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**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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To: The Honorable Michelle N. Kidani, Chair
and Members of the Senate Committee on Education

Date: Monday, February 4, 2019
Time: 2:55 P.M.
Place: Conference Room 229, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 1158, Relating to School Supplies

The Department provides the following comments regarding S.B. 1158 for your consideration. S.B. 1158 establishes a general excise tax holiday for consumers and businesses for school supplies sold during the weekend prior to the start of the school year, provided that businesses pass the savings on to consumers. The measure is effective on July 1, 2019.

First, the Department has concerns regarding its ability to determine whether the business has passed on the savings on to the consumer. Businesses set prices based on a multitude of variables, and it would be impossible to prove that a business has not passed on the tax savings. The customer can only know whether or not the business has passed on the tax, but not whether the price charged is reflective of this savings.

Second, the Department notes that fixed dates for this tax holiday may be easier to administer and easier for the families purchasing the school supplies to take advantage of the holiday. For example, the tax holiday could be set as the last Friday in July to the Sunday that immediately follows.

Third, the Department notes that the exemption is not available to mail, telephone, electronic mail, or internet orders, even if such vendor is paying general excise tax on its sales. This distinction could be grounds for a claim of discriminatory treatment in violation of the Commerce Clause. The Department ultimately defers to the Department of the Attorney General on this issue.

Finally, the Department respectfully requests that the effective date of the measure be made January 1, 2020 to sufficient time to administer the tax holiday proposed by this measure.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE TAX, Tax Holiday for School Supplies

BILL NUMBER: SB 1158

INTRODUCED BY: KANUHA, INOUYE, Fevella

EXECUTIVE SUMMARY: Establishes a general excise tax holiday for consumers and businesses for school supplies sold during the weekend prior to the start of the school year on condition that businesses pass the savings on to consumers. The holiday provisions may be unconstitutional to the extent they exclude orders from businesses operating outside Hawaii.

SYNOPSIS: Adds a new section to chapter 237, HRS.

Provides that general excise taxes are not due on the sale of school supplies on the Friday, Saturday, and Sunday prior to students' first day of public school (on the DOE calendar), provided that all savings shall be passed on to the purchaser without any increase in price.

Does not apply to (1) rebates, layaway sales, rain checks, or exchanges when the transactions occur before or after the tax holiday period; and (2) mail, telephone, electronic mail, or internet orders with businesses operating outside the State of Hawaii.

Specifies that articles normally sold as a unit are not to be broken down as individual items to obtain the exemption.

States that shipping and handling charges are included as part of the sales price of an item.

States that the retailer shall not be required to obtain any special license, permit, or other documentation of sales during the exemption holiday period; provided that the retailer's records shall clearly identify the type of item sold, the date the item was sold, and the sales price of the item.

Defines "school supply" as an item commonly used by a student in a course of study and includes the items set out in the following all-inclusive list: binders, book bags, calculators, cellophane tape, blackboard chalk, compasses, composition books, crayons, erasers, expandable folders, pocket folders, plastic folders, manila folders, glue, paste, paste sticks, highlighters, index cards, index card boxes, legal pads, lunch boxes, markers, notebooks, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, construction paper, pencil boxes and other school supply boxes, pencil sharpeners, pencils, pens, protractors, rulers, scissors, and writing tablets. "School supply" excludes all items not listed.

EFFECTIVE DATE: July 1, 2019.

STAFF COMMENTS: Sales tax holidays have been used in many states, and the Federal Reserve Bank of Chicago has conducted a study concluding that sales during tax holidays, households increase the quantities of clothing and shoes bought by over 49% and 45%, respectively, relative to what they buy on average. [Federal Reserve Bank of Chicago, *The Effect of Sales Tax Holidays on Household Consumption Patterns*, July 2010](#). [Wikipedia](#) lists the following chart of established holidays:

State or Jurisdiction	Items Included	Period	Days
Alabama ^[9]	clothing, computers, school supplies, books / severe weather preparedness	3rd weekend in July / last weekend in February	3
Arkansas ^[7]	clothing, school supplies, books	1st weekend in August	2
Connecticut	clothing	3rd week in August	7
District of Columbia ^[8]		Repealed	
Florida	clothing, school supplies, books	2nd week in August	3
Georgia	clothing, school supplies, computers	1st weekend of August: REPEALED FOR 2017	4
Iowa	clothing	1st weekend of August	2
Louisiana ^[9]	all TPP - \$2,500, hurricane preparedness items - \$1,500, firearms, ammunition and hunting supplies	1st weekend of September	2
Massachusetts ^[10]	Most items for which the sales tax would normally apply; purchases up to \$2500 included	2nd weekend of August	2
Maryland ^[11]	clothing & footwear	August 14–20	7
	Energy star products	Feb. 19-21, 2011	3
Missouri ^[12]	clothing, school supplies, computers	1st weekend in August	3
New Mexico	clothing, school supplies, computers	1st weekend of August	3
North Carolina	Repealed as of July 1, 2014		
Oklahoma	clothing	1st weekend of August	3
South Carolina	clothing, school supplies, computers	1st weekend of August	3
Tennessee ^[13]	clothing, school supplies, computers	Last Friday of July	3
Texas ^[14]	clothing, diapers, backpacks, school supplies	3rd weekend of August	3
Virginia	clothing, school supplies, green appliances, hurricane preparedness items	May, August, October	3

The Foundation has constitutional and practical concerns with subsection (b)(2), which disallows the exemption for: “Mail, telephone, electronic mail, or internet orders with businesses operating outside the State of Hawaii.” The practical concern is the interpretation of the exclusion. Is a

purchase of pencils, pens, and protractors from the local Walmart excluded because Walmart has stores in other states (and therefore operates outside of Hawaii)? The constitutional concern is that the Commerce Clause of the U.S. Constitution obligates State tax systems not to discriminate against interstate commerce. *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). *Bacchus* 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)). The exclusion should be deleted.

Next, we wonder why books that a school requires a student to purchase do not qualify as school supplies.

We have concerns about the definition of school supplies, which contains both "means" and "includes" provisions that appear to conflict. To resolve the conflict, we suggest the following:

(f) For purposes of this section, "school supply" means ~~[an item commonly used by a student in a course of study and includes the items set out in the following all-inclusive list]~~: binders, book bags, calculators, cellophane tape, blackboard chalk, compasses, composition books, crayons, erasers, expandable folders, pocket folders, plastic folders, manila folders, glue, paste, paste sticks, highlighters, index cards, index card boxes, legal pads, lunch boxes, markers, notebooks, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, construction paper, pencil boxes and other school supply boxes, pencil sharpeners, pencils, pens, protractors, rulers, scissors, and writing tablets. "School supply" excludes all items not listed in this definition.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/04/2019
Time: 02:55 PM
Location: 229
Committee: Senate Education

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: SB 1158 RELATING TO SCHOOL SUPPLIES.

Purpose of Bill: Establishes a general excise tax holiday for consumers and businesses for school supplies sold during the weekend prior to the start of the school year on condition that businesses pass the savings on to consumers.

Department's Position:

The Department of Education (Department) submits the following comments on SB 1158, which establishes a general excise tax holiday for consumers and businesses for school supplies sold during the weekend prior to the start of the school year on condition that businesses pass the savings on to consumers.

The Department acknowledges that the tax holiday provisions of this bill could provide appreciated cost savings to parents and families of the approximately 180,000 students in the Department's 256 schools. The Department defers to the appropriate state agency to comment on the feasibility, appropriateness, implementation, and cost to the State for such a tax holiday.

Thank you for the opportunity to testify on SB 1158.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



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

ON THE FOLLOWING MEASURE:

S. B. No.1158, RELATING TO SCHOOL SUPPLIES

BEFORE THE:

SENATE COMMITTEE ON EDUCATION

DATE: Monday, February 4, 2019 **TIME:** 2:55 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Kristie C. Chang, Deputy Attorney General

Chair Kidani and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and provides the following comments.

The stated purpose of this bill is to provide a general excise tax (GET) holiday for sales of school supplies to businesses that pass on those savings to the consumers.

S.B. No. 1158, among other things:

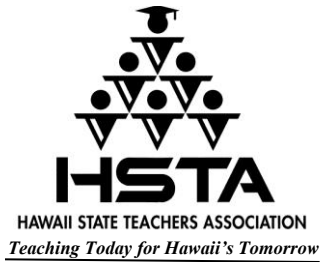
- (1) Provides for a school supply tax holiday that exempts a business from the general excise tax (GET) on sales of schools supplies that occur on the last Friday, Saturday, and Sunday before public school begins;
- (2) Requires a business claiming this exemption to pass on the savings to the purchaser;
- (3) Specifies that the exemption does not apply to rebates, layaway sales, rain checks or exchanges when the transaction does not occur during the holiday period;
- (4) Excludes mail, telephone, electronic mail, or internet orders with businesses operating outside the State of Hawaii; and
- (5) Provides an all- inclusive list regarding what constitutes school supplies.

S.B. No. 1158 could be subject to challenge as violative of the Commerce Clause of the United States Constitution. Article I, section 8, clause 3, of the United States Constitution provides that the Commerce Clause grants Congress power to "regulate Commerce . . . among the several States." "It has long been accepted that the Commerce Clause not only grants Congress the authority to regulate commerce among the States, but also directly limits the power of the States to discriminate against interstate commerce." New Energy Co. of In. v. Limbach, 486 U.S. 269, 273-74, 108 S.

Ct. 1803, 1807-08, 100 L. Ed. 2d 302 (1988). "Discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." C & A Carbone, Inc. v. Town of Clarkstown, N.Y., 511 U.S. 383, 392, 114 S. Ct. 1677, 1683, 128 L. Ed. 2d 399 (1994), citing Maine v. Taylor, 477 U.S. 131, 106 S. Ct. 2440, 91 L. Ed. 2d 110 (1986). The United States Supreme Court stated in a case arising from a Hawaii tax law that the cardinal rule of Commerce Clause jurisprudence is 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 Exch. v. State Tax Comm'n, 429 U.S. 318, 329 (1977)). In Bacchus, the United States Supreme Court struck down an exemption from the liquor tax for locally produced alcoholic beverages upon finding that the exemption bestowed a commercial advantage on locally produced products. Similar to the bill at hand, the purpose of the exemption in Bacchus was to promote local industry and encourage increased consumption of local products.

The GET exemption in this bill is limited to businesses operating within the State. See page 3, lines 1 and 2. An out-of-state seller of school supplies with a GET license would not be able to claim this exemption. Furthermore, the restrictions in this bill limiting the exemption to local businesses operating in the State would discriminate against sellers of school supplies outside the State in the form of lower taxes that would not be available to out-of-state competitors. This sort of discrimination in favor of local business is prohibited by the Commerce Clause.

Due to the constitutional concerns noted above, the Department of the Attorney General believes this bill should be amended to provide the exemption to any business with a GET license and to include a similar exemption from the use tax.



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TESTIMONY BEFORE THE SENATE COMMITTEE ON
EDUCATION

RE: SB 1158 - RELATING TO SCHOOL SUPPLIES

MONDAY, FEBRUARY 4, 2019

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Kidani, and Members of the Committee:

The Hawaii State Teachers Association **strongly supports SB 1158**, that will establish a general excise tax holiday for consumers and businesses for school supplies sold during the weekend prior to the start of the school year on condition that businesses pass the savings on to consumers.

The Hawaii State Teachers Association is the exclusive representative of the state's 13,700 public school teachers. As the local affiliate of the 2.2 million member National Education Association. This measure would provide relief from the general excise tax when purchasing school supplies the weekend before the start of school.

With the high cost of living here in Hawaii this measure will provide much needed relief for parents as well teachers as they buy the required school supplies that all students and teachers need to be ready for the school year. The high cost of school supplies for families, especially multiplied for each child, is expensive each year. We should join other states in offering this excise tax holiday for school supplies to support our families in Hawaii.

The Hawaii State Teachers Association asks your committee to **support** SB 1158.

LATE

SB-1158

Submitted on: 2/3/2019 4:29:08 PM

Testimony for EDU on 2/4/2019 2:55:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl	Individual	Support	No

Comments:

This seemed to work well on the continent in certain states. It is worth a try to see how it works here.