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**HOUSE COMMITTEE ON TRANSPORTATION  
TESTIMONY REGARDING HB 142  
RELATING TO INTRA-STATE AVIATION**

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: FEBRUARY 9, 2009**

**TIME: 9AM**

**ROOM: 309**

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This bill proposes to exempt aviation fuel purchased from a foreign trade zone from the state general excise and use taxes for fuel used in inter-island travel.

The Department of Taxation (Department) has the following comments.

**ELIMINATE SECTION 1, PURPOSE CLAUSE**—The Department opposes Section 1 because it is legally and factually inaccurate. The Department strongly disagrees with the statement suggesting that the taxes assessed on aviation fuel—which is a self-assessed tax—is anyway inaccurate or illegal under the Federal Aviation Act. The Department is concerned that if this legislation does not pass, or does pass with this language, that an unwarranted advantage in favor of taxpayers could negatively impact the Department's rights.

**REVENUE LOSS**—This legislation is estimated to result in a revenue loss of \$5 million per year.

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**SUBJECT:** GENERAL EXCISE, USE, Exempt Foreign Trade Zone aviation fuel

**BILL NUMBER:** HB 142

**INTRODUCED BY:** Souki, McKelvey, Yamashita, and 1 Democrat

**BRIEF SUMMARY:** Adds a new section to HRS chapter 237 and a new paragraph to the definition of “use” under HRS section 238-1 to provide that the sales of aviation fuel categorized as privileged foreign merchandise, non-privileged foreign merchandise, domestic merchandise, or zone-restricted merchandise that is admitted into a foreign trade zone and purchased in a foreign trade zone and is made directly to or used by any common carrier for consumption or use in air transportation between two points in the state, shall be exempt from the state’s general excise and use tax laws.

This act shall not be construed to imply that any law prior to the effective date of this act is inconsistent with this act.

**EFFECTIVE DATE:** July 1, 2009

**STAFF COMMENTS:** Currently aviation fuel is imported and stored in Hawaii Fueling Facilities Corporation (HFFC) storage tanks. HFFC was established in 1969 to provide fuel storage and distribution to its member airlines. On September 1, 1997, the HFFC began operating under the Foreign Trade Zone (FTZ) at the Honolulu International Airport. Fuel purchased from HFFC for use in aircraft of HFFC members is exempt from the imposition of the general excise, use, and fuel taxes since they are operating in the FTZ. When the fuel is then pumped through the HFFC’s bonded fuel lines and provided to the aircraft, the fuel remains in interstate commerce and technically is outside the jurisdiction of the state and the imposition of state taxes. The current exemption from taxes for product within the FTZ but sold for consumption outside the state applies only when the consumption of such product occurs out of state where sales are made to any common carrier in interstate or foreign commerce. Exempting the fuel used for intrastate air transportation would help level the playing field and create a fairer market for all airlines.

While it is the federal law that confers exempt status on products in the FTZ, recognizing that the products have not entered the country, it is understood that the states can further define that recognition with respect to use of products that have FTZ exempt status. This is what this measure proposes with respect to tax laws imposed by the state.

Digested 2/5/09



**Testimony to the House Committee on Transportation  
Hawaii State Capitol  
Conference Room 309  
Monday, February 9, 2009 at 9:00 a.m.**

**SUBJECT: HOUSE BILL 142 – RELATING TO INTRA-STATE AVIATION**

Chair Souki, Vice Chair Awana and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I appreciate the opportunity to state The Chamber's strong support of House Bill No. 142, relating to Intra-State Aviation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. 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.

The measure, as received by your Committee, exempts from general excise and use taxes the fuel sold from a foreign-trade zone to common carriers for use in interisland air transportation..

The Chamber encourages a broad base of understanding, support and appreciation for the Tourism and Travel Industries within the business community, Legislature and the general public. The committee also supports visitor industry growth and improvement while working to enhance the visitor experience.

The Chamber understands the value and significance of the airline industry, especially our local carriers, who in addition to serving the travel needs for the people of Hawaii and beyond, have contributed significantly to the community. Additional decline in the travel industry harms all businesses and the local economy. As a result, the Chamber wants to embrace and strengthen the commercial aviation sector.

This bill proposes to give fuel tax relief for interisland air transportation by common carriers. The Chamber believes this is a relevant step in the right direction of giving aid to the industry. Airlines are facing serious challenges today, and exempting them from the general excise and use tax on aviation fuel will help to alleviate some financial burdens. Additionally, this measure provides a fair and balanced relief to the local carriers as well as is consistent with the federal law relating to interstate commerce. Overall, this measure will help our local airline industry, as well as benefit the state as a whole.

In light of this, the Chamber of Commerce of Hawaii urges your support of House Bill 142. Thank you for the opportunity to express our views on this matter.

**TESTIMONY OF KEONI WAGNER ON BEHALF OF HAWAIIAN AIRLINES  
IN SUPPORT OF H.B. NO. 142, RELATING TO INTRA-STATE AVIATION**

February 9, 2009

To: Chairman Joseph M. Souki and Members of the House Committee on Transportation:

My name is Keoni Wagner and I am the Vice President of Public Affairs for Hawaiian Airlines speaking on behalf of Hawaiian in support of the intent of H.B. No. 142.

This bill is similar to the bills which were submitted during the 2007 and 2008 legislative sessions to clarify the applicability of an existing Federal exemption from state taxes on all aviation fuel sold from a foreign trade zone (FTZ) for interisland flights between points within the State of Hawaii. Under current State interpretation of the law, carriers that operate flights between Hawaii and the mainland or international destinations enjoy the benefit of this exemption, but interisland carriers do not. We continue to believe that, under the federal definition of interisland flights as “interstate commerce,” this exemption applies to interisland flights as well.

Hawaiian is acutely aware of the difficult budgetary decisions being weighed by the Legislature this session, but we believe that it is in the state’s interest to reduce the financial burden of this tax on Hawaii’s interisland air carriers.

Thank you for the opportunity to testify on this measure.