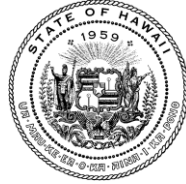


DAVID Y. IGE  
GOVERNOR

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 9, 2022  
Time: 10:00 A.M.  
Place: Via Video Conference, State Capitol

**Re: H.B. 1926, Relating to Taxation**

The Department of Taxation (Department) strongly opposes H.B. 1926.

H.B. 1926 amends the foreign trade zone exemption contained in Hawaii Revised Statutes (HRS) section 212-8. Specifically, the bill codifies the interpretation of the foreign trade zone exemption that was contained in the recently retracted Attorney General Opinion No. 64-52. Additionally, H.B. 1926 contains language stating that the exemption shall be interpreted liberally in favor of the taxpayer. The bill becomes effective upon approval and applies retroactively to any taxable years for which the statute of limitations is open.

First, the Department notes that the conclusion reached Attorney General Opinion No. 64-52 is not supported by tax exemption contained in the federal Foreign Trade Zone Act, nor is it supported by federal case law. There is no requirement that the State provide a broad tax exemption as is being proposed by this measure.

Second, the Department notes that in 1984 the Foreign Trade Zone Act was amended to read that goods held in the FTZ were exempt from State and Local ad valorem taxes. The Hawaii State General Excise Tax is not an ad valorem tax.

Finally, the Department notes that providing that the exemption shall be interpreted in favor of the taxpayer is reversing the treatment of tax exemptions. Generally, exemptions from tax are strictly construed against the taxpayer, while impositions of tax are strictly construed against the State. The Department is opposed to this provision as it is inappropriate to provide an exemption this expressly broad and include language that furthers ambiguity. The Department strongly suggests deleting Section 4.

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



## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE  
GOVERNOR

MIKE MCCARTNEY  
DIRECTOR

CHUNG I. CHANG  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [dbedt.hawaii.gov](http://dbedt.hawaii.gov)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

Statement of  
**Mike McCartney**  
Director

Department of Business, Economic Development & Tourism

Before the  
**HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT**

Wednesday, February 9, 2022

10:00 AM

State Capitol, Conference Room 312

In consideration of  
**H.B. 1926**  
**RELATING TO TAXATION.**

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

The Department of Business, Economic Development and Tourism (DBEDT) offers the following comments on H.B. 1926, which relates to taxation within Hawaii's Foreign-Trade Zones.

The purpose and intent behind the long-standing Attorney General's Opinion (64-52) was to ensure an attractive environment for economic development within the state's Foreign-Trade Zones. These tax incentives have been challenged multiple times since they were implemented in 1964 and each time upheld and clarified (refer to Exhibit 1). The state believed these exemptions were applicable to the noted activity performed in a federally established Foreign-Trade Zone. These exemptions were communicated to Zone Operators and service providers, and widely distributed to the public in print and on the Hawaii Department of Taxation website.

These exemptions were unexpectedly removed early in 2021 without public knowledge, consult or engagement, and then followed by a letter much later in the year stating the Zones or service providers may be liable for nonpayment of taxes for potentially up to the statute of limitations of three years, or in some instances as far

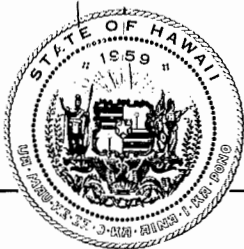
back as 1984 (refer to Exhibit 2), this caused distress among many small companies which service the larger Zone operations. Existing service contracts had been executed which had already factored these exemptions into the agreement's provisions, and thus would place the immediate tax payment burden on the smaller service provider who conducted the previously exempted activity in the Zone.

Well over 80% of basic consumer goods and energy resources needed to sustain Hawaii's economy must be imported. Foreign-Trade Zones in the state help to offset the high cost of living in our remote location. Although the business environment and economic base may have evolved over the 56 years that Hawaii has overseen its FTZ program, the basis for its establishment and continued mission is to create greater job opportunities by diversifying and growing Hawaii's economic base. The mission of the Hawaii FTZ is to provide critical economic support for Hawaii's businesses.

This past reporting year, Hawaii's Foreign-Trade Zones handled over \$4.5 billion in merchandise. Exports from the state's FTZs totaled \$179 million ranking 19<sup>th</sup> in the nation for warehouse/distribution activity among FTZs nationally. The value-added for merchandise in Hawaii's FTZs was nearly \$2.6 billion. Hawaii's Foreign-Trade Zones supports over 360 companies statewide and 3,100 jobs for Hawaii.

Thank you for the opportunity to offer these comments.

# EXHIBIT 1



## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

JOHN WAIHEE  
GOVERNOR  
MUFI HANNEMANN  
DIRECTOR  
BARBARA KIM STANTON  
DEPUTY DIRECTOR  
RICK EGGED  
DEPUTY DIRECTOR  
TAKESHI YOSHIHARA  
DEPUTY DIRECTOR

### FOREIGN-TRADE ZONE NO. 9

PIER 2, 521 ALA MOANA, HONOLULU, HAWAII 96813 TELEPHONE: (808) 586-2507 FAX: (808) 586 2512

### APPLICABILITY OF HAWAII TAXES TO OPERATIONS WITHIN HAWAII'S FOREIGN-TRADE ZONES

The following are examples of transactions which have been reviewed by the Department of the Attorney General and the Department of Taxation for applicability of the Hawaii State tax code. As this information is offered in condensed form, it is intended purely for the advice of intended users of Hawaii's Foreign-Trade Zone program with the idea that supporting details to these tax decisions are available at the Foreign-Trade Zone administrative office at Pier 2.

#### I. OPINION NO. 64-52, DEPARTMENT OF THE ATTORNEY GENERAL, November 5, 1964

Questions 1 and 2: Would state taxes apply to sales made within the foreign trade zone? Would state consumption taxes apply within the zone?

- *We answer these two questions in the negative. Since the proposed foreign trade zone will be created pursuant to the paramount and plenary powers of Congress to regulate trade with foreign nations, Congress has assumed exclusive regulatory powers within the zone, and no local regulation may interfere with these powers.*

Question 3: Would state taxes apply to sales made within Hawaii?

- (a) A corporation engaged in business within the zone sells goods to a purchaser in this state. The seller does not maintain an office in the state nor is it otherwise engaged in business in the state. The sales are completed within the zone premises, the title to the goods passes within the zone, and delivery and possession are made in the zone. The purchaser purchases these goods for resale in the state. The question is whether the general excise tax applies on account of such sale.

- *We answer question 3(a) in the negative.*



PRESIDENT'S AWARD

(b) Assuming the same fact situation in (a) above, the purchaser, after taking possession and taking the goods out of the zone, then sells the goods in the normal course of his business, to another purchaser in this state. The question is whether the general excise tax applies on account of such sales made within this state.

- *We answer question 3(b) in the affirmative, subject to an important limitation under certain conditions as more fully explained in footnote 6 of Opinion No. 64-52.*

(c) A purchaser in Hawaii purchases goods from a corporation engaged in business in the zone for the purpose of using or consuming these goods for his own use or consumption within this state. The question is whether the consumption tax applies on account of such goods imported.

- *We answer question 3(c) in the affirmative.*

Questions 4 and 5: Would state taxes apply to sales made in a foreign country? Would state taxes apply to sales made in another state?

We shall assume that a corporation engaged in business within the foreign trade zone sells goods to a purchaser in a foreign country or in another state. Title to these goods passes in the foreign country or state and purchaser accepts these goods in the foreign country or state. The question is whether the general excise tax applies on account of such sales.

- *We answer these two questions in the negative.*

II. OPINION NO. 85:812-1, DEPARTMENT OF THE  
ATTORNEY GENERAL, October 23, 1985

What State taxes are applicable to the operations of firms within a Foreign-Trade Zone or Subzone?

A. Sale of merchandise within a Zone or Subzone.

- *Non-taxable.*

B. Consumption of goods within a Zone or Subzone.

- *Non-taxable.*

C. Services rendered within a Zone or Subzone.

- *Non-taxable.*

D. Manufacture of goods or merchandise within a Zone or Subzone.

- *Non-taxable.*

E. Shipment of goods or merchandise from the Zone or Subzone out of the State of Hawaii.

- *Non-taxable.*

F. Merchandise shipped directly into the Zone or Subzone from out-of-state.

- *Non-taxable.*

G and H

(G) State Corporate Income tax on income derived by a "foreign corporation" on operations within a Zone or Subzone.

(H) State Corporate Income tax on income derived by an "alien corporation" on operation within a Zone or Subzone.

- *We believe that the possibility of assessing net income taxes does exist, because section 212-8 does not expressly exempt foreign-trade zone activities from the tax imposed by chapter 235, the income tax law. Unless specifically exempted by an Act of Congress, therefore, foreign corporations may be liable for net income taxes as a nonresident upon income "received or derived from property owned, personal services performed, trade, or business carried on, and any and every other source in the State," pursuant to section 235-4(b), Hawaii Revised Statutes.*

I. Transfer of merchandise from one Zone to a Subzone or from one Subzone to another Zone or Subzone.

- *Non-taxable.*

J. Sale of merchandise which is under customs bond.

- *Non-taxable.*

K. Purchase of goods outside the Zone but from within the State of Hawaii.

- *Taxable.*

L. Consumption of goods or services outside the Zone but within the State of Hawaii.

- *Taxable.*

M. Merchandise entering the State of Hawaii from a Zone or Subzone for consumption.

- *Taxable.*

III. OPINION OF DEPARTMENT OF TAXATION, August 11, 1988

A. Transactions by a "Foreign Corporation" Operating as a Zone User Within a Foreign-Trade Zone

1. Are gross receipts from corporate sales made to overseas firms excluded from State corporate income tax?

- *No, pursuant to the Attorney General's Opinion dated October 23, 1985, "[U]nless specifically exempted by an Act of Congress, therefore, foreign corporations may be liable for net income taxes as a nonresident upon income "received or derived from property owned, personal services performed, trade, or business carried on, and any and every other source in the State," pursuant to section 235-4(b), Hawaii Revised Statutes."*

*Section 235-5(d), Hawaii Revised Statutes (HRS), provides, in part, with respect to income or loss attributable to the State, "Every person shall be deemed to be carrying on a trade or business in the State if the person's income therefrom is subject to the taxing jurisdiction of this State by reason of the person's engaging in activities in this State, or causing transactions to be conducted in this State, with the object of gain, profit, or economic benefit, whether or not such activities or transactions are in or connected with interstate or foreign commerce."*

2. Are gross receipts from corporate sales made to firms situated in the State of Hawaii excluded from State corporate income tax?

- *No. Same as A.(1).*

B. State Tax Effect on Deactivation of Foreign-Trade Zone Facilities

1. If a Subzone operator after establishing operations in a Zone is closed out by federal action to cancel the Zone grant and thus render his operation domestic, what impact would this have on past exemptions from general excise Use Taxes on purchases of equipment and excise taxes on construction of improvements in the Foreign-Trade Zone?

- *The prior general excise tax/use tax exemptions allowed or properly taken by sellers of tangible personal property or contractors performing work within the zone or subzone would not be retroactively disallowed. Any tax exemption afforded under Section 212-8, HRS, would however, terminate as of the effective date of the zone grant revocation.*

2. If a Subzone operator, after establishing operations in a zone, decides voluntarily to ask that Foreign-Trade Zone status be deactivated temporarily or permanently at that facility, what impact would this action have on past exemptions that this corporation gained from general excise Use Taxes on purchases of equipment and excise taxes on construction of improvements in the Foreign-Trade Zone?

- *Same as B.(1).*

C. Services Rendered by Contractor

1. If a Hawaii contractor, doing business in the State of Hawaii performs work for the Zone operator within the Zone boundaries, does the State tax his income from this work under gross income tax statutes?

- *No. The gross income derived by a contractor or subcontractor from the construction of improvements for a zone operator (grantee) within the foreign trade zone or subzone is exempt from the general excise tax. It should be emphasized that the exemption from the general excise tax applies only to work performed entirely within the foreign trade zone or subzone.*

2. If an out-of-state contractor is brought in to perform work within the Zone boundaries, what taxes are applicable to his compensation, and which party (zone operator or contractor) is liable for the tax payment, if any, to the State?

- *The out-of-state contractor would be subject to the Hawaii income tax imposed under chapter 235, HRS.*



D. Impact of State Sales Tax on Location of Sale

This question has reference to Section 212-8 HRS relative to sale of products within a Foreign-Trade Zone being exempt from general excise tax, use tax, fuel tax and liquor tax when sales are made directly to any common carrier in interstate or foreign commerce or both, for consumption out-of-state by crew or passengers on the shipper's vessels or airplanes, or for use out-of-state by the vessels or airplanes.

1. Is the exemption from the above noted State taxes applicable only if sales take place directly at the Foreign-Trade Zone facility?

- *Yes. The exemption from taxes provided under section 212-8, HRS, applies only to sales of tangible personal property consummated entirely within the foreign trade zone or subzone. This means that the sale of the goods must be made within the foreign trade zone or subzone; title to the goods must pass to the purchaser within the zone or subzone; and the delivery and possession of the goods takes place within the zone or subzone premises.*

2. Since Zone facilities may be established non-contiguous to the Subzone site, would a satellite or annex of a Subzone situated at the harbor or airport qualify as the point or points where sales to carriers can be made directly by the trade zone operator and be exempt from these taxes?

- *No, assuming the satellite facilities are not located within a designated foreign trade zone or subzone. There is, however, a separate general excise tax exemption available under section 237-24(18), HRS, as follows:*

*Amounts received from sales of (A) intoxicating liquor as defined in chapter 244D, (B) tobacco products as defined in chapter 245, and (C) agricultural, meat, or fish products grown, raised, or caught in Hawaii, when such sales are made to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes.*

E. Tax Impact on Material Delivered to the Zone Corporation

1. When material is purchased by a Zone Corporation directly from an out-of-state business, and delivered directly to the Zone, is the Corporation required to pay Use Tax?

- *No. A person engaged in business within the foreign trade zone or subzone importing or purchasing tangible personal property from an out-of-state seller that is shipped directly into the zone or subzone is exempt from the Hawaii use tax on the tangible property so imported.*

2. When material is ordered through a wholesaler or jobber doing business in Hawaii and delivered to the Zone from an out-of-state factory, is the jobber liable for Gross Income Tax? If not, is the Zone Corporation liable for Use Tax?

- *Yes, assuming title to the materials passed to the purchaser outside of the foreign trade zone or subzone. The general excise tax exemption is applicable only to sales of tangible property or services consummated entirely within the zone or subzone. All elements of the transaction must have transpired within the zone, including the sale of the materials, passage of title, delivery and possession of the materials. As the wholesaler or jobber is engaged in business without (outside) the foreign trade zone or subzone, the wholesaler is liable for the Hawaii use tax at the rate of one-half of one percent on tangible property sold in this situation.*

3. When material is ordered from a mainland firm for delivery to the zone, and the order is made through a local representative of the firm in Hawaii, licensed to do business in the State of Hawaii, is the firm liable for the Gross State Income Tax? If not, is the Zone Corporation liable for Use Tax?

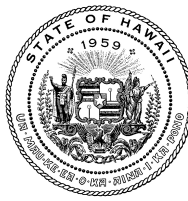
- *Same as E.(2).*

\* \* \* \*

# EXHIBIT 2

DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LT. GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TAXATION

ISAAC W. CHOY  
DIRECTOR OF TAXATION

DEPUTY DIRECTOR

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Date: October 20, 2021  
Letter ID: XXXXXXXXXXXX  
Hawaii Tax ID: GE-XXX-XXX-XXX-X

## IMPORTANT INFORMATION

Dear Taxpayer:

It has come to our attention that you have claimed the foreign trade zone (FTZ) exemption on your general excise tax return. The Department of Taxation issued Information Release (TIR) No. 2021-07 regarding Exemption from Taxes in a Foreign Trade Zone on September 29, 2021. The TIR clarifies the exemption from state taxes in a FTZ, specifically addressing the imposition of the Hawaii taxes on certain services and contracting in a FTZ. Please visit our website at <http://tax.hawaii.gov> for a copy of the TIR.

If you filed returns and paid taxes in a manner not consistent with the guidance contained in the TIR, amended returns need to be filed. The periods involved are dependent on the statute of limitations. Hawaii Revised Statutes (HRS) section 231-40 indicates that generally, the statute of limitations is within three years after the annual return was filed, or within three years of the due date prescribed for the filing of said return, whichever is later. However, there is no statute of limitations if an annual G-49 wasn't filed. In that circumstance, how far back the Department will go will be determined on a case by case basis.

Taxpayers can apply to the Department's Voluntary Disclosure Program to seek some relief. Program details can be found in TIR 2020-03. If approved, the Department will consider waiving 100% of the penalty and 50% of interest related to the reclassification of the foreign trade zone exemption. If you intend to apply to the voluntary disclosure program, please do so by **November 5, 2021**. Thereafter, the Department may audit, and issue assessments based on best available information for the FTZ exemption. Once under audit, taxpayer is no longer eligible for the voluntary disclosure program.

You may submit a voluntary disclosure request to the following email address: [tax.voluntary.disclosure@hawaii.gov](mailto:tax.voluntary.disclosure@hawaii.gov) or call Ed Collins at (808)587-1611 for questions.

Sincerely,

Ed Collins  
Returns Classifying Officer



DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT  
ON  
HOUSE BILL NO. 1926  
  
February 9, 2022  
10:00 a.m.  
Room 312 and Videoconference

**LATE**

RELATING TO TAXATION

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 1926 retroactively restores the foreign-trade zone exemption from taxation under the general excise tax law, use tax law, fuel tax law, liquor tax law, and cigarette and tobacco tax law.

B&F notes that the federal American Rescue Plan (ARP) Act restricts states from using ARP Coronavirus State Fiscal Recovery Funds (CSFRF) to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the CSFRF have been spent. If a state cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than the CSFRF, such as:

- By enacting policies to raise other sources of revenue;
- By cutting spending; or
- Through higher revenue due to economic growth.

If the CSFRF provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the U.S. Treasury.

The U.S. Department of Treasury has issued rules governing how this restriction is to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with this ARP restriction.

Thank you for your consideration of our comments.

**HB-1926**

Submitted on: 2/7/2022 2:36:53 PM

Testimony for ECD on 2/9/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ray Kamikawa	Par Hawaii Refining, LLC; Island Energy Services, LLC	Support	Yes

Comments:

I am testifying in support of HB1926. I speak as an attorney who has assisted taxpayers over decades in complying with Hawaii's tax laws. It is important to be able to rely on published guidance from the Department of Taxation and Attorney General. In this case, published guidance in 1964 affording tax exemptions for Foreign Trade Zone business transactions was summarily overturned by the Department without notice or warning 57 years later in 2021. Rather than repeat more detailed written testimony that will be submitted, I will stop there and make myself available for questions if need be.

Thank you for this opportunity to testify.

Ray Kamikawa.



February 9, 2022

**TESTIMONY IN STRONG SUPPORT OF HOUSE BILL 1926**  
**RELATING TO TAXATION**

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

Wednesday, February 9, 2022 at 10:00 a.m.  
VIA VIDEOCONFERENCE  
Conference Room 312  
State Capitol  
415 South Beretania Street

Chair Quinlan, Vice Chair Holt, and members of the Committee,

Thank you for this opportunity to submit testimony in **strong support** of House Bill 1926. Par Hawaii (“Par”) is the state's only producer of petroleum products, including transportation fuels. Both Par and Island Energy Services (“IES”) deliver fuel to Oahu, Maui, Hawaii Island, Kauai and Molokai through a network of branded retail locations and product distribution terminals. Both IES and Par have significant operations within the Trade Zone 9 (“FTZ”).

FTZs are, by federal law, an area where imported goods are warehoused free from customs duties and various taxes until those goods leave the FTZ. Goods withdrawn for domestic sale or stored beyond certain periods are then subject to duties. Congress created such duty-free enclaves under federal control in order to encourage merchants here and abroad to make use of American ports as transshipment centers for goods in foreign trade. It would not be compatible with the comprehensive scheme of Congress enacted to affect these goals if the states were free to tax such goods in the FTZ.

## **Tax Rules Governing FTZ**

Consistent with this federal objective, the State of Hawaii has since 1964 treated the FTZ as free from the burden of state taxes, including the general excise tax (“GET”), based on Attorney General Opinion 64-52 (November 5, 1964). AG Op 64-52 opined that State taxes were preempted by federal regulation of FTZ transactions. ***As administered by the Department of Taxation (“DOTAX”) and the Department of Business, Economic Development and Tourism (“DBEDT”), this protection from state taxation applied to all business transactions within the FTZ, including the performance of services and contracting by third party vendors.*** DOTAX permitted Par/IES and these vendors to claim the FTZ exemption from the GET on their respective GET returns. Subsequent opinions by the DOTAX’s Tax Facts 99-1 and 99-2 validated the treatment of the FTZ as free from state tax.

## **DOTAX Interpretation**

However, without warning or explanation, beginning in January 2021, DOTAX removed the ability of Par/IES and these vendors to claim the FTZ exemption for certain transactions (e.g., sales, services and contracting) taking place within the FTZ. This came as a complete surprise to these businesses who attempted to claim the FTZ exemption in February when their January GET returns became due, and found that they could not. No explanation was provided by DOTAX in its GET instructions or on its website.

Not until much later in 2021 did the Attorney General (the “AG”), in AG Op. 21-1 (September 22, 2021), reconsider the 1964’s AG Op. 64-52, which concluded that the State may impose State taxes on business activities conducted within the FTZ, but only if the State conducted a federal preemption analysis for each State tax to determine if it conflicted with the purpose of the federal Foreign Trade Zones Act. Just one week later, on September 29, 2021, DOTAX issued Tax Information Release (“TIR”) 2021-07, summarily stating that it could think of no tax that would be preempted, except for those transactions covered by HRS §212-8, which exempts from the use tax, GET, and other state taxes the sales of products that are admitted into the FTZ and sold to any common carrier by sea or air for consumption out of state.

Beginning in October 2021, DOTAX issued notices to vendors and operators in the FTZ who claimed the FTZ exemption in past years that they were no longer permitted to claim the FTZ exemption. Moreover, DOTAX’s notices also stated that DOTAX would apply its position on the application of GET to activities within the FTZ retroactively to all years open for assessments,



which, in most cases, is three (3) years, and that vendors and operators were obligated to amend their GET returns for those periods accordingly.

### **Impact on Businesses & Consumers**

After 57 years of protecting FTZ businesses from state taxation, DOTAX's sudden and unilateral decision to reverse course and tax transactions in the FTZ has put a significant burden on FTZ businesses who have relied on the FTZ tax exemption for decades. Specific to Par/IES, we have structured our contracts, pricing models, and other business affairs on the fundamental assumption that activities conducted within the FTZ would be exempt from state taxation. This sudden and dramatic change will undoubtedly increase Par's / IES's costs of doing business in Hawaii which, in turn, will ultimately lead to increased costs paid by Hawaii consumers for our products. This is all because of a change in position by the AG and DOTAX, not as a result of legislation or properly conducted administrative rulemaking, which should have incorporated notice and opportunity for public hearing into the decision-making process.

We believe that the analysis by the AG and DOTAX in reconsidering AG Op. 64-52 is legally flawed and reflects superficial analysis. But, of even more significance, is that these actions by the AG and DOTAX run counter to notions of fair play, and have deprived these businesses of basic due process. After 57 years of reliance on AG Op 64-52 by FTZ businesses, DOTAX should have consulted with FTZ operators and vendors before changing settled economic and financial expectations.

For the foregoing reasons, we respectfully request that the status quo on FTZ taxation prior to January 2021 be preserved and HB 1962 accomplishes that.

Thank you for allowing Par Hawaii and Island Energy Services the opportunity to present these comments for the Committee's consideration and respectfully request your favorable consideration.

**HB-1926**

Submitted on: 2/7/2022 4:16:30 PM

Testimony for ECD on 2/9/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ikaika Rawlins	Par Hawaii Refining, LLC; Island Energy Services, LLC	Support	Yes

Comments:

I am testifying in support of HB1926. I am an attorney who advises taxpayers on Hawaii tax law compliance matters. It is important for compliance purposes for taxpayers to be able to rely on published guidance issued by the Department of Taxation ("DOTAX") and the Attorney General (the "AG") regarding the applicability of State taxes. Relative to HB 1926, published guidance issued by the AG in 1964 that afforded tax exemptions for Foreign Trade Zone business transactions was summarily overturned by DOTAX in 2021 without notice or warning, after being in effect for 57 years. HB 1926 would resolve this issue by reestablishing this longstanding exemption. Rather than repeat more detailed written testimony that will be submitted, I will stop there and make myself available for questions at the hearing if need be. Thank you for this opportunity to testify.

Ikaika Rawlins



**Testimony to  
The Committee on Economic Development  
Wednesday, February 9, 2022  
10:00 AM  
VIA Video Conference  
Conference Room 312, Hawaii State Capitol**

**HB 1926**

Chair Quinlan, Vice Chair Holt, and members of the committee,

Hawaii Gas **supports** **HB 1926**, which retroactively restores the foreign-trade zones exemption from taxation under the general excise law, use tax law, fuel tax law, liquor tax law and cigarette tax and tobacco tax law.

Hawaii Gas is a national leader in the production and distribution of renewable gas in a gas utility system and has committed to do its part to support the state's march towards carbon neutrality by 2045.

The Foreign Trade Zone (FTZ) was established by the federal government in 1934 to encourage U.S. companies to maintain and expand their operations in the United States by removing duties and taxes on unfinished raw materials and services consumed with the trade zone until the finished product was complete and sold. This bill looks to restore the well-established federal law that was confirmed by the Hawaii Attorney General in 1964 and has been part of the Hawaii administrative rules for over fifty years. Since taxpayers had no notice or opportunity to be heard when this law was administratively reversed in 2021, taxpayers now face an undue burden – including penalties – for back taxes they never understood were possibly owed since their operations were in a foreign trade zone where such taxes had never applied.

Taxes and duties are, in fact, paid on finished products once they leave the foreign trade zone and it is inequitable to retroactively collect back taxes and overturn fifty years of uncontroverted law without any notice or opportunity to be heard. Companies in the FTZ will now be forced to pass these extra taxes and duties onto their customers who will be paying taxes on the same products and services twice.

We urge the committees to pass HB 1926.

Thank you for the opportunity to testify.



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Economic Development  
Wednesday, February 9, 2022, at 10:00 A.M.  
Via Videoconference**

**RE: HB 1926 Relating to Taxation**

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

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 1926, which retroactively restores the foreign-trade zones exemption from taxation under the general excise tax law, use tax law, fuel tax law, liquor tax law, and cigarette tax and tobacco tax law

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 our state's small manufacturing and logistics businesses use foreign trade zones (FTZ) to lower the cost of doing business and to access larger warehouses. By restoring the foreign trade zones tax exemption, it would further improve the program and help our small businesses in need.

There are several small business owners that have spoken out in support of the Hawaii FTZ. Easy Music Center President Peter Dods said in his testimonial: "We would be dead in the water without the FTZ. It's allowed us to increase our product offerings far beyond what we are able to warehouse. It's increased our profit margins and our sales dramatically. Having the FTZ allows us to compete on more equal footing with major box stores. For a small retailer like Easy Music Center, the FTZ is the lifeblood of our business, and without it, we might not have survived 2020." (<https://www.ftz9.org/news/testimonials/>)

In a time where companies are still struggling due to the COVID-19 pandemic, lowering the cost of doing business in the state would only help our economy recover. We ask that you pass HB 1926 to help our manufacturers and small logistics companies.

Thank you for the opportunity to testify.



# HiEmployment

The Honorable Sean Quinlan  
The Honorable Daniel Holt  
House Committee on Economic Development

Wednesday, February 9, 2022 at 10:00 a.m.  
Via Videoconference

**RE: HB1926, Relating to Taxation**

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

My name is Sean Knox, and I am President of Hawaii Employment Services, Inc. (HiEmployment) and I **strongly support** this bill. HiEmployment is a professional employment agency that assists local companies with their recruiting and staffing needs. HiEmployment has been in business in Hawaii since 2005 and we locally employ over 200 employees.

I am writing to express our strong support of HB1926.

For many years, we have benefited from savings and convenience of conducting business in the foreign trade zone. The main purpose is to reduce/defer the payment of duties, tariffs, and taxes in the zone for the benefit of Hawaii's economy, our business, and ultimately local consumers in the form of the final costs that are that are paid.

Recently, we were notified by the State Department of Taxation that they changed their views on the tax and business-friendly rules within the FTZ. The sudden interpretation resulted in requiring us to owe them back taxes along with new taxes going forward that were neither in our business nor expense plans, despite years of tax compliance.

Our company has had to lay off over 150 employees during the pandemic and our revenues are still much lower than they were in 2019. To have to pay back taxes – taxes which HiEmployment was not required to pay – will create an extreme burden in HiEmployment's efforts to re-hire employees and get back to a solid financial foundation.

Passing this bill will help to maintain the business-as-usual environment for the operation of our company in the FTZ. It is not appropriate that despite years of tax compliance, we are issued an unexpected tax bill claiming unpaid past taxes and for future taxes.

For these reasons we ask that the Committee pass this measure. Thank you for this opportunity to testify in strong support of this bill.

Sean K. Knox

Sean K. Knox, *President & CEO*

HiEmployment Staffing LLC



The Honorable Sean Quinlan, Chair  
The Honorable Daneil Holt, Vice Chair  
House Committee on Economic Development

Wednesday, February 9, 2022 at 10:00 AM  
Via Videoconference

**RE: HB 1926, Relating to Taxation**

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

My name is Mark Kramer, and I am CFO of Ancon Marine and I **strongly support** this bill. Ancon Marine is an industrial services provider. Ancon Marine has been in business in Hawaii since 2015 and we locally employ 20 employees.

I am writing to express our strong support of HB1926.

For many years, we have benefited from savings and convenience of conducting business in the foreign trade zone. The main purpose is to reduce/defer the payment of duties, tariffs, and taxes in the zone for the benefit of Hawaii's economy, our business, and ultimately local consumers in the form of the final costs that are that are paid.

Recently, we were notified by the State Department of Taxation that they changed their views on the tax and business-friendly rules within the FTZ. The sudden interpretation resulted in requiring us to owe them back taxes along with new taxes going forward that were neither in our business nor expense plans, despite years of tax compliance.

In mid-2018, I spoke with a Department of Taxation representative about a "tax certification letter" Ancon Marine received from a vendor within the FTZ, assuring Ancon Marine that it was exempt from the GET for services rendered to the FTZ business. I wanted the Department of Taxation to confirm the representations in the FTZ business's letter. I questioned the representative about prior Attorney General Opinions stating that contractor services performed in the FTZ are exempt from GET and whether the Department of Taxation followed that Attorney General advice. The representative stated that it did not follow the advice and would treat Ancon Marine's services as subject to the GET. I then asked whether the Department of Taxation had published anything to refute the Attorney General Opinions and clarify its position on GET in the FTZ. The representative responded that the Department of Taxation had not. I asked the representative if the Department of Taxation planned on doing so and he was not aware when or if that would happen.

The same Department of Taxation representative reviewed Ancon Marine's filing records and saw that Ancon Marine had not filed its annual Forms G-49 for 2015 through 2017, although Ancon Marine did file the periodic forms G-45 and paid the GET with those forms. When I asked the representative what guidance to follow, he suggested that we file the Forms G-49 to claim the payments as refunds, but



warned that any refund amounts over a certain threshold would be reviewed by a Department of Taxation auditor before being issued. The representative said that if the refunds were approved, then Ancon Marine was probably ok to not pay the GET. Ancon Marine filed the Forms G-49 claiming the refunds around mid to late-2018. The Department of Taxation issued Ancon Marine's 2015 refund in November of 2018, less the offset for taxes owed for 2016. The Department of Taxation issued refunds to Ancon Marine for 2016 and 2017 in February of 2019. Based on the Department of Taxation reviewing and approving the refunds, Ancon Marine stopped reporting GET liability altogether consistent with the Attorney General Opinions and based on the Department's guidance.

Passing this bill will help to maintain the business-as-usual environment for the operation of our company in the FTZ. It is not appropriate that despite years of tax compliance, we are issued an unexpected tax bill claiming unpaid past taxes and for future taxes.

For these reasons we ask that the Committee pass this measure. Thank you for this opportunity to testify in strong support of this bill.

Mark Kramer  
  
Ancon Marine



Honolulu International Airport  
3201 Aolele St.  
Honolulu, HI 96819  
Phone (808) 833-3291  
Fax (808) 833-3295

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

Wednesday, February 9, 2022 at 10:00 A.M.  
Via Videoconference

**RE: HB 1926, Relating to Taxation**

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

My name is Jason Maga, and I am Assistant Treasurer of the Hawaii Fueling Facilities Corporation ("HFFC") and **strongly support** this bill. HFFC provides jet fuel storage & distribution services for the Daniel K. Inouye International Airport. HFFC has been in business in Hawaii since 1969 and we locally employ over 50 employees.

I am writing to express our strong support of HB 1926.

For many years, we have benefited from savings and convenience of conducting business in the foreign trade zone. The main purpose is to reduce/defer the payment of duties, tariffs, and taxes in the zone for the benefit of Hawaii's economy, our business, and ultimately local consumers in the form of the final costs that are that are paid.

Passing this bill will help to maintain the business-as-usual environment for the operation of our company in the FTZ. It is not appropriate that despite years of tax compliance the Department of Taxation and Department of the Attorney General, without advance warning or notice, reversed the long-standing position on exemption within the FTZ.

For these reasons we ask that the Committee pass this measure. Thank you for this opportunity to testify in strong support of this bill.

Jason Maga

Hawaii Fueling Facilities Corporation



# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** GENERAL EXCISE, USE, FUEL, LIQUOR, TOBACCO, Exemption for Activity in Foreign-Trade Zones

**BILL NUMBER:** HB 1926, SB 3193

**INTRODUCED BY:** HB by SAIKI, SB by DELA CRUZ, INOUYE, KEITH-AGARAN, KIDANI, Baker, Nishihara

**EXECUTIVE SUMMARY:** Retroactively restores the foreign-trade zones exemption from taxation under the general excise tax law, use tax law, fuel tax law, liquor tax law, and cigarette tax and tobacco tax law. This issue seems to have stemmed from the Department's misunderstanding of what laws can or can't apply in a foreign trade zone. The Department seems to have now figured it out and it wants taxpayers to pay for its mistakes...retroactively. We think it's appropriate for the Legislature to step in and come up with a just resolution.

**SYNOPSIS:** Amends section 212-8, HRS, to provide that the following shall be exempt from those taxes imposed under chapters 237, 238, 243, 244D, and 245: (1) The value or purchase price, as applicable, of any tangible personal property, intangible personal property, services, or contracting imported into a foreign-trade zone; and (2) The gross income from the sale of tangible personal property, from services and contracting rendered, and from the sale of intangible personal property within a foreign-trade zone.

In an uncodified section, provides that any tax paid by a taxpayer after September 29, 2021, not consistent with the amendments made by this bill, upon demand of the taxpayer, shall be refunded to the taxpayer with interest under applicable law; provided that the taxpayer shall be entitled to a refund regardless of whether the taxes were paid as a result of: (1) Tax liabilities incurred by the taxpayer during the current taxable year; or (2) Amendments made to the taxpayer's returns for prior taxable years.

**EFFECTIVE DATE:** Upon Approval, applicable to all taxable years for which the statute of limitations on assessment remains open, including but not limited to sections 231-40.5, 237-40, 238-7, 243-14, 244D-8, and 245-7, Hawaii Revised Statutes.

**STAFF COMMENTS:** If you're in downtown Honolulu and you're driving past Restaurant Row, you're likely to see a sign on the makai side saying, "Foreign Trade Zone No. 9."

In this country, a foreign trade zone (FTZ) is a geographical area, in (or adjacent to) a United States Port of Entry, where commercial merchandise, both domestic and foreign, receives the same Customs treatment as if it were outside the United States. The zones help American businesses to be competitive in the global economy by reducing tariff burdens on the importation of foreign inputs and on exported finished products. Businesses can set up shop in the zone for loading, unloading, handling, storing, manipulating, manufacturing, and exhibiting goods and for reshipping them by land, water or air. Merchandise of every description may be held in the zone

without being subject to tariffs (customs duties) and other taxes based on the value of the goods. This tariff and tax relief is designed to lower the costs of U.S.-based operations engaged in international trade and thereby create and retain the employment and capital investment opportunities that result from those operations.

The FTZ in Honolulu was established in 1966 at Pier 39 in Honolulu Harbor. It has since grown to include 13 sites and 2,600 acres.

So, what's the current problem with the FTZ? Of course, it has to be a tax problem. It involves Hawaii General Excise Tax (and other specialty taxes as well), and the question is whether taxes apply in an FTZ.

Federal law is clear that merchandise admitted into the zone and not intended for sale into the country is not subject to state tax. *Xerox Corp. v. County of Harris, Texas*, 459 U.S. 145 (1982); *McGoldrick v. Gulf Oil Corp*, 309 U.S. 414 (1940).

State law, HRS section 212-8, also provides that merchandise that is admitted into the zone and that is sold for use or consumption out of state is exempt from GET, Use Tax, fuel tax, liquor tax, and tobacco tax. Tax still applies if the merchandise is sold to someone in the state.

But there has been some confusion over whether *other* activity performed in the zone is subject to state tax. For example, a factory in the zone that manufactures products for export breaks down, and a technician comes in to fix the broken machinery. Is the technician's fee subject to GET?

For a while, the Department of Taxation was telling folks that the answer is no. They thought that a FTZ was a "federal enclave," where the laws of the states just don't apply. Washington, DC is one example. It was carved out of Maryland and Virginia, and neither state's law applies there. Other federal enclaves include some federal courthouses, military bases, federal buildings, national forests, and parks.

The Department, however, recently had an epiphany. Eureka! FTZ's are not federal enclaves! See, for example, *3M Health Care, Ltd. v. Grant*, 908 F.2d 918, 922 (11th Cir. 1990) ("It is not that the [FTZ] is a federal enclave beyond the reach of all of Florida's laws ...").

After realizing its mistake, the Department did what a typical tax agency does. In Tax Information Release 2021-07 (Sept. 29, 2021), and in direct letters it sent to impacted taxpayers, it started telling people it wanted back taxes for all open years.

For most businesses that filed returns, the statute of limitations is three years. If a business "substantially omitted" income by failing to declare it even though it was claimed exempt, the Department can go back six years. If a business didn't file returns, thinking they didn't have to, the Department can go back to the beginning of time.

The Department, one can easily imagine, was licking its chops at the thought of millions of additional revenues it could bring in. Potentially affected taxpayers, meanwhile, began losing sleep.

Re: HB 1926, SB 3193

Page 3

Do we think that this is the kind of issue where the Department should let bygones be bygones and just make sure that the rules are clear going forward? Or are we all okay with the Department saying, “Well, we screwed up in the past, but our mistake doesn’t matter because the duly enacted laws say you owe the tax”?

We think it’s appropriate for the Legislature to step in and run interference between an obviously hungry Department of Taxation and the taxpaying public.

Digested: 2/7/2022

**METROPOLITAN  
PAINTING** & ENVIRONMENTAL  
SYSTEMS INC.

CONTRACTOR'S LICENSE NO. C14916

P.O. BOX 893807  
MILILANI, HAWAII 96789-0807  
PHONE: (808) 682-5099  
FAX: (808) 682-7189



**LATE**

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

Re: HB1926 Relating to Taxation

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

My name is Geraldine Lee and I am the President of Metropolitan Painting & Environmental Systems, Inc. I strongly support HB1926 and humbly ask your consideration and support of this very important bill.

Metropolitan Painting is a local, woman-owned, Disadvantaged Business Entity certified by the State of Hawaii Department of Transportation. We have been in business since 1988. We have an average work force of 18 employees, most of whom reside on the west and central west side of the island of Oahu. For nearly 34 years we have performed painting services to the two refineries in Kapolei. I am very humbled by the longevity of our relationship with both refineries and can honestly say that we do not have any other customers that have provided work opportunities for us over the span of 34 years.

The refineries are our primary customers and as a result we have dedicated our service and resources to meet the painting requirements at their Kapolei facility, pipelines and outer island facilities. The refineries operate 24 hours a day, 7 days a week and as a result, repair and maintenance of its facilities is absolutely essential for its long-term viability. We provide work and remedial work to eliminate and prevent further corrosion on all steel structures.

We continue to rely on the refineries for current and future work opportunities. They are great companies to work for and have earned reputations of being great contributors to our local community and the State of Hawaii. They employ hundreds of local residents and have greatly invested in our state and our people. They are the leading suppliers of transportation fuels in Hawaii serving our State's approximate 1.4 million residents and 8 million annual visitors. We, in turn, need to support their businesses and that is why I am gravely concerned about the actions taken by the Department of Taxation which is outlined in HB1926.

I hereby present my support of HB1926 which will restore the Foreign Trade Zone exemptions that have been unfairly taken away from them. The economical impact to the Refineries and all businesses that have worked within the FTZ area will be financially devastating and could impact the cost to do business in Hawaii and to remain in business. Despite 34 years of being tax compliant we are now facing a devastating tax situation that could impact our ability to remain in business. The decision to disallow the FTZ exemption was done within the Tax Department without fair opportunity, hearing or input to

the matter. It is further devastating to be notified of this tax change during a time when we are still recovering from the economic down turn due to Covid.

For these reasons I humbly ask that the committee pass this measure and restore the FTZ exemption as stated in HB1926.

Thank you for the opportunity to submit this written testimony in full support of HB1926.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Geraldine Lee". The signature is written in a cursive, flowing style.

Geraldine Lee  
President



**LATE**

Caltrol, Inc.  
1385 Pama Lane, Suite 111  
Las Vegas, NV 89119  
USA

T 1 702 966 1800  
F 1 702 966 1995

The Honorable Glenn Wakai, Chair / The Honorable Sean Quinlan  
The Honorable Bennette E. Misalucha / The Honorable Daniel Holt  
Senate Committee on Energy, Economic Development, and Tourism / House Committee on Economic  
Development

Wednesday, February 9, 2022 at 10:00 A.M.  
Via Videoconference

**RE: SB 3193/HB 1926, Relating to Taxation**

Chair Wakai, Vice Chair Misalucha, and Members of the Committee:

My name is Michael Threet, and I am the Chief Financial Officer of Caltrol, Inc and **strongly support** this bill. Caltrol Inc is a distributor of valves, regulators, and control systems that are used in the Oil & Gas, Life Sciences, Power, and Mining industries. Caltrol, Inc has been in business in Hawaii since 2006.

I am writing to express our strong support of SB 3193/HB 1926.

For many years, we have benefited from savings and convenience of conducting business in the foreign trade zone. The main purpose is to reduce/defer the payment of duties, tariffs, and taxes in the zone for the benefit of Hawaii's economy, our business, and ultimately local consumers in the form of the final costs that are that are paid.

Recently, we were notified by the State Department of Taxation that they changed their views on the tax and business-friendly rules within the FTZ. The sudden interpretation resulted in requiring us to owe them back taxes along with new taxes going forward that were neither in our business nor expense plans, despite years of tax compliance.

The notice we received from the State of Hawaii Department of Taxation in mid-October 2021 indicated that if we complied by the end of the month (October 2021) the Department would consider waiving some of the fees. There was essentially no time to gather the necessary documentation and consult with all parties involved within that time frame. We are an employee owned business that takes pride in our work and we have always been in compliance with the Department of Taxation and ensure that our monthly tax payments are on time. Now the HDOT has opened up an audit because of this exemption and is requiring us to provide them with documentation since 2016. The audit is going to place a burden on us that will require a significant amount time and resources that our employee owned company has not budgeted or planned for.

We recently received a Notice of Proposed Assessment from the Department of Taxation, dated January 11, 2022 that proposes to impose an excise tax on Caltrol, Inc. in the amount of \$166,437 for the year 2016, which includes interest of \$46,179 and a penalty of \$24,051.



**Caltrol, Inc.**  
1385 Pama Lane, Suite 111  
Las Vegas, NV 89119  
USA

T 1 702 966 1800  
F 1 702 966 1995

Passing this bill will help to maintain the business-as-usual environment for the operation of our company in the FTZ. It is not appropriate that despite years of tax compliance, we are issued an unexpected tax bill claiming unpaid past taxes and for future taxes.

For these reasons we ask that the Committee pass this measure. Thank you for this opportunity to testify in strong support of this bill.

A handwritten signature in blue ink, appearing to read 'Michael Threet', is written over a light blue horizontal line.

Michael Threet, CFO/COO

Caltrol, Inc.



**LATE**

February 9, 2022

Representative Sean Quinlan  
Chair  
Committee on Economic Development

Representative Daniel Holt  
Vice Chair  
Committee on Economic Development

Re: Testimony in support of HB 1926

Aloha Chair Quinlan, Vice Chair Holt, and members of the committee on Economic Development,

As Hawai'i's hometown airline, we are keenly interested in the quality of life and betterment of our community, and as such Hawaiian Airlines is in full support of HB 1926.

Hawaiian Airlines has supported legislation that fosters economic development in Hawai'i. This is especially true when it helps to keep goods and services affordable for the residents of the state. HB 1926 achieves both these purposes and is a good example of solid public policy.

Mahalo for the opportunity to provide testimony in support of HB 1926.

Blaine Miyasato  
Managing Director, State and Local Government Affairs  
Hawaiian Airlines



**CC Repair & Maintenance Service Inc.**

1319 Ala Alii Street, Honolulu, Hawaii 96818  
Eric: (808) 478-9856 Email: eric.ccrepair@gmail.com

**LATE**

February 7, 2022

**RE: State House (Committee on Economic Development) hearing on 2/9/22 at 10 am related to Foreign-Trade Zones; Exemption. HB 1926**

Dear Chairman Representative Quinlan and Vice Chairman Representative Holt,

My name is Eric Ching and I'm a resident and business owner in the state of Hawaii and would like to thank you for this opportunity to submit my testimony in **SUPPORT** of HB 1926 that's being heard before your committee today.

My business provides landscape services for my customers who happen to operate within the Foreign Trade Zone therefore my business has been greatly impacted by the recent tax policy change within recent months.

My customers who operated in the FTZ explained to me, work done in this zone is exempt from general excise tax and provided me with documentation from the Attorney General Opinion No. 64-52 and a copy of the guidance from the department of Business and Economic Development, and Tourism in support of their instructions exempting this tax.

On September 22, 2022, a conflicting opinion was issued written by state deputy attorney general Gary S. Sukanuma and approved by attorney general at the time Clare E. Connors in issuing opinion 21-01.

Questions raised after reviewing AG opinion 21-01 conflicted with AG opinion 64-52 and with the guidance from DEBDT which remained tax policy for nearly 55 years. I also believe AG opinion 64-52 served as the "preemption analysis" that AG opinion 21-01 indicated to be not done. Additionally, AG opinion 21-01, explains the 1984 amendment change the law. Partial quote of this change "*Tangible personal property imported from outside*" understood to be a noun and "*manufacturing, or processing*" activities understood as verbs and are all part of contracting efforts within the FTZ and are clearly exempted.

After reading opinion 21-01 there are still questions that remained that I hope will be clarified through either passage of HB 1926 or a subsequent judicial review or ruling that might provide more clarity.

Sincerely



Eric Ching

CC Repair & Maintenance Service Inc.

**LATE**



91-505 Awakumoku Street  
Kapolei Hi 96707  
Phone (808) 682-5580  
Fax (808) 682-5590

February 08,2022

RE: SB 3193 / HB 1926 , Relating to Taxation

My name is Cheryl Morales , and I am President of American Industrial, Inc and **strongly support** this bill.

American Industrial, Inc is a Scaffolding , Insulation and Service company that provides an array of services to the refinery and power plants across the islands . Our services includes but are not limited to the following- scaffolding, insulation, refractory, labor services, landscaping, fire proofing, abatement, etc. Our daily services assist the refinery and power plants to efficiently produce products such as gas and electricity for daily consumption to the entire state. American Industrial, Inc has been in business in Hawaii since 2010 and we locally employ over 55 employees.

I am writing to express my **strong support** of SB 3193 / HB 1926.

For many years , we have benefited from savings and convenience of conducting business in the foreign trade zone. The main purpose is to reduce / defer the payment of duties, tariffs and taxes in the zone for the benefit of Hawaii's economy, our business and ultimately local consumers in the form of the final costs that are paid.

Recently, we were notified by the State Department of Taxation that they changed their views on the tax and business-friendly rules within the FTZ. The sudden interpretation resulted in requiring us to owe them back taxes along with new taxes going forward that were neither in our business nor expense plans., despite years of tax compliance.

American Industrial, Inc was not ready in any capacity for this sudden tax change. This unexpected development has caused undue financial tax burdens that has never been a concern in the past. American Industrial, Inc is still trying to acclimate to the State's new tax requirements for FTZ.

Passing this bill will help to maintain the business-as-usual environment for the operation of our company in the FTZ. It is not appropriate that despite years of tax compliance , we are issued an unexpected tax bill claiming unpaid past taxes and for future taxes.

For these reasons we ask that the Committee pass the measure . Thank you for the opportunity to testify in **strong support** of this bill.

Cheryl Morales

President

American Industrial, Inc

February 9, 2022

Committee on Economic Development  
Representative Sean Quinlan, Chair  
Representative, Vice Chair

**LATE**



*Working together for Kapolei*

Wednesday, February 9, 2022,  
10:00 a.m. Via Videoconference

**RE: HB 1926 Relating to Taxation**

Dear Chair Quinlan, Vice Chair Holt and members of the Committee

My name is Kiran Polk, and I am the Executive Director of the Kapolei Chamber of Commerce. The Kapolei Chamber of Commerce is an advocate for businesses in the Kapolei region. The Chamber works on behalf of its members and the entire business community to improve the regional and State economic climate and help Kapolei businesses thrive. We are a member-driven, member-supported organization representing the interests of all types of business: small, medium or large, for profit or non-profit businesses or sole proprietorship.

The Kapolei Chamber of Commerce **supports HB 1926**, which retroactively restores the foreign-trade zones exemption from taxation under the general excise tax law, use tax law, fuel tax law, liquor tax law, and cigarette tax and tobacco tax law.

The largest industrial park in Hawai'i and one of the region's largest job centers is Campbell Industrial Park (CIP) in Kapolei, and it has **nearly 250 businesses, many of which are small businesses employing about 7,000 people**. The largest area covered by the foreign trade zone (FTZ) in our state is also Campbell Industrial Park (FTZ 2) encompassing over 380 acres. <https://www.ftz9.org/about-us/ftz-locations/>

**There are hundreds of businesses in CIP that are impacted by the absence of the FTZ exemption.** Many of these small manufacturing and logistics businesses have utilized the foreign trade zones (FTZ) to lower the cost of doing business. **At a time when West O`ahu is striving to recover and revitalize from COVID-19, an increase to operating costs can be detrimental these small businesses.** Some businesses may have no option to shutter if they face more financial hardships after bearing the storm of COVID-19.

Our small businesses need economic stimuli and growth while keeping operating costs manageable so they may thrive again.

Thank you for this opportunity to provide testimony.

Best,

Kiran Polk  
Executive Director

**HB-1926**

Submitted on: 2/7/2022 2:37:47 PM

Testimony for ECD on 2/9/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Gerard Silva	Individual	Oppose	No

Comments:

There the Ones that should be Paying Taxes not US!!