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To: The Honorable John M. Mizuno, Chair
and Members of the House Committee on Health

Date: Thursday, February 14, 2019
Time: 9:31 A.M.
Place: Conference Room 329, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 632, Relating to the General Excise Tax

The Department of Taxation (Department) offers the following comments on H.B. 632 for the Committee's consideration.

H.B. 632 amends the general excise tax exemption for amounts received by hospitals, medical practitioners, etc., for the sale of prescription drugs and prosthetic devices to individuals under Hawaii Revised Statutes section 237-24.3(6). This measure expands the exemption by providing an exemption specifically for prescription drugs sold pursuant to a doctor's prescription, diabetic supplies, prosthetic devices, medical oxygen, human blood and its derivatives, mobility enhancing equipment sold by prescription, and repair and replacement parts for any such devices or equipment. This measure clarifies the exemption by providing new or updated definitions for the terms "mobility enhancing equipment," "prescription," and "prosthetic device." This bill is effective upon its approval and applies to taxable years beginning after December 31, 2018.

The Department requests a technical amendment to the effective date in Section 4 as follows:

"This Act, upon its approval, shall be effective
January 1, 2020."

Thank you for the opportunity to provide comments.



DISABILITY AND COMMUNICATION ACCESS BOARD

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February 14, 2019

LATE

TESTIMONY TO THE HOUSE COMMITTEE ON HEALTH

House Bill 632 - Relating to the General Excise Tax

The Disability and Communication Access Board (DCAB) supports House Bill 632 that exempts sale of mobility enhancing equipment sold by prescription, prosthetic devices, prescription drugs sold pursuant to a prescription, diabetic supplies, medical oxygen, and human blood and its derivatives from the general excise tax for taxable years beginning after December 15, 2108 and amends the definitions of "prosthetic device" and "prescription drugs."

We prefer the wording of House Bill 523, because it includes durable medical equipment. If the contents of both bills can be combined, that would be an acceptable compromise.

Thank you for the opportunity to testify.

Respectfully submitted,

A handwritten signature in blue ink that reads "Francine L. Wai".

for

FRANCINE WAI
Executive Director

TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, Exempt Mobility Enhancing and Durable Medical Equipment

BILL NUMBER: HB 632; SB 332 (Identical)

INTRODUCED BY: HB by LUKE; SB by K. RHOADS, HARIMOTO, Ruderman

EXECUTIVE SUMMARY: Expands the current exemption for prescription drugs and prosthetic devices to include more items specific to health care. The expanded list of items appears to be consistent with the policy justification for the original exemption. In addition, some of the changes in this bill would rectify an anomaly that exists under current law. Note that this draft of the bill could result in medical marijuana being exempt.

SYNOPSIS: Modifies the current exemption for prescription drugs and prosthetic devices in HRS §237-24.3(6), so as to exempt gross proceeds from the sales of the following for human use: (A) Prescription drugs sold pursuant to a prescription; (B) Diabetic supplies; (C) Prosthetic devices; (D) Medical oxygen; (E) Human blood and its derivatives; (F) Mobility enhancing equipment sold by prescription; and (G) Repair and replacement parts for any of the foregoing exempt devices and equipment;

Deletes the existing definitions for “prescription drugs” and “prosthetic device.”

EFFECTIVE DATE: Taxable years beginning after December 31, 2018.

STAFF COMMENTS: Under the Hawaii GET law as it now exists, prescription drugs and prosthetic devices (including replacement parts) are exempt when received by a hospital, medical clinic, health care facility, pharmacy, or licensed health care practitioner for selling the drugs or devices to an individual. The Department of Taxation has carefully interpreted this exemption in Tax Information Release 86-4.

Under TIR 86-4, the following medical devices do not qualify for exemption: bandages, thermometers, hypodermic needles, diaphragm syringes, gauze, orthopedic support, inhalation extender devices, food products/supplements, dietary supplements, prophylactics, contact lens preparations, wheelchairs, crutches, canes, quad canes, and walkers. The expanded definitions in the bill would make a good portion of the above exempt, and appear to be consistent with the policy justification for the original exemption.

The bill proposes to expand the exemption without regard to who is selling the articles. This may help to correct an anomaly that now exists in the law. Compare the following situations:

Drug manufacturer M sells a drug to retail pharmacy R who sells it to patient P. The sale from R to P is exempt and the sale from M to R is a wholesale sale taxed at 0.5%. Total tax: 5%.

Drug manufacturer M sells a drug to GET-exempt hospital H who sells it to patient P. The sale from H to P is exempt because H is a tax-exempt organization. The sale from M to H does not

qualify as a wholesale sale because an exempt organization is not a “licensed seller” and the exemption doesn’t apply because the sale is not to a patient. The sale is a retail sale taxed at 4%. Total tax: 4%.

Businesses providing similar, if not identical, goods or services should be treated equally as the tax is on the business and not on the customer. The law now discriminates against tax-exempt hospitals, infirmaries, and sanitarium (HRS §237-23(a)(6)).

Note that this bill deletes the existing definition for prescription drugs. That definition contains an exclusion for cannabis products. Without the exclusion, there is a good argument that medical cannabis qualifies for the exemption.

Digested 2/12/2019

LATE

HB-632

Submitted on: 2/14/2019 7:15:37 AM

Testimony for HLT on 2/14/2019 9:31:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments: