SB 32

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SENATE COMMITTEE ON ENERGY & ENVIRONMENT
TESTIMONY REGARDING SB 32
RELATING TO FUEL

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 12, 2009
TIME: 4PM
ROOM: 227

This legislation eliminates the repeal date for Act 209, Session Laws of Hawaii 2007, which makes the general excise tax exemption on the sale of alcohol fuels permanent.

The Department of Taxation (Department) **must oppose this legislation due to its revenue loss**. The Department; however **supports considering such an exemption in the future** when revenues can support such a benefit.

Prior to this session's fiscal constrains due to projected decreased revenue collections, the Department strongly supported the current general excise tax exemption on the sale of alcohol fuel, which is set to expire June 30, 2009.

Unfortunately, the Department cannot support extending the alcohol fuel exemption this session due to fiscal constraints and budget realities. The Department cannot support the tax provision in this measure because it is not factored into the budget. The Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either. Given the forecasted decrease in revenue projections, this measure would add to the budget shortfall.

The Department is aware and sympathetic to the high fuel prices Hawaii drivers typically pay. Fortunately, fuel prices are near record lows when compared to even the last 3 or 4 years of fuel prices. Demand, as well as the retail price of fuel, has plummeted to the benefit of drivers in recent months.

This legislation would result in an annual revenue loss of approximately $40 million for FY 2010 and after.

L E G I S L A T I V E

TAXBILLSERVICE

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SUBJECT: GENERAL EXCISE, Repeal sunset date

BILL NUMBER: SB 32

INTRODUCED BY: Hooser, Baker, Chun Oakland, Espero, Kim, Tokuda, Tsutsui

BRIEF SUMMARY: Amends Act 209, SLH 2007, to repeal the June 20, 2009 sunset date.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: The legislature by Act 209, SLH 2007, exempts from the general excise tax the gross proceeds arising from the sale of alcohol fuels for consumption or use by the purchaser and not for resale. Act 209 also provided that this exemption shall be repealed on June 30, 2009. This measure proposes to make this exemption permanent by repealing the sunset provision.

It should be remembered that since the general excise tax imposed on liquid fuels is calculated as 4% of the wholesale price of fuel, as the cost of liquid fuel rises, so does the amount of general excise tax. Further, as compared to the state fuel tax, respective county fuel taxes and federal excise taxes which are also imposed on the price of liquid fuels, the general excise tax is a relatively small amount. The wholesale price of gasoline would have to rise to $4 per gallon for the amount of the general excise tax to be equal to the state fuel tax.

It is interesting to note that Hawaii is probably the only state to impose its "sales tax" on fuel for vehicle consumption. This is because the general excise tax is a gross receipts tax imposed for the "privilege" of doing business in Hawaii. As a result, unless specific exemptions are adopted, every transaction of business in Hawaii is subject to the general excise tax. Sales for final consumption are taxed at the full retail rate while sales of goods and services for resale are subject to the lesser 0.5% rate. For other states, the perception is that this product is already subject to the fuel tax and, therefore, the imposition of the sales tax is viewed as a double taxation of the same product.

While the impetus to the enactment of this exemption was to appease the motoring public since the imposition of the general excise tax on fuel increased the price of fuel at the pump, it should be acknowledged that the exemption will reduce the amount of general excise tax revenue collected. Any exemption to appease the motoring public should also be accompanied with a like reduction in spending.

While no one wants to pay higher prices for gasoline, there are two points to consider in addition to the fact that re-imposing the general excise tax would contribute more revenues to the state general fund. First, as all motorists and consumers witnessed last year, as gasoline prices rose, consumers changed their habits in order to minimize the rising cost of filling up at the pump. Drivers gave serious consideration to alternatives such as hybrid cars and commuting by mass transit. Thus, while the added cost of the general excise tax will increase the cost of gasoline, it may also help to make the shift away from the consumption of fossil fuel to "greener" alternatives. In other words, it can be viewed as a disincentive to use fossil fuels. For those lawmakers who have pledged to "green" Hawaii, the reinstatement of the general excise tax can be viewed as a step in that direction.

Finally, lawmakers need to remember that although the cost of the general excise tax is passed on to the customer, in this case the motorist, it is a tax imposed for the privilege of doing business in Hawaii. Thus, the oil companies who lawmakers railed against only a few years ago by attempting to impose a cap on the price of gasoline as well as the service station owners where gas is purchased have had a two-year holiday from paying the 4.0-4.5% tax on sales of fuel. Meanwhile all other businesses in Hawaii have had to contend with the general excise tax on their sales of goods and services, including the amount that they must pay on the amount that is "passed-on" to their customers. Thus, the oil companies and service station owners have been able to keep more of their profits since they do not have to pay the general excise tax on the sales of gasoline.

From a public finance and highway user perspective, if the general excise tax was re-imposed on the sales of gasoline, consideration might be given to using the proceeds of the tax, estimated to be about $40 million annually, to help shore up the state's highway fund which is now forecasted to run a deficit of nearly $54 million by the end of the fiscal year 2010. This strategy might allow lawmakers to avoid even larger increases in the state highway taxes such as the fuel tax and the motor vehicle weight fee.

Digested 2/11/09