STAND. COM. REP. NO. 1419

Honolulu, Hawaii

Morch 23 , 2007

S.B. No. 1034 RE: S.D. 2

Honorable Calvin K.Y. Say Speaker, House of Representatives Twenty-Fourth State Legislature

State of Hawaii

Regular Session of 2007

Sir:

Your Committee on Transportation, to which was referred S.B. No. 1034, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose of this bill is to maintain fairness within Hawaii's airline industry and to keep the State's inter-island airline industry healthy and competitive by exempting the fuel sold to common carriers for intrastate air transportation from the general excise tax (GET) and use tax.

The Department of Business, Economic Development, and Tourism, Aircraft Service International Group, Hawaii Chapter of the March of Dimes, Aloha Airlines, The Chamber of Commerce of Hawaii, Plumbers and Fitters Union Local 675, Hawaiian Airlines, Aloha Airlines Pilots' Union, Transport Workers Union, and International Association of Machinists and Aerospace Workers District 141 testified in support of this bill. The Department of Taxation (DOTAX) and Tax Foundation of Hawaii submitted comments.

Current law grants a GET and use tax exemption to airlines when they purchase jet fuel from a Hawaii Foreign Trade Zone (FTZ) for use in interstate or foreign commerce. However, DOTAX has taken the position that inter-island flights are not interstate commerce and, therefore, airlines that purchase fuel from the FTZ for use in inter-island flights do not qualify for the tax exemption. While inter-island flights do not travel between



States, a court challenge in 1983 appears to support the position that inter-island flights do constitute interstate commerce. The decision of the United States Supreme Court in Aloha Airlines, Inc. v. Director of Taxation of Hawaii, 464 U.S. 7, 104 S.Ct. 291 (1983) found that the State of Hawaii could not tax gross receipts of Aloha Airlines because taxing of airlines was forbidden under federal statute. In its decision, the Supreme Court found that federal law provided Congress with "clear...authority to regulate state taxation of air transportation in interstate commerce." Thus, it appears that inter-island air carriers should qualify for the GET and use tax exemption if they purchase fuel from the FTZ and use the fuel for inter-island flights.

While your Committee understands the concerns raised by DoTAX that the provision of this exemption may result in \$8.6 million of lost revenue each year and that this exemption is misplaced in statute, the issue of applying taxes fairly among Hawaii's air carriers deserves further consideration. The fiscal impact of this bill on the general revenues of the State are beyond the purview of this Committee, and your Committee respectfully requests the Committee on Finance to examine this matter further.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1034, S.D. 2, and recommends that it be referred to the Committee on Finance.

Respectfully submitted on behalf of the members of the Committee on Transportation,

JOSEPH M. SOUKI, Chai:



## State of Hawaii House of Representatives The Twenty-fourth Legislature

## **Record of Votes of the Committee on Transportation**

Bill/Resolution No.:	Date:			
SB 1034 SD 2 (SSCR1258)	MARCH 21, 2007			
Committee Referral: EDB, TRN, FIN	☐ The committee is reconsidering its previous decision on the measure.			
The recommendation is to: Pass, unamended	☐ Pass, with amendments			
☐ Hold	<ul> <li>Pass, with amendments, for recommittal for further consideration</li> </ul>			
TRN Members	Ayes	Ayes (WR)	Nays	Excused
1. SOUKI, Joseph M. (C)				
2. NISHIMOTO, Scott Y. (VC)				
3. EVANS, Cindy				
4. HAR, Sharon E.				
5. LEE, Marilyn B.				
6. LUKE, Sylvia				\$54W
7. McKELVEY, Angus L.K.				
8. NAKASONE, Bob				
9. SONSON, Alex M.				
10. TAKAMINE, Dwight Y.	/,			
11. TAKUMI, Roy M.				
12. MEYER, Colleen Rose				
13. PINE, Kymberly Marcos				
TOTAL	8			7
The recommendation is:				
☐ Not Adopted				
If joint referral, did not support recommendation.				
committee acronym(s)				
Ch 62 -				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Clerk's Office				