



STATE OF HAWAII
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To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

Date: Wednesday, February 13, 2019
Time: 10:00 A.M.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 530, S.D.1, Relating to the General Excise Tax

The Department of Taxation (Department) offers the following comments on S.B. 530, S.D.1, for the Committee's consideration.

S.B. 530, S.D. 1, 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 the exemption by providing an exemption specifically for prescription drugs sold pursuant to a doctor's prescription, hearing aids, prosthetic devices, mobility enhancing equipment sold by prescription, and repair and replacement parts for any such devices or equipment. This measure clarifies the exemption by providing new or updated definitions for the terms "mobility enhancing equipment," "prescription," and "prosthetic device." This bill is effective upon its approval and applies to taxable years beginning after December 31, 2019.

The Department notes that it is able to administer the changes in this measure with its current effective date, but requests Section 4 of the bill be amended to read:

SECTION 4. This Act, upon its approval, shall take effect January 1, 2020.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

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

BILL NUMBER: SB 530, SD-1

INTRODUCED BY: Senate Committee on Commerce, Consumer Protection, and 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.

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 doctor's prescription; (B) Hearing aids; (C) Prosthetic devices; (D) Mobility enhancing equipment sold by prescription; and (E) Repair and replacement parts for any of the foregoing exempt devices and equipment. The exemption does not apply to amounts received for services in selling any of the foregoing.

Defines "prescription" as 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.

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 hearing aids and artificial limbs.

EFFECTIVE DATE: Taxable years beginning after December 31, 2019.

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%.

Under the bill, M's sale to R and M's sale to H are both sales for human use so the exemption applies. Total tax: 0%.

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)) and the bill would correct that problem.

Digested 2/10/2019

SB-530-SD-1

Submitted on: 2/8/2019 2:26:00 PM

Testimony for WAM on 2/13/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
GARY SIMON	Testifying for Policy Advisory Board for Elder Affairs (PABEA)	Support	Yes

Comments:

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

I am Gary Simon, Chairperson of the Policy Advisory Board for Elder Affairs (PABEA), which is an appointed board tasked with advising the Executive Office on Aging (EOA).

I am offering testimony as an individual who has worked in healthcare for over thirty years, and I am offering testimony on behalf of PABEA.

My testimony does not represent the views of the EOA but of PABEA.

PABEA wholeheartedly supports SB 530 SD 1.

The general excise tax exemptions outlined in the bill will reduce the financial stress and suffering faced by our residents with disabilities and our kupuna on limited income.

We urge you to support SB 530 SD 1, and we urge you to recommend its passage.

Thank you for seriously considering the Bill.

Very sincerely,

Gary Simon, Chairperson, Policy Advisory Board for Elder Affairs (PABEA)