



TESTIMONY BY:

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**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097**

Thursday, March 31, 2022
2:30 PM
State Capitol, Teleconference

**S.B. 2475, S.D.2
RELATING TO TAXATION**

House Committee on Finance

The Department of Transportation provides **comments** on S.B. 2475, S.D. 2.

S.B. 2475, S.D. 2 clarifies that amounts received or accrued for wharfage and demurrage services are exempt under the general excise tax law; and clarifies that amounts received for the transportation or storage of cargo are not exempt under the general excise tax law.

The DOT recognizes that Hawaii is heavily reliant on imported goods and sensitive to the cost of goods, including associated fees and taxes. Amending section 237-24.3 (3)(A), Hawaii Revised Statutes (HRS), to state, "but not including receipts for transportation or storage of cargo," may result in taxes or additional costs being passed on to consumers. In addition, the Water Carriers Working Group's final report (2021) found that "the cost of shipping goods to and within Hawaii is reflected in the cost of imported goods consumed in Hawaii and has been calculated to be as much as 7.5 percent of the cost of the goods".

DOT realizes that the potential consequences of amending section 237-24.3 (3)(A), HRS, does not align with the intended purpose of the bill. Any additional cost or tax imposed and shouldered by consumers would greatly harm the community, increase the cost of living, and negatively impact the State's economy. DOT suggests that "but not including receipts for transportation or storage of cargo," be deleted to align with the intended purpose of the bill and to not further burden the consumers with increased consumer costs.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
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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 FINANCE
ON
SENATE BILL NO. 2475, S.D. 2

March 31, 2022
2:30 p.m.
Room 308 and Videoconference

RELATING TO TAXATION

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

Senate Bill No. 2475, S.D. 2, amends Section 237-24.3, HRS, to clarify that the amounts received or accrued for the transportation or shortage of cargo are not exempt from State general excise tax law, and to exempt the amounts received or accrued for wharfage and demurrage from State general excise 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.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

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To: The Honorable Sylvia Luke, Chair;
The Honorable Kyle T. Yamashita, Vice Chair;
and Members of the House Committee on Finance

From: Isaac W. Choy, Director
Department of Taxation

Date: Thursday, March 31, 2022
Time: 2:30 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 2475, S.D. 2, Relating to Taxation

The Department of Taxation (Department) has concerns about S.B. 2475, S.D.2, and offers the following comments for your consideration.

S.B. 2475, S.D.2, amends the general excise tax (GET) exemption for certain activities related to shipping. Specifically, the bill states that the exemption at Hawaii Revised Statutes (HRS) section 237-24.3(3) does not exempt receipts for transportation or storage of cargo from the GET. S.B. 2475, S.D. 2, also adds a completely new deduction for wharfage and demurrage that is charged under HRS chapter 266. The bill has a defective effective date of July 1, 2050.

First, the Department notes that the previous Committee included the Department's suggested amendment to exclude receipts for transportation and storage from the exemption. The Department appreciates this change and believes the amendment clarifies the exemption.

Second, the proposed exemption of wharfage and demurrage appears to be an attempt at allowing a deduction for certain costs. The Department points out that the GET is based on *gross* receipts with very few deductions. Because GET is a tax based on *gross* receipts, the Department generally opposes the allowance of any deductions. However, if this new deduction will not be deleted, the Department suggests deleting subparagraph (3)(D) in the measure and adding the following language to HRS section 237-24.3 as an entirely new paragraph.

(X) Amounts equal to the wharfage and demurrage imposed under chapter 266 that is paid by the taxpayer directly to the department of transportation;

Finally, if this measure is moved forward, the Department requests the effective date of any changes be made effective on January 1, 2023. Thank you for the opportunity to provide testimony on this measure.

Hawaii Harbor Users Group
March 31, 2022

RE: SB2475, SD2

Dear Chair Luke, Vice Chair Yamashita, and Members of the Committee on Finance:

The Hawaii Harbor Users Group (HHUG) is a non-profit maritime transportation industry group comprised of key commercial harbor users. As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent Hawaii's imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support dependable and efficient cargo transportation and handling to service our residents and businesses.

HHUG provides comments on SB2475, SD2. It appears that the intent of this measure as introduced was not to provide new exemptions, but rather to exempt stevedoring and related services from the general excise tax ("GET") consistent with the long-standing policy of the Department of Taxation and the Legislature as derived from and supported by, among other things: (A) the Department's longstanding position that stevedoring and related services are exempt from the GET as set forth in Tax Information Release 56-78; (B) the Legislature's intent in 1979 at the adoption of the provision that would ultimately be codified as section 237-24.3(3), Hawaii Revised Statutes ("HRS"); the Legislature's intent in 1987, when the more specific stevedoring and related services exemption was added to the subsection that would ultimately be codified as section 237-24.3(3), HRS; and (D) the Legislature's express acknowledgment in Act 105, Session Laws of Hawaii (SLH) 2011, that the general excise tax exemption in section 237-24.3(3), HRS, applies to amounts received for "stevedoring services" and "related activities" as defined in section 382-1, HRS. Independently, each of these indicates that amounts received from stevedoring services and related activities are exempt from the GET. Collectively, and especially after enactment of Act 105, SLH (2011), it is evident that the amounts received from stevedoring services and related activities are exempt from the GET pursuant to section 237-24.3(3), HRS.

While this measure as introduced did not provide new tax exemptions, the current version, SB2475, SD2 appears to impose the GET on previously exempt amounts and increase the cost of goods for the State. As introduced, this measure exempted stevedoring services from the general excise tax. The current draft removes the GET exemption for stevedoring services and imposes a new GET on receipts for the transportation and storage of cargo – amounts that are currently exempt from the general excise tax. Furthermore, Neighbor Island consumers will be subject to the GET tax on stevedoring services and receipts for the transportation and storage of cargo three times: when the container arrives in Honolulu Harbor, when the container arrives at the Neighbor Island harbors, and then when the empty container is shipped back to and arrives in Honolulu Harbor. **HHUG requests that your Committee amend page 5, lines 11 to 12 by deleting the language "but not including receipts for transportation or storage of cargo" and restoring the original language of "including stevedoring and related services as defined in section 382-1".** The language on page 5, lines 9 to 16 of SB2475, SD2 unnecessarily increases the cost of goods to Hawaii's consumers by imposing the general excise tax to services that are currently exempt.

HHUG also requests technical, nonsubstantive amendments to SB2475, SD2. Specifically, we request that page 1, lines 1 to 10 be amended to read "The legislature finds that the State's shipping industry is critical to the people of Hawaii. It is the means by which most goods come to the islands to support our lives thousands of miles away. The legislature further finds that because of our remote

location, nearly all of our goods are shipped and imported here and then transported intrastate between our islands. As such, Hawaii is sensitive to fees and taxes that are associated with shipping.”

Thank you for providing HHUG the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GET, Exemptions; Shipping Activities; Stevedoring; Wharfage; Demurrage

BILL NUMBER: SB 2475 SD2

INTRODUCED BY: Senate Committee on Transportation

EXECUTIVE SUMMARY: Clarifies that amounts received or accrued for wharfage and demurrage services are exempt under the general excise tax law. Clarifies that amounts received for the transportation or storage of cargo are not exempt under the general excise tax law. Effective 1/1/2050.

SYNOPSIS: Amends section 237-24.3(3), HRS, to state that wharfage and demurrage imposed under chapter 266, HRS, that is paid to the Department of Transportation would be eligible for GET exemption. Adds language providing that receipts for transportation or storage of cargo are taxable.

EFFECTIVE DATE: January 1, 2050.

STAFF COMMENTS: GET is now applied on transportation industries in an uneven way.

First, we can't tax air transportation. There are federal laws prohibiting us from applying a gross receipts tax (like our General Excise Tax) to transportation charges. Back in the late 70's and early 80's, we tried to tax air carriers by imposing our Public Service Company Tax, which applies to public utilities in lieu of GET. We were very creative. The Hawaii Supreme Court held, and our state told the U.S. Supreme Court, that our tax was actually a tax on real and personal property (which was allowed), but because it was so difficult to value the kinds of property that utilities had, like airspace rights, rights-of-way for power and cable lines, or easements for water pipes, the tax used the gross income of an airline as a proxy for valuing its property.

The U.S. Supreme Court didn't buy the argument. "It's still a tax measured by gross receipts, which is a gross receipts tax under federal law, and we get to interpret that federal law," they said, in effect, in a unanimous 8-0 decision in 1983.

Despite this ruling, zealous tax auditors still tried to go after helicopter tour companies and those companies pushed back, leading the Department of Taxation to rule, in Tax Information Release 89-10, that those gross receipts were immune both from the Public Service Company Tax and the GET.

There are also federal restrictions on taxing transportation by water. Federal law prohibits anyone other than the federal government to tax a vessel, its passengers, or its crew while the vessel is operating on navigable waters. In 2010, our Intermediate Court of Appeals ruled that the GET as applied to charges for chartering a sport fishing boat was valid because it was a tax on the business and not on the vessel, passengers, or crew. The court reasoned that the federal

law was meant to prohibit fees and taxes on a vessel simply because the vessel sails through a given jurisdiction and didn't mean to affect whether sales or income taxes can apply in general. The Hawaii Supreme Court declined to review the case, as did the U.S. Supreme Court. So, GET can be applied to transportation by water, at least for now.

In the meantime, fine distinctions are already being made. In cases involving UPS and Lynden Air Freight, the Hawaii Supreme Court held that when a shipper pays for a shipment to go from your office to your counterpart on the Mainland, GET can apply only to the transportation by ground between your office and the airport.

In short, the landscape here is filled with complexity and disparities between transportation industries. Are there good reasons why, as a matter of tax policy, we should tax water and ground transportation when air transportation can't be taxed? (Other than, "Because we can.") We're an island state. One of the reasons often given to explain our astronomical cost of living is that goods and people need to be shipped in and out, and that isn't done for free. If the tax is lessened or eliminated, the transportation industries would compete on a more level playing field, residents would feel some relief in the cost of living department (or at least sellers wouldn't be able to use the tax as an excuse), and the government revenues might not go down because fewer costs may lead to more buying, and thus more total revenue subject to GET taxation.

We welcome efforts to lessen the tax burden on transportation or provide clarity to the area.

Digested: 3/28/2022

Testimony of The Pasha Group
in Support of SB2475
Before the House Committee on Finance
March 31, 2022

TO: Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice Chair
Members of the House Committee on Finance

FR: The Pasha Group

RE: SB2475 SD2 Relating to Taxation. - **SUPPORT**

The Pasha Group (“Pasha”) supports SB2475 SD2 with the following amendments:

1. Section 237-24.3(3)(A) should be amended as shown in S.D. 1 and read as follows:
 - (3) Amounts received or accrued from:
 - (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, including stevedoring services as defined in section 382-1, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
2. SECTION 4 should be amended to read as follows:

SECTION 4. This Act shall take effect upon approval.

Thank you for providing Pasha with the opportunity to provide testimony in support and your consideration of our comments.



March 31, 2022

The Honorable Representative Sylvia Luke, Chair
The Honorable Representative Kyle T. Yamashita, Vice Chair
House Committee on Finance

RE: Senate Bill 2475, S.D. 2 – RELATING TO TAXATION
Hearing Date: March 31, 2022, 2:30 p.m.

Aloha Chair Luke, Vice Chair Yamashita, and Members of the House Committee on Finance:

Thank you for allowing me to submit testimony on behalf of Young Brothers, LLC (“YB”) offering **COMMENTS** on Senate Bill 2475, S.D. 2 – RELATING TO TAXATION.

This bill seeks to clarify that amounts received or accrued for wharfage and demurrage services are exempt under the general excise tax law and seeks to clarify that amounts received for the transportation or storage of cargo are not exempt under the general excise tax law.

YB has no concerns with the portion of this measure that seeks to clarify that amounts received or accrued for wharfage and demurrage services are exempt under the general excise tax law (p. 6, lines 6-7). This is consistent with the stated purpose of the measure “to clarify that amounts received or accrued for wharfage and demurrage services are exempt under the general excise tax law” (p. 4, lines 1-3).

However, YB notes that the purpose and effect of including the portion of this measure that seeks to clarify that amounts received for the transportation or storage of cargo are not exempt under the general excise tax law (p. 5, lines 11-12) is unclear – particularly because it introduces potential ambiguity with respect to the distinction between amounts received or accrued from “loading or unloading of cargo” and “receipts for transportation or storage of cargo” (p. 5, lines 9-16). Accordingly, YB respectfully requests that your committee amend page 5, lines 11 to 12 by deleting the language “but not including receipts for transportation or storage of cargo”.

YB also requests technical, nonsubstantive amendments to SB2475, S.D. 2. Specifically, YB requests that page 1, lines 1 to 10 be amended to read “The legislature finds that the State’s shipping industry is critical to the people of Hawaii. It is the means by which most goods come to the islands to support our lives thousands of miles away. The legislature further finds that because of our remote location, nearly all of our goods are shipped and imported here and then transported intrastate between our islands. As such, Hawaii is sensitive to fees and taxes that are associated with shipping.”

Thank you for your service to the State of Hawaii, and for the opportunity to testify offering comments on this measure.

Sincerely,

Kris Nakagawa
Vice President, External and Legal Affairs