



**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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To: The Honorable Henry J.C. Aquino, Chair
and Members of the House Committee on Transportation

Date: Friday, February 1, 2019
Time: 10:00 A.M.
Place: Conference Room 423, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 421, Relating to the General Excise Tax

The Department of Taxation (Department) offers the following comments regarding H.B. 421 and offers the following comments for the Committee's consideration.

H.B. 421 establishes a new five-year general excise tax (GET) exemption for amounts received from the servicing and maintenance of helicopters in an aircraft service and maintenance facility, provided that 75% of the helicopters serviced and maintained annually in the facility are equipped with quiet technology. A summary of key provisions are as follows:

- Amends section 237-24.9, Hawaii Revised Statutes (HRS), to explicitly include helicopters within the definition of "Aircraft";
- Limits the statute's provision on minimum facility size to those facilities servicing and maintaining jet aircraft;
- Adds language to the definition of "aircraft service and maintenance facility" mandating that no less than seventy-five per cent of the helicopters serviced and maintained annually in an aircraft and maintenance facility shall be equipped with quiet technology; and
- Effective upon approval and will repeal on December 31, 2023.

First, the Department notes that the second provision added to the definition of "Aircraft service and maintenance facility," which requires that 75% of helicopters annually serviced and maintained in the facility be equipped with quiet technology, may result in an unintended contradiction in the statute that prevents some taxpayers from using the exemption. In order to clarify that the second requirement only applies to helicopter facilities, the Department suggests amending paragraph (2) of the definition of aircraft service and maintenance facility" to read:

For a facility that services and maintains helicopters, no less than seventy-five per cent of the helicopters serviced and maintained annually shall be

equipped with quiet technology.

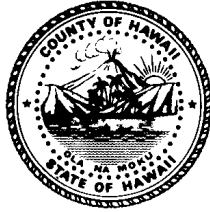
Second, the Department notes that "quiet technology" is not defined. Clarifying this will help minimize taxpayer confusion, prevent improper claims and abuse of the credit, and avoid unexpected losses in revenue.

Finally, the Department suggests amending the effective date so that law would go into effect from the beginning of a tax period and that the effective date be made January 1, 2020 to allow the Department the time to make the necessary form and instruction changes. Section 3 could be amended to read:

SECTION 3. This Act shall take effect on January 1, 2020; provided that Section 1 shall be repealed on December 31, 2023; provided that section 237-24.9(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

Thank you for the opportunity to provide comments.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

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January 31, 2019

Representative Henry J.C. Aquino, Chair
Committee on Transportation
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chair Aquino and Committee Members:

Re: HB 421 Relating to the General Excise Tax (Helicopter Servicing and Repair)
Hearing Date: 02/01/2019 – 10:00 am; House Conference Room 423

Thank you for this opportunity to testify against HB 421.

Helicopters are a valued component of our tourism industry. They also have been a source of endless complaints from communities that lie in their flight paths, and there should be no doubt that noise can constitute both a nuisance and a health hazard, especially in otherwise tranquil rural areas.

Helicopter companies are now asking the Legislature for special treatment with respect to the general excise tax. There is no suggestion of economic hardship; there is no credible argument (that I know of) that new facilities will be attracted to Hawai'i; and there is no suggestion that the industry would use its savings to better accommodate those who live in their fly-over country. The exemption will simply add to the companies' bottom line.

This year's bill is slightly better than last year's version, in that it asks for only a five-year general excise tax exemption, and it adds a provision that "75% of the helicopters serviced and maintained annually in the facility are equipped with quiet technology." But as far as I can tell, there is no definition of "quiet technology" nor a hint as to how effective such technology is. At a minimum, that needs clarification.

As you struggle to balance your budget, one must ask whether the added profits for these companies' owners could be better utilized in meeting the multiple needs that Hawai'i faces. To me, the answer is that our transportation, education, social service needs, etc., should be a higher priority.

In addition, I don't think it would be unfair to say that tax giveaways should be reserved for good corporate citizens.

I have met with tour operators and asked them to develop a plan to address noise and safety. They have taken some initial steps, and I commend them for that. Moreover, I am

April 2, 2018

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hopeful that tour operators and community members can work together. However, the history laid out in SCR 183 (2018) is eye-opening:

“In 2000, the National Environmental Policy Act, in conjunction with the National Parks Air Tour Management Act of 2000, required an Air Tour Management Plan to be implemented at various national parks throughout the country... The objective of an Air Tour Management Plan is "to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences and tribal lands...In 2005, the project was upgraded to an Environmental Impact Statement, and the Federal Aviation Administration published a notice of opportunity for commercial air tour operators granted interim operating authority to review and self-correct annual authorizations. In 2008, Federal Aviation Administration and National Park Service staff met with Hawai'i air tour operators, and acoustic monitoring of three sites at Hawai'i Volcanoes National Park was conducted. In 2011, a preliminary draft Air Tour Management Plan for Hawai'i Volcanoes National Park was published, but...seven years later, in 2018, there [was] still no final Air Tour Management Plan for Hawai'i Volcanoes National Park...In addition, after more than sixteen years, no Air Tour Management Plan for any national park in the nation has been completed...”

How can our residents be asked to tolerate the status quo when it has been 15 years since the Federal Aviation Administration and National Park Service asked for comments on an Air Tour Management Plan Environmental Assessment, and eight years since a preliminary draft Air Tour Management Plan for Hawai'i Volcanoes National Park was published. That is an outrage.

I would urge a No vote on HB 421, at least until the helicopter industry proves itself to be a better neighbor, it is established that “quiet technology” actually makes a difference, and this Legislature determines that the benefits to the broader community of this tax giveaway outweigh the benefits to the helicopter industry.

Respectfully submitted,



Harry Kim

Mayor, County of Hawai'i



LATE

Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

HB 421

Relating To The General Excise Tax

COMMITTEE ON TRANSPORTATION

Friday, February 1, 2019, 10:00 am

Conference Room 423

Dear Chair Aquino, Vice Chair Hashimoto and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 195 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA is **in support of HB 421**, which establishes a five-year general excise tax exemption for amounts received from the servicing and maintenance of helicopters in an aircraft service and maintenance facility or from the construction of a facility that services and maintains helicopters; provided that 75% of the helicopters serviced and maintained annually in the facility are equipped with quiet technology.

MHLA believes that HB 421 will provide needed parity in tax treatment for all helicopters with aircraft. Helicopters provide important services in the aviation industry for inter-island travel for tourism, medical needs, and inter-island commerce. We would like to see them share the same GET exemption as other aircraft.

Thank you for the opportunity to testify.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exemption for Helicopter Repair and Maintenance

BILL NUMBER: HB 421

INTRODUCED BY: ONISHI, AQUINO, CREAGAN, LUKE, MORIKAWA, WOODSON,
Brower

EXECUTIVE SUMMARY: The bill seeks to exempt helicopter repair and maintenance from the GET. However, the bill as drafted creates inequity because propeller aircraft would not be so exempted, and it may impact those already receiving the benefits of the exemption because it adds another requirement for a facility to qualify.

SYNOPSIS: Amends the definition of “aircraft” in HRS section 237-24.9 to include a helicopter.

Amends the definition of “aircraft service and maintenance facility” to require that no less than 75% cent of the helicopters serviced and maintained annually in the facility be equipped with quiet technology.

EFFECTIVE DATE: this Act shall take effect upon its approval and shall be repealed on December 31, 2023; provided that section 237-24.9(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

STAFF COMMENTS: Before the 1980’s, the State attempted to tax air carriers of all kinds under the public service company tax. However, there is a federal statute (now 49 U.S.C. §40116) preventing States from imposing taxes against the gross income from transportation by air of passengers or cargo. The State contended that it wasn’t prevented from imposing the tax, and the U.S. Supreme Court disagreed in a unanimous opinion. *Aloha Airlines v. Director of Taxation*, 464 U.S. 7 (1983).

Then, the Department of Taxation issued Tax Information Release 89-10, acknowledging that the transportation of persons or cargo by helicopter aircraft, including sightseeing tours, is exempt from the GET.

The provision being amended by this bill relates to another exemption entirely. Back in 1997, Continental Airlines was considering building a \$24 million jet maintenance hangar close to the Honolulu International Airport. To lure the project away from Guam and Saipan, our lawmakers at the time offered incentives, including a GET exemption. The exemption applied to servicing and maintenance of aircraft, or from the construction of an aircraft service and maintenance facility. But “aircraft,” as used in the exemption statute, was and still is restricted to aircraft with two or more jet engines. Small carriers with propeller planes don’t qualify, raising some questions about whether this exemption helps the industry fairly. Is it simply a reflection of the economic realities – namely that the big planes can fly elsewhere to have the maintenance work done, while smaller aircraft are effectively trapped here? A better approach may be to have the

exemption apply (or be repealed) across the board; the current structure leaves the impression that big business skates by where small business is left behind.

In addition, the requirement that 75% of the helicopters serviced and maintained annually be equipped with quiet technology is problematic:

1. The GET is a transaction-based tax, so the facts necessary to apply it need to be known when the transaction happens. Whether the 75% test is met is necessarily unknown until the close of the taxable year.
2. There is no clear definition of “quiet technology.”

As drafted, this requirement is an additional requirement for a facility to qualify. Thus, existing qualified facilities may no longer qualify and its existing customers may be unintended casualties.

Digested 1/30/2019

State of Hawaii House of Representatives Committee on Transportation

Friday, February 1, 2019; 10:00am

Support for HB 421

Testimony comments of Gregg Lundberg, Blue Hawaiian Helicopters

Chair Aquino, Vice Chair Hashimoto and members of the House Transportation Committee, thank you for the opportunity to speak in support of HB 421, which establishes a five-year general excise tax exemption for amounts received from the servicing and maintenance of helicopters in an aircraft service and maintenance facility or from the construction of a facility that services and maintains helicopters provided that 75% of the helicopters serviced and maintained annually in the facility are equipped with quiet technology. This bill sunsets 12/31/2023.

My name is Gregg Lundberg, president of Blue Hawaiian Helicopters. Blue Hawaiian is Hawaii's first air tour operator, founded in 1985, and is the only air tour operator to offer tours and employ Hawaiian residents on Oahu, Kauai, Maui and the Big Island. We firmly believe that our tours are more than just sightseeing, they function as "flying classrooms" for our passengers to learn about the rich history of Hawaii, its culture, and its diverse geography.

HB 421 seeks to provide parity for smaller aviation operators and seeks to promote and encourage the use of quiet technology. Our state's remote geography requires a reliance on air transportation of many types, including medical operations, air tours and disaster relief. By modernizing the current tax statute to include the maintenance of helicopters with quiet technology these operators will be included with other aviation operations, all contributing stakeholders in the state's economy. We are here to give you the perspective of an aviation stakeholder who operates aircraft that are currently excluded from the current statute and to ask for your support of this measure.

In serving hundreds of thousands of visitors to Hawaii each year, our operations must be efficient and organized in order to have our state-of-the-art helicopters fully maintained and ready for our passengers each day. There are considerable costs to operating a safe aviation operation that meets FAA regulatory requirements, including thousands of hours of recurrent pilot and mechanic training each year, aircraft parts, tools and equipment, as well as full-time highly-trained mechanics and thousands of maintenance labor hours. We respectfully request that you support HB 421.

Thank you again for the opportunity to testify.



LATE

February 1, 2019

**Testimony to the House Committee on Transportation
Friday, February 1, 2017 10:00AM in House Conference Room 423**

RE: House Bill 421 - RELATING TO THE GENERAL EXCISE TAX

Jack Harter Helicopters supports some of the changes to *HRS §237-24.9 Aircraft service and maintenance facility* in HB421. We think the inclusion of helicopters in the definition of an aircraft in this bill provides equity in the tax regulations related to aeronautical activities in Hawaii.

There is an apparent flaw in the bill in that HB421 still contains language that refers to “jet aircraft”. “(1) A facility that services and maintains jet aircraft shall be ...” To provide the desired equity in the HRS, we believe the language in this part of the bill should read, “(1) A facility that services and maintains aircraft shall be ...” It is our understanding that if the original language in HB421 were to remain as proposed, helicopters would not qualify because the definition of a “jet aircraft” does not specifically include helicopters.

Jack Harter Helicopters does not support the following parts of HB41:

1: The requirement that a facility that services and maintains jet aircraft shall be not less than thirty thousand square feet in area.

We do not support this part of the bill because there are no available spaces at neighbor island airports that meet this space requirement and the space requirement far exceeds the needs and affordability of any helicopter operator currently flying in Hawaii.

2: The language in HB421 requiring seventy-five percent of all helicopters serviced within the maintenance facility be equipped with “quiet technology”.

As a long-standing operator of helicopters on Kauai, we recognize that there is no such thing as a “quiet helicopter”. There is no definition of what “Quiet Technology” consists of in this bill. There are a few helicopter companies in Hawaii that operate Airbus AS350B4 and EC130 helicopters that they advertise as Ecostars or Whisperstars. These helicopters have a noise rating that is 0.2 decibels louder than the MD500E helicopters operated by our company and a few others, but our MD500Es are not considered to include “quiet technology”. For HB421 to be equitable to all helicopter operators in Hawaii, the “quiet technology” language in this bill needs to be eliminated or a reasonable noise rating level needs to be established what qualifies a helicopter as a “quiet” helicopter.

Thank you for considering our testimony,

Casey Riemer
Special Project Manager

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LATE

Testimony to the
COMMITTEE ON TRANSPORTATION

Rep. Henry J.C. Aquino, Chair
Rep. Troy N. Hashimoto, Vice Chair

Friday, February 1, 2019, 10:00 am
Conference Room 423

RE: HB421 RELATING TO THE GENERAL EXCISE TAX

Aloha Chair Representative Aquino and Vice Chair Representative Hashimoto along with members the committee,

Mahalo for this opportunity to testify, my name is Toni Marie Davis. For the last 20 years it has been my honor to serve the Activity & Attraction industry of Hawaii through my position as the Executive Director of A3H (Activities & Attractions Association of Hawaii). A3H represents nearly 200 businesses statewide. Our members range in size from very large (over 300 employees) to very small (1-2 employees). Helicopter tour businesses which are members include: Air Maui, Blue Hawaiian Helicopters, Jack Harter's Helicopters, Magnum, Helicopters, Magnum Helicopters, Paradise Helicopters, Safari Helicopters and Sunshine Helicopters.

Unfortunately, there is no consensus regarding this Bill, which modifies an already existing aircraft maintenance tax exemption to include Helicopters with requirements related to 75% of their fleet having "quiet technology" and a minimum facility area of 30,000 square feet.

All support the inclusion of Helicopters in the tax exemption, while most oppose the requirements. If the Bill were modified to include Helicopters in this tax exemption along with aircraft, while NOT imposing the "quiet technology" and minimum facility requirements, I believe, all would be in agreement to support House Bill 421.

Thank you again for the opportunity to testify.

Sincerely,

Toni Marie Davis
Executive Director