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

Date: Thursday, February 21, 2019  
Time: 11:00 A.M.  
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: H.B. 632, H.D.1, Relating to the General Excise Tax

The Department of Taxation (Department) offers the following comments on H.B. 632, H.D. 1, for the Committee's consideration.

A summary of the key provisions of H.B. 632, H.D. 1 are as follows:

- 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);
- Expands the exemption by providing an exemption specifically for prescription drugs sold pursuant to a doctor's prescription, diabetic supplies, prosthetic devices, medical oxygen, human blood and its derivatives, mobility enhancing equipment sold by prescription, durable medical equipment, and repair and replacement parts for any such devices or equipment;
- Clarifies the exemption by providing new or updated definitions for the terms "durable medical equipment," "mobility enhancing equipment," "prescription," and "prosthetic device"; and
- Has a defective effective date of July 1, 2050, and otherwise applies to taxable years beginning after December 31, 2018.

The Department requests a technical amendment to the effective date in Section 4 as set forth below. This will allow changes proposed by this measure to apply to all taxpayers at the same time irrespective of their tax year (calendar vs. fiscal).

"This Act, upon its approval, shall be effective  
January 1, 2020."

Thank you for the opportunity to provide comments.



## DISABILITY AND COMMUNICATION ACCESS BOARD

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February 21, 2019

### TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE

House Bill 632, HD1 - Relating to the General Excise Tax

The Disability and Communication Access Board (DCAB) supports House Bill 632, HD1 that exempts gross receipts from the sale of mobility enhancing equipment, prosthetic devices, and prescription drugs sold pursuant to a doctor's prescription from the general excise tax. Amends the definition of "prosthetic device" to include devices worn on the body.

The exemptions from the general excise tax for the purchase of durable medical equipment and expanding the definition of "prosthetic device" to include hearing aids and heart valves, pacemakers and artificial limbs will go a long way in assisting people with disabilities to function more independently in the community.

Thank you for the opportunity to testify.

Respectfully submitted,

FRANCINE WAI  
Executive Director

**HB-632-HD-1**

Submitted on: 2/20/2019 9:42:57 AM

Testimony for FIN on 2/21/2019 11:00:00 AM

| <b>Submitted By</b>               | <b>Organization</b>   | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|-----------------------------------|-----------------------|---------------------------|---------------------------|
| HERBERT M. "TIM"<br>RICHARDS, III | Hawaii County Council | Support                   | No                        |

Comments:

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempt Mobility Enhancing and Durable Medical Equipment

BILL NUMBER: HB 632; HD-1

INTRODUCED BY: House Committee on Health

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. Note that this draft of the bill is intended to result in medical marijuana being exempt.

SYNOPSIS: 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 prescription; (B) Diabetic supplies; (C) Prosthetic devices; (D) Medical oxygen; (E) Human blood and its derivatives; (F) Mobility enhancing equipment sold by prescription; (G) Durable medical equipment; and (H) Repair and replacement parts for any of the foregoing exempt devices and equipment;

Deletes the existing definitions for “prescription drugs” and “prosthetic device.” Adds a new subsection (b) with definitions:

- "Durable medical equipment" shall be as defined in section 321-542.

The cross-referenced definition reads:

"Durable medical equipment" means equipment that is considered a selected product under the Centers for Medicare and Medicaid Services durable medical equipment, prosthetics, orthotics, and supplies competitive bidding program that can stand repeated use; is primarily and customarily used to serve a medical purpose; is generally not useful to a person in the absence of an illness or injury; is appropriate for use in the home; does not contain any prescription drug; and is not considered to be a specialty item, equipment, or service.

- "Mobility enhancing equipment" means equipment, including repair and replacement parts, that:
  - (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either at home or in a motor vehicle;
  - (2) Is not generally used by persons with normal mobility; and
  - (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

- "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this State.
- "Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs.
- "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device worn on or in the body, to:
  - (1) Artificially replace a missing portion of the body;
  - (2) Prevent or correct a physical deformity or malfunction; or
  - (3) Support a weak or deformed portion of the body.

"Prosthetic device" shall not include any ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance. Examples of prosthetic devices include heart valves, hearing aids, pacemakers, and artificial limbs."

EFFECTIVE DATE: Takes effect on July 1, 2050, and shall apply to taxable years beginning after December 31, 2018.

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 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:

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: 5%.

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)).

Note that this bill deletes the existing definition for prescription drugs. That definition contains an exclusion for cannabis products. Without the exclusion, medical cannabis qualifies for the exemption; this conclusion is confirmed in the Health Committee report.

Digested 2/17/2019

**HB-632-HD-1**

Submitted on: 2/20/2019 10:22:00 AM

Testimony for FIN on 2/21/2019 11:00:00 AM

| <b>Submitted By</b> | <b>Organization</b>   | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---|---------------------------|---------------------------|
| Melodie Aduja       | O`ahu County<br>Committee on<br>Legislative Priorities of<br>the Democratic Party of<br>Hawai`i | Support                   | No                        |

Comments: