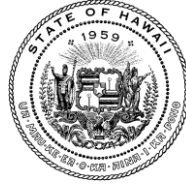


DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LT. GOVERNOR



ISAAC W. CHOY  
DIRECTOR OF TAXATION

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

To: The Honorable Sean Quinlan, Chair;  
The Honorable Daniel Holt, Vice Chair;  
and Members of the House Committee on Economic Development

From: Isaac W. Choy, Director  
Department of Taxation

Date: Wednesday, February 2, 2022  
Time: 10:00 A.M.  
Place: Via Video Conference, State Capitol

**Re: H.B. 1407, Relating to the General Excise Tax**

The Department of Taxation (Department) strongly supports H.B. 1407.

H.B. 1407 amends the general excise tax (GET) to limit application of the wholesale rate of GET to situations where a subsequent retail sale that is subject to the 4 percent rate occurs. The bill adds the requirement of a subsequent retail sale to both Hawaii Revised Statutes (HRS) sections 237-4(a)(1) and 237-4(a)(8). The bill is effective July 1, 2022.

The Department's testimony is based on the following summary points:

- The wholesale rate was adopted to relieve the pyramiding effect of the GET. The application of the wholesale rate contemplated that a subsequent sale taxed at the highest rate of tax would occur.
- The elimination of the requirement for a sale subject to the highest rate of tax was inadvertent, resulting from a mere misinterpretation of intent by the revisor of statutes.
- Clarifying the intent of the legislature is important to the orderly administration of taxes.

HISTORY OF LAWS AFFECTING THE WHOLESALE RATE SINCE 1999

In order to understand the mistakes that led to the current law, it is useful to go back through the history of laws enacted.

S.B. 638 (1999): The purpose of this bill was to expand the definition of wholesale service-to-service transactions (formerly known as intermediary services) to mirror the wholesale sales of

tangible personal property (TPP). The measure did not change the requirement for having a four percent rate in the transaction chain. HRS sections 237-4(a)(8)(A) and (B).

S.B. 638, S.D. 1 (1999): This draft added a phase-in of the rate applicable to wholesale services from four percent to one-half percent over a period of years. The phase-in used a deduction mechanism. Full implementation of the one-half percent rate would become effective in 2006. The requirement for having a four percent transaction in transaction chain for sale of TPP at wholesale was not changed.

S.B. 638, S.D. 1, H.D. 1 (1999): This draft changed the phase-in of the one-half percent rate from a deduction mechanism to the simple statement of the applicable rates. This draft also clarified the definition of wholesale transaction of TPP at HRS section 237-4(a)(8). The drafting changes used for eliminating the need to have a four percent transaction in the transaction chain, was not changed.

This draft also included the sunset provision that deleted HRS section 237-4(a)(8)(A). As interpreted by the revisor, this deleted the entire section 237-4(a)(8)(A) and thus deleted the specific requirement for a four percent transaction in the transaction chain to receive the wholesale rate. The sunset date was set at January 1, 2006. The provision for requiring a four percent transaction in the transaction chain was intact until January 1, 2006.

Act 71, Session Laws of Hawaii (SLH), 1999; S.B. 638, S.D. 1, H.D. 2: The final draft appears to have been written as the final legal check. The modifications were:

- HRS section 237-4(a)(10)(B) was amended to include licensed contractors and persons furnishing transient accommodations.
- HRS section 237-13(2)(A) added “and provided that insofar as the sales of TPP is a wholesale under section 237-4(a)(8) (B) the sale shall be subject to section 237-\_\_”

When the bill became Act 71, SLH 1999, the requirement for a four percent transaction in the transaction chain was still intact in HRS section 237-4(a)(8)(A).

Act 198, SLH 2000; S.B. 2945, S.D. 1, H.D. 3: Act 198, SLH 2000 made several technical amendments to the wholesale statute. The act made the following substantive amendments:

- HRS section 237-4(a)(10) was amended to add several elements to the definition of wholesale services. The added elements included subpart (F), which required a resale of the service that was subject to GET at the highest rate as a requirement to qualify for the wholesale rate.
- HRS section 237-4(a)(13) was added to allow wholesale sales of amusements, the enactment included the requirement that a resale of amusements be subject to GET at the highest rate.

As you can see, it was the intent of the Legislature to require a subsequent resale subject to the four percent rate.

Act 16, SLH 2008; S.B. 2399: This was a revisor bill. The bill was enacted as introduced. The Act made the following amendments relevant to this testimony:

- HRS section 237-4(a)(8)(A) was deleted. This deletion removed the requirement of a subsequent sale at the highest rate of GET. The Department contends this deletion was a mistake, which was based on a misinterpretation of Act 71, SLH 1999, by the revisor of statutes.
- HRS section 237-4(a)(8)(C) was deleted.

### CONCLUSION

The Department believes the intent of the legislature was clear. That intent was to allow a wholesale transaction only if there was a four percent transaction in the transaction chain. This requirement made it clear and simple to administer the various wholesale rate allowances. The requirement of the four percent transaction provided an objective test for the wholesale rate. Without the four percent rate, the determination is more subjective. A subjective determination is harder to administer.

For these reasons, the Department is strongly in support of this measure. Thank you for the opportunity to provide testimony on this measure.



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Economic Development  
Wednesday, February 2, 2022, at 10:00 A.M.  
Via Videoconference**

**RE: HB 1407 Relating to the General Excise Tax**

Chair Quinlan, Vice Chair Holt, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 1407, which:

- Clarifies that, under the general excise tax law, sales to a licensed retail merchant, jobber or other licensed seller for resale are only eligible for the wholesale tax rate if the resale is subject to the highest general excise tax rate.
- Adds a similar requirement for sales of tangible personal property to a service provider or for the purpose of providing transient accommodations.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Many of the Chamber's members carry a "not-for-profit" status, which means they are unable to charge general excise tax to its customers. This bill would require non-profits to pay the general excise tax rate at the increased 4%, despite their non-profit status.

For example, a hospital or non-profit medical group that resells non-prescription drugs, supplies or other medical products purchased from vendors to its patients or the public, would have to pay this increased tax. This would be a massive negative affect to our groups that do so much for the community and hurt their overall mission.

Many non-profits do not even have the capabilities to collect the general excise tax because of their non-profit status. This would cause an overwhelming logistical burden and further hurt the ability of our non-profit members to assist their stakeholders.

This bill would also hurt our smallest businesses with the burden of paying additional taxes. Many roadblocks to a successful entrepreneur's small business is the taxes and fees you have to pay to start-up. By adding an additional tax on top of the ones they are already paying this would further slow our economic recovery post pandemic.



Thank you for the opportunity to testify.

Wednesday, February 2, 2022 at 10:00 AM  
Via Video Conference

**House Committee on Economic Development**

To: Representative Sean Quinlan, Chair  
Representative Daniel Holt, Vice Chair

From: Michael Robinson  
Vice President, Government Relations & Community Affairs

Re: **HB 1407 – Testimony In Opposition  
Relating to The General Excise Tax**

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My name is Michael Robinson, and I am the Vice President of Government Relations & Community Affairs at Hawai'i Pacific Health. Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

I am writing in **OPPOSITION** to HB 1407 which establishes that sales to a licensed retail merchant, jobber or other licensed seller for resale are only eligible for the wholesale tax rate if the resale is subject to the highest general excise tax rate. The measure creates a similar requirement for sales of tangible personal property to a service provider.

As a not-for-profit organization, HPH is exempt from the general excise tax. The Department of Taxation (DoTax) has recognized this exemption which governs HPH and all of its affiliated hospitals. HRS §237-23(a)(6) codifies the provision that the GET does not apply to hospitals, affirming the recognition provided to nonprofit organizations such as HPH by DoTax.

HPH resells non-prescription drugs, supplies and other medical products purchased from its vendors to its patients and to the general public. Based on its not-for-profit status, HPH is unable to charge general excise tax to its patients and the general public. HB 1407 would require that HPH and other hospitals pay the general excise tax rate at the increased rate of 4%, despite their nonprofit status. Passage of HB 1407 would result in HPH paying the general excise tax without the ability to collect it. This would hugely and negatively impact HPH's finances. It is estimated that the losses to HPH alone would be between \$5 million to \$7 million. Thus, HPH opposes passage of HB 1407.

Thank you for the opportunity to testify.



## **HAWAII HEALTH SYSTEMS**

C O R P O R A T I O N

*Quality Healthcare For All*

### **COMMITTEE ON ECONOMIC DEVELOPMENT**

**Representative Sean Quinlan, Chair**

**Representative Daniel Holt, Vice Chair**

February 2, 2022

10:00 a.m.

Via Videoconference

#### **Testimony Providing Comments on House Bill 1407**

#### **RELATING TO THE GENERAL EXCISE TAX**

**Clarifies that, under the general excise tax law, sales to a licensed retail merchant, jobber, or other licensed seller for resale are only eligible for the wholesale tax rate if the resale is subject to the highest general excise tax rate. Adds a similar requirement for sales of tangible personal property to a service provider or for the purpose of providing transient accommodations.**

Linda Rosen, M.D., M.P.H.

President & Chief Executive Officer

Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony **providing comments on HB 1407** that clarifies that, under the general excise tax law, sales to a licensed retail merchant, jobber, or other licensed seller for resale are only eligible for the wholesale tax rate if the resale is subject to the highest general excise tax rate.

As an agency of the State of Hawaii, HHSC does not charge patients and the public the general excise tax (GET). Like other hospitals in the state, HHSC's facilities purchase and provide a number of prescription/non-prescription pharmaceuticals and other medical supplies as part of the patient services it provides, but only receives reimbursement from third-party insurers (including Medicare and Medicaid) based on contracted rates for the types of service performed. This bill, should it pass unamended, could result in HHSC experiencing a significant increase in costs on these items should HHSC's pharmaceutical and medical supply vendors choose to pass on the increased GET rate of 4% (instead of the wholesale rate of 0.5%) to HHSC. HHSC estimates that this could increase HHSC's operating expenses by approximately \$2.1 million annually. HHSC would humbly suggest that medical supplies and drugs vendors be granted an exemption from the provisions of this bill as the potential increase in costs would place on undue burden on all medical service providers in the State of Hawaii that are already

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struggling with lost revenues and increasing expenses as a result of the Coronavirus pandemic.

Thank you for the opportunity to testify before this committee **providing comments** on this measure.





## THE QUEEN'S HEALTH SYSTEMS

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To: The Honorable Sean Quinlan, Chair  
The Honorable Daniel Holt, Vice Chair  
Members, House Committee on Economic Development

From: Jacce Mikulanec, Director, Government Relations, The Queen's Health Systems

Date: February 2, 2022

Re: Opposition to HB 1407 – Relating to the General Excise Tax

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The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to testify in opposition to HB 1407, which attempts to clarify that, under the general excise tax law, sales to a licensed retail merchant, jobber, or other licensed seller for resale are only eligible for the wholesale tax rate if the resale is subject to the highest general excise tax (GET) rate.

Our health systems operate as registered non-profit organizations per designation provided by the state Department of Taxation (HRS §237-23(a)(6)) and therefore, are exempted from the GET. As such, Queen's does not charge patients and the public the general excise tax. Queen's like, other hospitals in the state, purchase and resell a number of prescription/non-prescription pharmaceuticals and other medical supplies across our system (including Molokai General Hospital, Queen's North Hawai'i Community Hospital, and Queen's West Oahu). This bill, should it pass, would require Queen's to pay the increased GET rate of 4.5% (instead of the wholesale rate of .5%) on these items and thus incur significant financial costs without the ability to recoup those costs. We estimate that The Queen's Health Systems could face an annual increase in expense of \$3 million should this bill be enacted.

Thank you for allowing The Queen's Health Systems to testify in opposition to HB 1407.

*The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.*

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** GENERAL EXCISE, Wholesale Sales

**BILL NUMBER:** HB 1407, SB 2020

**INTRODUCED BY:** HB by YAMANE, SB by KEOHOKALOLE

**EXECUTIVE SUMMARY:** Clarifies that, under the general excise tax law, sales to a licensed retail merchant, jobber, or other licensed seller for resale are only eligible for the wholesale tax rate if the resale is subject to the highest general excise tax rate. Adds a similar requirement for sales of tangible personal property to a service provider or for the purpose of providing transient accommodations. Our view is that this legislation is not necessary and may cause harm.

**SYNOPSIS:** Amends section 237-4(a)(1), HRS, to add a requirement that if tangible personal property is resold, the resale must be subject to the tax imposed at the highest tax rate.

Amends section 237-4(a)(8), HRS, to add a requirement that if a service provider resells services or tangible personal property, the resale must be subject to the tax imposed at the highest tax rate.

**EFFECTIVE DATE:** July 1, 2022

**STAFF COMMENTS:** This bill deals with the definition of wholesaling, and therefore which transactions qualify for the 0.5% wholesale tax rate, under the general excise tax law. The bill attempts to conform paragraphs 237-4(a)(1) and (8) with paragraphs (10) and (13), both of which have a requirement similar to the one this bill proposes to add.

Taxpayers are often, understandably, confused about when they are entitled to claim the wholesale GET rate. Consider taxpayer T making a sale to retailer R. T is entitled to the wholesale rate only if R is reselling the product or service sold. This fact, however, typically is not something that T knows. To fill in the information gap, T is supposed to take a resale certificate from R certifying that R will indeed resell the product or service. That resale certificate would allow T to claim the wholesale rate in good faith. Not all taxpayers, however, know how to use resale certificates.

The existing system, in theory, separates non-retail from retail transactions by requiring that T's customer have a general excise tax license. This is a requirement in existing law, and it can be enforced relatively easily.

Adding a requirement that the resale be at the highest rate can and will add to the confusion, and also will lead to anomalous results, more than under current law. An audit of T in this example and a survey of T's customers may reveal whether the customer has a GET license, but will not reveal whether tax has been paid at the highest rate. Consider the following scenarios:

1. T, a manufacturer of aloha shirts, sells a shirt to R. R resells the shirt to X by way of Internet sale, and R ships the shirt to X out of state. Under current law, T qualifies for the wholesale rate even though R is exempt from tax on the retail sale (export sale, exempt under section 237-29.5, HRS).
2. T, a manufacturer of medicines, sells medicines to D, a drug store. T's doctor prescribes some of T's medicine to patient X, and X buys some from D. Under current law, T qualifies for the wholesale rate even though R is exempt from tax on the retail sale (prescription drugs, exempt under section 237-24.3(6), HRS). (Note that the result changes if D is a GET-exempt hospital. In that case, existing case law does not consider D to be a licensed seller, and T would need to pay retail rate GET on sales to the hospital.)
3. T, a supplier of feed and other materials relating to farming, sells feed to distributor D. D resells the feed to farmer F, who feeds cattle with it. The farmer sells the meat to grocery store R, who sells the meat to X for consumption. Under current law, the sales by T, D, and F all qualify as wholesale sales. Under the bill, the sale from D to F will be taxed at 4%. This would be expected to hurt farmers and drive up the price of food.

For these reasons, we believe the bill is ill-advised. Consideration should be given to repealing subparagraphs 237-4(a)(10)(F) and 237-4(a)(13)(F) for these reasons.

Digested: 1/27/2022



**LATE**

DATE: February 1, 2022

TO: Representative Sean Quinlan  
Chair, Committee on Economic Development

FROM: Mihoko Ito

RE: **H.B. 1407 – Relating to the General Excise Tax**  
**Hearing Date: Wednesday, February 2, 2022 at 10:00 a.m.**

**LATE**

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Dear Chair Quinlan, Vice Chair Holt, and members of the Committee on Economic Development:

We submit this testimony on behalf of Walgreen Co. (“Walgreens”). Walgreens operates stores at more than 9,000 locations in all 50 states, the District of Columbia, and Puerto Rico. In Hawaii, Walgreens has 17 stores on the islands of Oahu and Maui.

Walgreens respectfully **opposes** H.B. 1407, which provides that under the general excise tax law, sales to a licensed retail merchant, jobber, or other licensed seller for resale are only eligible for the wholesale tax rate if the resale is subject to the highest general excise tax rate.

Under current Hawaii tax law, prescription drugs and medical devices are exempted from the general excise tax. If this bill were to pass, this exemption would remain in place, but companies like Walgreens would be required to absorb the increased tax, without the ability to collect it. We believe that this measure would ultimately increase the prices of prescription drugs and medical devices for patients. For these reasons, we are opposed to the bill.

We respectfully ask the Committee to hold H.B. 1407. Thank you for the opportunity to testify on this measure.



February 2, 2022 at 10:00 am  
Via Videoconference

**LATE**

**LATE**

**House Committee on Economic Development**

To: Chair Sean Quinlan  
Vice Chair Daniel Holt

From: Paige Heckathorn Choy  
Associate Vice President, Government Affairs  
Healthcare Association of Hawaii

Re: **Submitting Comments**  
**HB 1407, Relating to the General Excise Tax**

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the health care continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

We write to **submit comments** on HB 1407, which seeks to provide consistency and clarity within the Hawaii tax code for wholesalers and retailers. We understand that there are situations where the appropriate rate of taxation is not as clear-cut, such as when healthcare providers are acquiring drugs or supplies needed for patient care. However, this will create a one-size-fits-all solution to a situation that would be best resolved using a thoughtful, targeted approach.

The pandemic has caused immense financial stress on healthcare providers in the state. Delayed and cancelled care during the initial stages of the pandemic and in the ensuing surges decreased revenues for all providers, which was difficult considering the immense additional costs that providers have faced in acquiring PPE and tests at inflated rates and securing travel and temporary staff that are able to charge surge prices due to the nationwide shortage, among many other cost items. The amendments proposed in this measure would increase the costs of care for many providers during an already precarious time for many healthcare providers in the state, large and small.

While we understand that discussions should continue regarding the appropriate application of the GET, we believe that this bill may be unintentionally broad and could unnecessarily strain healthcare providers while we are still in a pandemic. Thank you for your consideration of our comments.