

DAVID Y. IGE  
GOVERNOR

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LT. GOVERNOR



ISAAC W. CHOY  
DIRECTOR OF TAXATION

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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To: The Honorable Henry J.C. Aquino, Chair;  
The Honorable Greggor Ilagan, Vice Chair;  
and Members of the House Committee on Transportation

From: Isaac W. Choy, Director  
Department of Taxation

Date: February 12, 2021  
Time: 10:00 A.M.  
Place: Via Video Conference, State Capitol

**Re: H.B. 194, Relating to Taxation**

The Department of Taxation (Department) offers the following comments regarding H.B. 194, for your consideration.

H.B. 194 extends the deadline for a county to adopt an ordinance to establish a general excise tax surcharge from March 31, 2019 to June 30, 2022. To date, Honolulu, Kauai, and Hawaii Counties have adopted a County Surcharge (CS). Thus, the extension to adopt a CS will only affect Maui County.

H.B. 194 requires that the county ordinance be adopted prior to June 30, 2022 with imposition and collection of the CS to begin on:

- January 1, 2022 if the CS was established by the adoption of an ordinance on or after March 31, 2019, but prior to June 30, 2021; or
- January 1, 2023 if the CS was established by the adoption of an ordinance on or after June 30, 2021, but prior to June 30, 2022.

H.B. 194 provides the Department with at least six months to make form changes, develop and test technical configurations, and educate taxpayers. The Department is able to begin administering the CS on January 1, 2022 or January 1, 2023 as currently written.

Thank you for the opportunity to provide comments on this measure.

Council Chair  
Alice L. Lee

Vice-Chair  
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore  
Tasha Kama

Councilmembers  
Gabe Johnson  
Kelly Takaya King  
Michael J. Molina  
Tamara Paltin  
Shane M. Sinenci  
Yuki Lei K. Sugimura




Director of Council Services  
Traci N. T. Fujita, Esq.

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

February 10, 2021

TO: Honorable Henry J.C. Aquino, Chair  
House Committee on Transportation

FROM: Alice L. Lee  
Council Chair 

DATE: February 12, 2021

SUBJECT: **SUPPORT OF HB 194, RELATING TO TAXATION**

Thank you for the opportunity to testify in **SUPPORT** of this important measure. The purpose of this measure is to Extends the period in which a county may adopt a surcharge on state tax, under certain conditions, from 3/31/2019 to 6/30/2022.

This measure is in the Maui County Council's Legislative Package; therefore, I offer this testimony on behalf of the Council.

The Maui County Council **SUPPORTS** this measure for the following reasons:

1. Maui County is the only county in the State without the option to charge a half-percent GET surcharge. Maui County's deadline to establish the surcharge was March 31, 2019.
2. The surcharge would provide the County with an additional means to generate County revenue should there be a need to reduce real property tax rates.

For the foregoing reasons, the Maui County Council **SUPPORTS** this measure.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, USE, Extends Period for Counties to Opt-In on Surcharge

BILL NUMBER: HB 194; SB 446

INTRODUCED BY: HB by SAIKI by request; SB by KOUCHI by request

EXECUTIVE SUMMARY: Extends the period in which a county may adopt a surcharge on state tax, under certain conditions, from 3/31/2019 to 6/30/2022.

SYNOPSIS: Amends section 46-16.8, HRS, to allow a county to adopt a surcharge on the state general excise tax by ordinance prior to 6/30/2022.

Amends section 237-8.6, HRS, to provide that the referenced surcharge will go into effect on 1/1/2022 if the ordinance is passed before 6/30/2021. The surcharge will go into effect on 1/1/2023 if the ordinance is passed before 6/30/2022.

Makes conforming amendments to section 238-2.6, HRS, relating to adoption of a surcharge on the Use Tax.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This bill is part of the Maui County Council package.

This measure concerns the 0.5% surcharge on the general excise tax that was first imposed in the City and County of Honolulu, sometimes known as the “rail surcharge.” As originally enacted in 2006, the rail surcharge was scheduled to sunset on December 31, 2022. The surcharge authority was extended to December 31, 2027, by Act 240, Session Laws of Hawaii 2015, and the City & County of Honolulu extended the surcharge by Ordinance 16-1. To date, Kauai County has adopted a 0.5% surcharge and Hawaii County has opted for 0.25% but later raised it to 0.5%. Maui County has not adopted the surcharge yet, and this bill would afford it an opportunity to do so.

How can counties raise money to balance their budgets?

One source of funding that is available to any county is the real property tax. Article VIII, section 3 of the Hawaii Constitution exclusively and directly gives power to the counties to impose real property tax. *State ex rel. Anzai v. City and County of Honolulu*, 99 Hawai‘i 508, 57 P.3d 433 (2002), established that for at least the past twenty years, any county is “free to exercise its exclusive authority to increase, diminish, enact, or repeal any exemptions involving real property taxes without interference by the legislature.” *Id.*, 57 P.3d at 446. The real property tax is imposed by county ordinance, it is imposed on those under the jurisdiction of the county and not of the state, and the money raised belongs to the county imposing it.

Another source of funding is state tax; specifically, state tax that is shared with the counties. Article VIII, section 3 of the Hawaii Constitution provides:

The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions.

Where the funds raised are by state statute imposing a state tax, the money raised is the State's money. The Hawaii Constitution, in the language quoted above, explicitly empowers the Legislature to apportion that money to one or more political subdivisions however the Legislature sees fit. Money can be raised for general revenue purposes, as is the case with most taxes including the Transient Accommodations Tax. That money can also be directed to special funds used for specific purposes, as is the case with the fuel tax that feeds the Highway Fund. Sometimes the tax money raised is directed to a multitude of uses, as with the TAT and the Conveyance Tax. It has been held that such funds can be disbursed to one or more counties through grants in aid, and that the State can enact conditions upon the power to disburse or give discretion to the Executive Branch to withhold disbursement. *Fasi v. Burns*, 56 Hawai'i 615, 618-19, 546 P.2d 1122, 1125 (1976).

The county surcharge on the GET, which is the subject of this bill, is imposed by county ordinance and not state law, although state statute delegates the power to tax.

Digested 2/10/2021



**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION  
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 423  
FRIDAY, FEBRUARY 12, 2021 AT 10:00 A.M.**

To The Honorable Henry J.C. Aquino, Chair;  
The Honorable Greggor Ilagan, Vice Chair; and  
Members of the Committee on Transportation,

**COMMENTS ON HB194 RELATING TO TAXATION**

Aloha, my name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing share our comments on HB194.

The Maui Chamber of Commerce has supported similar bills to this in the past. However, we have asked that measures to extend the GET surcharge period include a clause allowing the surcharge revenue to be used for affordable housing and rental infrastructure, given the housing crisis. Therefore, without that language included in this bill, we prefer SB645.

Mahalo for your consideration of our testimony.

Sincerely,

*Pamela Tumpap*

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.