in section 281-31(r)(1); and (3) produces 100% of its beer products in Hawaii.

Tax credits that exceed the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified expenses incurred by the entity for the taxable year. The expenses upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 704(b) (with respect to partner's distributive share) of the Internal Revenue Code.

Requires the director of taxation to prepare any forms necessary to claim a credit, may require a taxpayer to furnish reasonable information to validate a claim for the credit, and adopt rules pursuant to HRS chapter 91. Requires claims for the credit, including any amended claims, to be filed on or before the end of the twelfth month following the taxable year for which the credit is claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the tax credit.

EFFECTIVE DATE: July 1, 2012, applies to taxable years beginning after December 31, 2019.

STAFF COMMENTS: This measure is proposed as an incentive to a fledgling small craft beer industry in Hawaii.

Utilizing tax credits to drive economic policy in this manner is of a questionable benefit relative to the cost for all taxpayers. A direct appropriation of grant funding to producers would be more accountable and transparent. At least we would know the amount of the appropriation, while the fiscal impact of the credit would be a great big question mark.

Furthermore, the additional credit would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive in amount compared to the benefit expected to accrue because of the creditable activity.

We are concerned that limitation of the credit to those producing 100% of beer products within Hawaii may run afoul of federal Commerce Clause limitations. *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984); *In re Hawaiian Flour Mills, Inc.*, 76 Hawai'i 1, 868 P.2d 419 (1994). This issue should be reviewed carefully if this bill is to move forward.

*Bacchus Imports, Ltd v. Dias*, 468 U.S. 263 (1984), called it a “cardinal rule of Commerce Clause jurisprudence” that “[n]o State, consistent with the Commerce Clause, may ‘impose a tax which discriminates against interstate commerce ... by providing a direct commercial advantage to local business.’” *Id.* at 268 (quoting *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 320 (1977)).

In *Bacchus*, the taxing statute facially discriminated against interstate commerce. Specifically, it was an exemption from Hawaii Liquor Tax on sales of locally produced okolehao and fruit wine. The Court invalidated the exemption. The bill before this Committee awards a credit for locally produced beer but denies it for beer produced anywhere else. That also could be discrimination against interstate commerce. For that reason, the bill should be carefully analyzed for compliance with this constitutional provision if it is to move forward.

We have some technical comments, as follows:

- Reference in the qualified expense definition to the IRC section 263A UNICAP rules is confusing.
  - The apparent meaning is to disallow costs that would be capitalized into equipment costs or cost of sales. If the intent is otherwise, such as to allow the expenses that are capitalized into cost of sales (and to disallow office equipment and overhead), that needs to be stated.
  - In addition, the UNICAP rules do not apply to businesses with average annual gross receipts of \$25 million or less (IRC sec. 263A(i), 448(c)(1)). The credit applies to class 18 licensees, and it would be very difficult for such a licensee with the production limits in section 281(r)(1), HRS, to hit \$25 million in gross receipts. UNICAP probably is not worth worrying about.

- If the intent is to award credit for the cost of equipment or other tangible property, the capital goods excise tax credit in section 235-110.7, HRS, already provides relief.

Digested 2/23/2019



**WAIKIKI BREWING COMPANY**

Joe P. Lorenzen, Partner/Brewmaster

831 Queen St.

Honolulu, HI 96813

808-591-0387

[brewmaster@waikikibrewing.com](mailto:brewmaster@waikikibrewing.com)

HB 343 H.D.1, Relating to: A Small Craft Beer Producer Tax Credit

House Committee on Finance

Tuesday February 26, 2019 at 1:30 p.m. Conference Room 308

Position: **Support**

Chair Representative Sylvia Luke, Vice Chair Representative Ty Cullen and members of the Committee,

My name is Joe Lorenzen. I live in Honolulu, on the island of Oahu, and I am a partner in and Brewmaster of Waikiki Brewing Company with business locations in Waikiki and in Kaka'ako. Our brewery began with 15 employees in 2015, and now employs a staff of 45.

Waikiki Brewing Company supports HB 343 HD1 because as a local manufacturer of craft beer, we face much higher costs of production than brewers who import their products to the state of Hawaii. This bill will serve to help even the playing field with the mainland companies while supporting local job creation and manufacturing.

Not only does our business directly create local jobs, but as a local manufacturer, we purchase ingredients and materials from other local producers, further having a positive impact on the local economy and job market.

Only 5% of the beer sold in Hawaii is actually produced in Hawaii, leaving a great deal of room for growth of our craft beer sector. Our costs of production are high, with ingredients, equipment, and brewery modernization all contributing.

A craft producer tax credit helps Hawaii's breweries stay competitive with mainland manufacturers able to produce with lower costs and ship their craft beer to Hawaii.

Hawaii's craft beer producers support the local economy with jobs that offer careers and living wages for employees and their families. Passage of HB 343 HD1 will stimulate the craft brewing sector, and in turn reinvestment in our communities.

Thank you for the opportunity to provide testimony in support of HB 343 HD1.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe P. Lorenzen".

Joe P. Lorenzen



February 25, 2019

House Committee on Finance  
HB343 HD1: Small Craft Beer Producer Tax Credit  
Tuesday, February 26<sup>th</sup>, 2019 at 1:30pm, Conference Room 308

Re: **IN SUPPORT HB343 HD1**

Aloha Chair Representative Sylvia Luke, Vice Chair Representative Ty Cullen, and members of the Committee on Finance,

My name is Garrett W. Marrero, I live in Kula, HI. My wife and I were selected as the National Small Business Persons of the year in 2017 for our work at Maui Brewing Co. I'm writing on behalf of myself and our local family-operated business in support of **HB343 HD1** which creates a Small Craft Beer Producer Tax Credit to promote the local production of craft beer.

The purpose of this act is to establish a tax credit for small craft producers manufacturing in Hawaii to encourage local production and expand the growth of a local industry. The language in the bill should ensure that it requires beverages be made in Hawaii in order to qualify for the credit and that a "qualified producer" produce 100% of their beverage in Hawaii and that any production outside the State disqualifies the producer.

Maui Brewing Co. is a small, independent craft brewery that began with just 26 on our team in 2005. We are now over 500 strong and Hawaii's largest craft brewery. These employees live in Hawaii, raise their children here, pay taxes, and contribute to the community. We offer jobs with family-level wages, insurance benefits including health (medical, drug, dental, vision and preventative care), life insurance, and 401(k). We currently match contributions to 401(k). We simply would not be where we are without our staff and they deserve the best we can offer.

Maui Brewing Co. supports this legislation with amendments as suggested by the Hawaiian Craft Brewers Guild. The passage of this provision will allow for job creation, reinvestment in our communities, and allow us to be competitive with large breweries from the mainland where costs of production can be almost half as much. In speaking with others in our local beverage alcohol industry we agree that the small producers tax credit would be utilized to invest in new equipment and our people in order to continue growing our companies locally.

Hawaii's local brewers account for less than 5% of beer sold in Hawaii, approximately 60,000 barrels versus the 1,200,000 barrels imported into the State. The establishment of a tax credit for Small Producers is a direct incentive to produce locally, this may also serve to encourage those who have stopped or decreased producing in Hawaii to come back. It rewards the small business in every community in Hawaii for committing to authentic local brewing, winemaking and distilling at very little cost. We view this as an investment in job creation and encouraging Hawaii manufacturing. At the same time, the resulting increases in production volume and removing burden from unemployment will result in a net gain to the State.

**Handcrafted Ales & Lagers Brewed with Aloha**  
605 Lipoa Parkway, Kihei, HI 96753  
808.213.3002



In 2005 when we started Maui Brewing Co. we did so with the vision of producing the highest quality ales and lagers available in the State, and doing so with a strong commitment to always brewing in Hawaii. We have stayed true to our vision and have brought attention to craft beer in Hawaii for the first time in history. We are proud that in the craft brewing community around the world the name "Maui Brewing Co." is synonymous with world-class beer of a truly local Hawaiian origin. It has become increasingly difficult to grow and remain competitive with the extremely high cost of production in Hawaii, with costs more than doubling in less than 10 years, relative to our mainland counterparts. This paired with the highest liquor taxes in the Nation result in a disincentive to manufacturing in the State and not just a lack of competitive capability but with odds stacked against. The disincentive of local production has encouraged an outward migration of jobs, taxes, and manufacturing. We should encourage brewing and selling our products in Hawaii, and the support of our government officials with a tax credit rewarding local operations. We believe in a strong Hawaii, this starts with small businesses which are the backbone of any strong community.

Hawaiian producers operate under the highest cost conditions of any State. One look at the store shelves will show you that true Hawaiian beers are the most expensive beers on the shelf, this leads to lower volume and velocity of sales. This in itself has served to limit the availability of true, locally produced selections and give rise to a host of "faux-hawaiian" products. As a State, we must invest in local manufacturing, these are jobs with good wages and benefits that can provide careers for our residents. Further if Hawaii is to continue to compete on the international forum for tourism it is incumbent upon us to deliver an authentic Hawaiian experience in our products. How can we do that if we instead serve beers, wine and spirits bearing Hawaiian names but made across the world except in Hawaii?

We are the #5 purchaser of cans from a local Ball Corporation plant in Kapolei further supporting local labor. Many breweries here buy cardboard trays and boxes from Rengo, a local manufacturer in Kapolei. This is directly related to the growth of industry in Hawaii, more beer brewed here means more jobs for the economy. The Craft Brewing industry has proven a direct correlation of lower taxation and an increase in jobs and economic activity. States such as CA, CO, WA, OR, and NY have a thriving craft beverage industry due to the supportive nature of the tax structures established whether that be lower rates for small producers or tax credits to produce in the State. This bill provides a way to immediately support the growing industry.

Hawaii's breweries are also large supporters of agriculture brewing with many different agricultural products. Most breweries in the State have strong ties to farmers on their island as the brewers give farmers spent grain for feed and compost, and the brewers buy fruits, spices and etc to brew unique styles. Supporting brewers means supporting farmers.

This year Maui Brewing Co. will begin adding natural craft sodas, distilled spirits, cider and canned cocktails to our distributed lineup. These additional local beverage lines will add to not only our employment base but that of our wholesaler partners. Additional wages and taxes will be paid based on growth. It is imperative to have the support of the State when working to increase manufacturing within the State.

Thank you for the opportunity to offer these comments. We urge you to support the passage of **HB343 HD1**.

Sincerely,



Garrett W. Marrero

**Handcrafted Ales & Lagers Brewed with Aloha**  
605 Lipoa Parkway, Kihei, HI 96753  
808.213.3002

CEO/Founder

**Handcrafted Ales & Lagers Brewed with Aloha**  
605 Lipoa Parkway, Kihei, HI 96753  
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February 26, 2019

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

From: Kona Brewing Company  
Mary Rait; Director, Regulatory Compliance and Government Relations

RE: HB343 HD1; Relating to a Small Craft Beer Producer Tax Credit  
**In Opposition**; February 26, 2019; Conference Room 308

We appreciate the opportunity to provide testimony on HB343 HD1. Kona Brewing Co. runs our flagship brewery out of Kailua-Kona, Hawaii and currently produces more than 12,000 barrels of beer per year on island. The company was started by a father and son team in 1994 who had a dream to create fresh, local island brews made with spirit, passion, and quality. Kona Brewing Co. is currently in the process of expanding our pub and brewery operations in Hawaii to include a new state-of-the-art, 30,000 square-foot facility to support the anticipated demand for Kona Brewing beer sold in Hawaii. In addition to creating more local jobs, over time this expansion will increase our annual local production capacity from 12,000 to 100,000+ barrels of malt beverages, all of which will be sold in Hawaii.

While we support providing tax credits to the growing community of beer producers, our opposition is with the language that limits the credit to only those companies that produce 100% of their beer in Hawaii. As one of the largest beer producers in the state and a local industry leader in job creation, economic development, and community donations, Kona Brewing believes that a tax credit should be for any beer produced in Hawaii. In addition, we believe this language is possibly subject to a legal challenge under the Commerce Clause because it has “both the purpose and effect of discriminating in favor of local products.” *Bacchus Imports Ltd. v. Dias*, 468 U.S. 263, 273 (1984).

For 25 years Kona Brewing Co. has proudly invested in the future of Hawaii, and therefore feels passionate about promoting the growth of the craft beer industry while advocating for environmental responsibility, community wellness, and sustainability. Mahalo for the opportunity to provide testimony on HB343 HD1.

Sincerely,

A handwritten signature in cursive script that reads "Mary Rait".

Mary Rait  
Kona Brewing Company

Kauai Beer Company  
Justin Guerber  
4265 Rice St  
Lihue, HI 96766  
(808) 245-2337  
[justin@kauaibeer.com](mailto:justin@kauaibeer.com)



**HB 343 H.D.1, Relating to: A Small Craft Beer Producer Tax Credit**  
**House Committee on Finance**  
**Tuesday February 26, 2019 at 1:30 p.m. Conference Room 308**

Position: **Support**

Chair Representative Sylvia Luke, Vice Chair Representative Ty Cullen and members of the Committee,

My name is Justin Guerber and I have been the head brewer at Kauai Beer Company since 2012. We are located in Lihue on Kauai. We opened in 2013 with only a couple of employees and now currently employ over 30 people in our brew pub.

We are members of the Hawaiian Craft Brewers Guild that seeks to promote production of craft beer in Hawaii. Kauai Beer Company is an independent craft brewery producing 100% of our beer in Hawaii. We are united in our pursuit to promote economic activity for Hawaii's beer manufacturers and enhance opportunities in our communities. The Hawaiian Craft Brewers Guild represent the majority of craft beer producers in Hawaii.

Expanding the production of craft beer and the variety of beer we offer to customers is one of our goals. A small craft producer tax credit will encourage more local production and help us achieve growth in our business here in Hawaii.

Hawaii's craft breweries are growing and incentives such as the small craft producers income tax credit help spur that growth. Only 5% of the beer sold in Hawaii is actually produced in Hawaii, leaving a great deal of room for expansion of our craft beer sector. Our costs of production are high, approximately 40 to 50% higher than similar production costs on the mainland, with ingredients, equipment, and brewery

modernization all contributing. For example, a pallet of malt shipped to our brewery costs somewhere around \$700-\$800, and costs \$100 for a lot of mainland breweries. We also have to ship our hops in via UPS or FedEx (to maintain freshness), sometimes almost doubling the cost.

A craft producer tax credit helps Hawaii's breweries stay competitive with mainland manufacturers that are able to produce with lower costs and ship their craft beer to Hawaii.

We use locally grown ingredients in some of our beer such as tropical fruits, herbs and spices, and coffee which supports our local Hawaii farmers. We brew a rotating wheat beer that highlights a local fruit that is ripe at the time of production. We also are planning to use some of the local chocolate and coffee produced on the island. Craft beer producers making 100% of their beer in Hawaii are contributing to the economic growth of other local manufacturers and suppliers with the purchase of cans and packaging. Small craft beer tourism would have greater opportunities to grow as breweries expand their operations.

Mahalo for your consideration. We urge you to pass this bill.

Thank you for the opportunity to provide testimony in support of **HB343 H.D.1**.

## **Kauai Beer Company**

James Guerber

4265 Rice Street

Lihue, HI 96766

98080 639 7821

jim@kauaibeer.com



HB 343 H.D.1 , Relating to: A Small Craft Beer Producer Tax Credit  
House Committee on Finance  
Tuesday February 26, 2019 at 1:30 p.m. Conference Room 308

### **Position: Support**

Chair Representative Sylvia Luke, Vice Chair Representative Ty Cullen and members of the Committee,

My name is Jim Guerber and I am the President of the Kauai Beer Company, located in downtown Lihue, Kauai on Rice Street. We have been in business here since 2006 and began formally serving beer in September 2013. We have been instrumental in the effort to revitalize our downtown and are widely recognized for our contribution in that regard. We are in the process of renovating an adjacent space, which will dramatically enhance our ability to serve a larger customer base, increase production and increase our personnel, which is presently ~60 full and part-time personnel.

We are members of the Hawaiian Craft Brewers Guild that seeks to promote production of craft beer in Hawaii. Kauai Beer Company is an independent craft brewery producing 100% of our beer in Hawaii. We are united in our pursuit to promote economic activity for Hawaii's beer manufacturers and enhance opportunities in our communities. The Hawaiian Craft Brewers Guild represent the majority of craft beer producers in Hawaii.

We support HB 343 H.D.1 because it would stimulate business in the state of Hawaii.

Expanding the production of craft beer and the variety of beer we offer to customers is one of our goals. A small craft producer tax credit will encourage more local production and help us achieve growth in our business here in Hawaii.

Hawaii's craft breweries are growing and incentives such as the small craft producers income tax credit help spur that growth. Only 5% of the beer sold in Hawaii is actually produced in Hawaii, leaving a great deal of room for growth of our craft beer sector. Our costs of production are high, approximately 40 to 50% higher than similar production costs on the mainland, with ingredients, equipment, and brewery modernization all contributing to this disparity.

A craft producer tax credit helps Hawaii's breweries stay competitive with mainland manufacturers that are able to produce with lower costs and ship their craft beer to Hawaii.

Hawaii's craft beer producers support the local economy with jobs that offer careers and living wages for employees and their families. Passage of HB 343 H.D.1 will stimulate the craft brewing sector, and in turn reinvestment in both our brewery business and our communities.

We use locally grown ingredients in some of our beer such as tropical fruits, herbs and spices, and coffee which supports our local Hawaii farmers. We have used Kauai grown Guava and citrus so far and plan to try more varieties in the future. Craft beer producers making 100% of their beer in Hawaii are contributing to the economic growth of other local manufacturers and suppliers with the purchase of cans and packaging. Small craft beer tourism would have greater opportunities to grow as breweries expand their operations.

Mahalo for your consideration. We urge you to pass this bill.  
Thank you for the opportunity to provide testimony in support of HB 343 H.D.1.

Sincerely,

Jim Guerber  
President  
Kauai Beer Company



Cindy Goldstein, PhD  
Executive Director  
Hawaiian Craft Brewers Guild  
98-814 C Kaonohi Street  
Aiea, HI 96701

HB 343 H.D.1, Relating to: A Small Craft Beer Producer Tax Credit  
Growlers, Satellite Locations and Direct Shipping  
House Committee on Finance  
Tuesday February 26, 2019 at 1:30 p.m. Conference Room 308

Position: **Support**

Chair Representative Sylvia Luke, Vice Chair Representative Ty Cullen, and members of the Committee on Finance,

The Hawaiian Craft Brewers Guild is a non-profit Hawaii trade organization that promotes and encourages production of independent craft beer in Hawaii. The number of independent craft breweries in Hawaii continues to grow, with construction of new breweries and recent expansion by several breweries. The Hawaiian Craft Brewers Guild is united in our pursuit to promote economic activity for Hawaii's beer manufacturers and enhance opportunities in our communities. Our members represent the majority of craft beer producers in Hawaii, with members producing 100% of their beer in the State of Hawaii.

Hawaii's craft breweries are growing and incentives such as a small craft producer tax credit can help continue to spur that growth. The number of breweries in Hawaii has increased from eight in 2013 to 20 in production or about to open in 2019. We see continued growth of the craft brewing economic sector with 3 new craft breweries on track to begin production in 2019.

Even given this rate of growth, there is still room for continued increase in craft beer manufacturing. Only 5% of the beer sold in Hawaii is currently produced in Hawaii, providing opportunities to reach additional customers and increase the volume of local craft production.

Legislation that provides tax credits will stimulate the growth of Hawaii's small craft producers that have built their businesses across the state. The small producer credit would be used to invest in new equipment and increased opportunity for employees, to continue growing our companies locally.



Manufacturing businesses face challenges as they begin and then expand production in Hawaii. As a State, we must invest in local manufacturing. These are jobs with good wages and benefits that can provide careers for our residents.

The language in HB343 H.D. 1 specifies that the small craft beer producer credit is only for beer made 100% in Hawaii. "Qualified producers" must manufacture craft beer in Hawaii, fostering expansion and growth within the State and keeping the economic benefits in Hawaii. Including this provision will allow for job creation and reinvestment here in Hawaii, contributing to the economy and our local communities. Additional wages and taxes will be paid as craft producers experience increased success.

Cost of production is high in Hawaii, with an estimated 40% or higher cost of production compared to the continental United States. Basic cost of goods for ingredients, equipment, and brewery modernization all contribute. This bill helps our local breweries remain successful and competitive with mainland manufacturers.

Hawaii's craft beer producers provide good jobs that boost the local economy and support the growth of other businesses. Stimulating the craft producer sector multiplies economic growth across their local communities. Purchasing cans, packaging and other supplies made in state supports the growth of other local businesses. Craft producers use locally grown ingredients such as tropical fruits, herbs and spices, and coffee which supports our local Hawaii farmers. A small number of tour operators offer experiences to visit Hawaii's craft breweries, with their expansion of tours tied to the growth of our Hawaii craft beer producers.

Mahalo for considering our Hawaiian Craft Brewers Guild testimony before the House Finance Committee in support of HB343 H.D.1.



Beer Lab HI  
Nicolas Wong  
1010 University Ave  
Honolulu HI 96816  
8085427015  
[nicolas@beerlabhi.com](mailto:nicolas@beerlabhi.com)

HB 343 H.D.1, Relating to: A Small Craft Beer Producer Tax Credit  
House Committee on Finance  
Tuesday February 26, 2019 at 1:30 p.m. Conference Room 308

Position: **Support**

Chair Representative Sylvia Luke, Vice Chair Representative Ty Cullen and members of the Committee,

My name is Nicolas Wong, I live in Palolo, Oahu and I am the Founder of Beer Lab HI. We have three locations in Moilili, Waipio and Pearlridge center. Our brewery began in 2016 with 3 employees. We now provide 42 jobs in Hawaii.

We are members of the Hawaiian Craft Brewers Guild that seeks to promote production of craft beer in Hawaii. Beer Lab HI is an independent craft brewery producing 100% of our beer in Hawaii. We are united in our pursuit to promote economic activity for Hawaii's beer manufacturers and enhance opportunities in our communities. The Hawaiian Craft Brewers Guild represent the majority of craft beer producers in Hawaii.

Beer Lab HI supports HB 343 H.D.1 because Hawaii's craft breweries are growing and incentives such as the small craft producers income tax credit help spur that growth. Only 5% of the beer sold in Hawaii is actually produced in Hawaii, leaving a great deal of room for expansion of our craft beer sector. Our costs of production are high, approximately 40 to 50% higher than similar production costs on the mainland, with ingredients, equipment, and brewery modernization all contributing.

Mahalo for your consideration. We urge you to pass this bill.  
Thank you for the opportunity to provide testimony in support of HB343 H.D.1.



506 Keawe Street  
Honolulu, Hawaii, 96813

T 808-200-2739  
troy@realgastropub.com

[realgastropub.com](http://realgastropub.com)

February 25, 2019

HB 343 H.D.1, Relating to: A Small Craft Beer Producer Tax Credit  
House Committee on Finance  
Tuesday February 26, 2019 at 1:30 p.m. Conference Room 308

Position: **Support**

Chair Representative Sylvia Luke, Vice Chair Representative Ty Cullen and members of the Committee,

I'm writing on behalf of our small, local family-operated business, REAL gastropub / Bent Tail Brewing Company in Kakaako on Oahu. We support **HB343 H.D.1** which creates a Small Craft Beer Producer Tax Credit in order to promote the local production of craft beer.

REAL gastropub / Bent Tail Brewing Company supports this legislation with amendments. The amendments we propose are as follows:

Change the title to read "Relating to a Small Craft Producer Credit". This would then allow us to include wine and spirits producers while falling in line with the Class 18 producer license. This also brings parity to the beverage alcohol industry allowing wineries, distilleries and breweries to grow together creating more local options and delivering an authentic Hawaiian experience in our products to visitors and residents alike.

Section 1 regarding Purpose. Suggest changing to "The purpose of this act is to establish a tax credit for small craft producers manufacturing in Hawaii to encourage local production and expand the growth of a local industry"

A passage of this bill will create more jobs, pay more wages, create new products, allow breweries to grow not only in numbers but in volume, and ultimately reinvest in our communities growing the overall industry of locally made beverages. While we recognize that this credit results in a net loss of revenue to the State at an initial look, there is significant opportunity to have a net gain in revenue due to the growth of the overall industry.

Hawaiian producers operate under the highest cost conditions of any State. This has served to limit the availability of true, locally produced selections and give rise to a host of "faux-Hawaiian" products. As an isolated State we must invest in local manufacturing, these are jobs with good wages and benefits that can provide careers for our residents. Further if Hawaii is to continue to compete on the international forum for tourism it is important for us to deliver an authentic Hawaiian experience in our products. How can we do that if we instead serve beers,

wine and spirits bearing Hawaiian names but are made across the world and not necessarily made in Hawaii?

REAL gastropub was founded initially in 2012 with 18 original employees as a community gathering place serving local cuisine and hand-crafted beers. We are relocating, rebuilding our flagship and incorporating a 7BBL brewery named Bent Tail Brewing Company into our new location at Keauhou Lane in Kakaako. We will be able to grow into a team of 40 Honolulu residents that sells award winning beers throughout Oahu and with a focus on using local sources for our food as we have since our opening and now add this principal to our beer. We have done this in the face of significant challenges to growth at all levels; financial, shipping, taxation, legislative and more. Changes like this bill can help us continue our success and help others to do the same. We appreciate the on-going support of all individuals and legislators who support issues which enable local manufacturers and businesses to thrive in Hawaii.

Mahalo for your consideration, We support **HB343 H.D.1** with amendments The small craft producer tax credit will result in reinvestment in our economy and communities. Mahalo for your consideration of testimony in support of **HB343 H.D.1**.

Sincerely,

*Troy Terorotua*

Troy Terorotua  
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**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

**LATE**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 343, H.D. 1, RELATING TO A SMALL CRAFT BEER PRODUCER TAX CREDIT.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Tuesday, February 26, 2019      **TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Nathan S.C. Chee, Deputy Attorney General

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Chair Luke and Members of the Committee:

The Department of the Attorney General has concerns about this bill because it may be challenged as violating the Commerce Clause of the U. S. Constitution.

This bill establishes an income tax credit for expenses related to craft beer produced in the State. The tax credit is available only for production expenses “incurred within the state.” Page 5, lines 19-20. The credit is further limited on page 6, lines 13-14, by language requiring a “qualified taxpayer” to produce one hundred percent of its beer within the state. These two credit restrictions may be subject to challenge as discriminatory under the Commerce Clause of the U.S. Constitution.

Commerce Clause jurisprudence provides that “[n]o State, consistent with the Commerce Clause, may ‘impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business.’” Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 268 (1984)(citing Boston Stock Exchange v. State Tax Comm’n, 429 U.S. 318, 329 (1977)). While Bacchus involved a direct tax on liquor sales and not an income tax credit, the U.S. Supreme Court has stated “we have now squarely rejected the argument that the Commerce Clause distinguishes between taxes on net and gross income.” Comptroller of Treasury of Maryland v. Wynne, 135 S. Ct. 1787, 1796 (2015). In Maryland, the U.S. Supreme Court held the State’s failure to give its residents an income tax credit for taxes paid to other states violated the Commerce Clause.

In this bill, only a local producer of craft beer who produces one hundred percent of its beer within the State would qualify for the tax credit. A local producer who also imports beer from outside the State would not be able to claim the credit. Thus, the tax credit arguably provides a direct commercial advantage to local producers who produce all of their beer in Hawaii over beer producers who produce either all or part of its beer outside the State. As this bill: (1) defines “qualified expenses” as “expenses incurred within the state;” and (2) restricts the tax credit to local craft beer producers who produce one hundred percent of its beer within the State, it appears this bill has a discriminatory effect in favor of locally produced craft beer in violation of the Commerce Clause and may, therefore, be subject to a legal challenge.

Thank you for the opportunity to provide comments.