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

Date: Thursday, March 14, 2019

Time: 9:00 A.M.

Place: Conference Room 329, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: S.B. 530, S.D.2, Relating to the General Excise Tax

The Department of Taxation (Department) offers the following comments on S.B. 530, S.D.2, for the Committee's consideration.

S.B. 530, S.D. 2, 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, hearing aids, prosthetic devices, 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 but is defected to apply to taxable years beginning after December 31, 2050.

The Department notes that it is able to administer the changes in this measure, but respectfully requests Section 4 of the bill be amended to read:

SECTION 4. This Act, upon its approval, shall take effect January 1, 2020.

Thank you for the opportunity to provide comments.



## DISABILITY AND COMMUNICATION ACCESS BOARD

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March 14, 2019

### TESTIMONY TO THE HOUSE COMMITTEE ON HEALTH

#### Senate Bill 530, SD2 - Relating to the General Excise Tax

The Disability and Communication Access Board (DCAB) supports Senate Bill 530, SD2 that exempts from the general excise tax gross receipts from the sale of mobility enhancing equipment, hearing aids, prosthetic devices, and prescription drugs sold pursuant to a doctor's prescription. Amends the definition of "prosthetic device" to include devices worn on the body. Applies to taxable years beginning after December 31, 2050.

The House also introduced House Bill 632, because it includes durable medical equipment on page 9, lines 4-5. We recommend including the following wording in this bill:

"Durable medical equipment" shall be as defined in section 5 321-542.'

Including this wording in the bill would assist people who are elderly and also those who have disabilities be able to obtain medical equipment and devices (shower and bath chairs and bed pans) at a more affordable price in order to maintain their independence and quality of life.

Thank you for the opportunity to testify.

Respectfully submitted,

FRANCINE WAI  
Executive Director

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: SB 530, SD-2

INTRODUCED BY: Senate Committee on Ways & Means

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.

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 doctor's prescription; (B) Hearing aids; (C) Prosthetic devices; (D) Mobility enhancing equipment sold by prescription; and (E) Repair and replacement parts for any of the foregoing exempt devices and equipment. The exemption does not apply to amounts received for services in selling any of the foregoing.

Defines "prescription" as an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this State.

Defines "mobility enhancing equipment" as equipment, including repair and replacement parts, other than durable medical equipment, that: (A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle; (B) Is not generally used by persons with normal mobility; and (C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

Redefines "prosthetic device" as a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body in order to: (A) Artificially replace a missing portion of the body; (B) Prevent or correct a physical deformity or malfunction; or (C) Support a weak or deformed portion of the body; provided that "prosthetic device" shall not mean any ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance. Examples of prosthetic devices are hearing aids and artificial limbs.

EFFECTIVE DATE: Taxable years beginning after December 31, 2050.

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%.

Under the bill, M's sale to R and M's sale to H are both sales for human use so the exemption applies. Total tax: 0%.

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)) and the bill would correct that problem.

Digested 3/12/2019

**SB-530-SD-2**

Submitted on: 3/12/2019 1:59:12 PM

Testimony for HLT on 3/14/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
GARY SIMON	Policy Advisory Board for Elder Affairs	Support	No

Comments:

Dear Chair Mizuno, Vice Chair Kobayashi, and Honorable Members of the House Committee on Health:

I am Gary Simon, Chairperson of the Policy Advisory Board for Elder Affairs (PABEA), which is an appointed board tasked with advising the Executive Office on Aging (EOA).

I am offering testimony as an individual who has worked in healthcare for over thirty years, and I am offering testimony on behalf of PABEA.

My testimony does not represent the views of the EOA but of PABEA.

***PABEA wholeheartedly supports SB 530 SD 2.***

The general excise tax exemptions outlined in the bill will reduce the financial stress and suffering faced by our residents with disabilities and our kupuna on limited income.

We urge you to support SB 530 SD 2, and we urge you to recommend its passage.

Thank you for seriously considering the Bill.

Very sincerely,

Gary Simon, Chairperson, Policy Advisory Board for Elder Affairs (PABEA)

**PETER L. FRITZ**

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**HOUSE OF REPRESENTATIVES  
THE THIRTIETH LEGISLATURE  
REGULAR SESSION OF 2019**

**COMMITTEE ON HEALTH  
Testimony on S.B. 530 SD 2  
Hearing: March 14, 2019**

**Relating To The General Excise Tax**

Chair Mizuno, Vice Chair Kobayashi and members of the Committee. My name is Peter Fritz. I am an individual with a hearing disability, use hearing aids and a tax attorney. I am testifying today in **support** of S.B. 530 SD 2.

This bill would amend Hawaii's General Excise Tax law ("GET") to exempt gross receipts from the sale of mobility enhancing equipment and certain prosthetic devices that are worn on the body such as hearing aids.

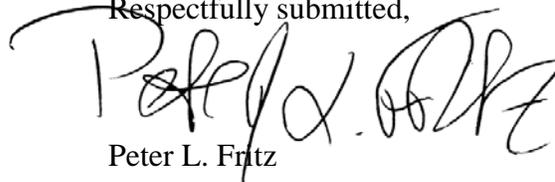
Presently, a seller often visibly passes on the GET to the consumer which increases the cost of the item. By exempting these items, this bill will benefit Hawaii's kupuna who may have a fixed income and the disabled. Most states provide exemptions for medical devices such as hearing aids and mobility enhancing equipment which are often necessities for daily living.

This bill adds a definition for mobility enhancing equipment, including repair and replacement parts, that is primarily and customarily used to provide or increase the ability to move from one place to another and is not generally used by persons with normal mobility. Some examples of mobility enhancing equipment are wheelchairs, canes, crutches, chair lifts, shower stools, and walkers.

For many people, these items are necessities for daily living and the additional expense when the GET is added to a purchase makes it harder to pay for these necessary devices.

I respectfully ask for your support of this bill.

Respectfully submitted,



Peter L. Fritz