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HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS
TESTIMONY REGARDING HB 2844
RELATING TO FILM INDUSTRY

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 2, 2010
TIME: 8:30AM
ROOM: 312

This bill, among other things, assesses a surcharge tax on motion picture theater operators and television broadcasters. This measure also authorizes the Department of Business, Economic Development & Tourism (DBEDT) to assess fees in the administration of the film credit.

The Department of Taxation (Department) **opposes the surcharge** on the film industry; however **supports the authority to assess fees** in order to fund the film industry branch.

OPPOSED TO ADDITIONAL SURCHARGE ON FILM INDUSTRY—The Department does not support the surcharge on the film operator and television broadcasting industry in order to support the film office. Though there is some logical nexus between theater operators and television broadcasters, these industry participants do not utilize the film office's services to such an extent that they should bear the brunt of an additional surcharge on their activities. Targeting those that use the services, such as through direct fees as is proposed elsewhere in the bill, is more appropriate.

SUPPORT FOR THE ASSESSMENT OF FEES TO FUND THE FILM OFFICE—The Department strongly supports authorizing DBEDT to assess fees on services associated with the film office in order to directly fund its activities. The film office is a vital component of DBEDT and is one of the few branches in government that brings millions of dollars into the Hawaii economy for very little outlay to the general fund. The film office attracts motion pictures to Hawaii, which provide jobs to the film industry workers locally. The film office has been instrumental in laying the foundation of industry infrastructure for continued film production success in Hawaii. As has been the case for decades, the film industry in Hawaii brings in millions of dollars in direct spending. Allowing the film office to remain fully staffed and operational through the use of fees to offset costs is a good step toward maintaining Hawaii's position as a film production destination.

L E G I S L A T I V E

TAXBILLSERVICE

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SUBJECT: INCOME, GENERAL EXCISE, Tax on motion picture theater or television broadcasting stations

BILL NUMBER: HB 2844

INTRODUCED BY: Say

BRIEF SUMMARY: Amends HRS section 237-13 (4) to provide for the imposition of a surcharge equal to 0.1 per cent of the gross income of every person in the business of operating motion picture theaters or television broadcasting stations from July 1, 2010 to June 30, 2015; except that the surcharge shall not be imposed on any gross income from the sale of amusements at wholesale. Stipulates that for the purpose of administering and collecting the surcharge, enforcing its payment, and punishing delinquent payers or non-payers, HRS chapters 237, 231 and other relevant law shall apply. "Television broadcasting station" includes a "cable operator" as defined under HRS section 440G-3.

Amends HRS section 235-17 to permit the department of business, economic development and tourism (DBEDT) to set the qualification fee in an amount to cover the cost of the department for performing duties relating to the qualified production tax credit.

Amends HRS section 201-14 to allow DBEDT to charge an application fee from any person who proposes to make a motion picture, television show, television commercial or any other visually recorded production and permit fees for filming at certain sites in the state.

Adds a new section to HRS chapter 201 to establish a film industry special fund into which revenues from the following shall be deposited: (1) the general excise tax surcharge on the gross income of motion picture theater operators and television broadcasting stations; and (2) fees charged by DBEDT under HRS section 201-14 and HRS section 235-17. Expenditures from the special fund shall be made for the operation of the film industry branch of the department.

This act shall be repealed on June 30, 2015; and HRS sections 201-24, 235-17, and 237-13 shall be reenacted in the form in which they read on the day prior to the effective date of this act.

EFFECTIVE DATE: July 1, 2010

STAFF COMMENTS: This measure would impose a temporary general excise tax surcharge of 0.1% on the gross income derived from the operations of movie theaters and television broadcast stations between July 1, 2010 and June 30, 2015. The measure would also allow DBEDT to charge fees for the performance of its duties relating to the film industry branch and establishes a new film industry branch special fund, funded by the general excise tax surcharge and fees. It should be remembered that any additional tax imposed on the subject businesses will be passed on to consumers in the cost of higher prices at the movie theaters and increased cable television fees.

Due to the dire financial shortfall that the state is in, it appears that this measure is proposed to generate funds to operate the film industry branch of DBEDT and also perpetuates the use of special funds. It should be noted that as with any earmarking, the legislature will be giving their stamp of approval for another "automatic funding" mechanism. Funds would be deposited into the film industry branch special fund without any legislative intervention. Without legislative scrutiny, it would be difficult to ascertain the effectiveness of this program and whether or not the film industry branch office has too little or too much revenue. If there is insufficient revenue to perform its duties, there is no doubt the amount of the general excise tax surcharge may be increased or the duration of the imposition of the general excise tax surcharge extended beyond June 30, 2015, or even made permanent. In addition, the danger in adopting this measure is that it may generate additional requests for funding of other programs or entities through the adoption of other general excise surcharge taxes as well as establishing other special funds.

How soon lawmakers have forgotten how earmarking general fund revenues into special funds can get the state into trouble. It was only 1989 when lawmakers approved earmarking $90 million for educational facilities as the "commitment" to education and only three years later they took back the earmarking because general fund revenues started to dwindle. Further, rather than spurring on construction of classrooms, the earmarking merely created apathy as school officials knew they would receive $90 million off the top and they didn't have to justify a request for funding. Instead of proposing measures like this, lawmakers should go back and read a little of their own history and learn from their mistakes.

Rather than perpetuating the earmarking of general funds or the creation and use of special funds, lawmakers should repeal all earmarking and utilize the appropriation process which would be more accountable than any earmarking scheme. At least lawmakers will be able to evaluate how the program is working and whether or not the program is being fully utilized. Advocates for other state programs and services should be insulted as the earmarking process means that this particular program, the film industry branch, will not be held to the same scrutiny that general fund financed programs are held. Although the proponents of this measure may argue that there is connection or nexus between movie productions or television shows and the funding of the film office, the proposed funding mechanism ignores that there is no direct bearing between the demand for the film office's services and productions shown either in local theaters or broadcast on television.

Indeed, the creation of special fund financed programs through earmarked resources is one of the major reasons why the state is in such dire financial condition as more and more programs are financed through the back door, out of sight of the taxpaying public.

Digested 2/1/10

From:	Joseph McNamara [JMcNamara@khon2.com]
Sent:	Monday, February 01, 2010 3:43 PM
To:	EBMtestimony
Subject:	FW: HB 2844 Relating to the Film Industry (Bill scheduled to be heard by EBM on Tuesday, 2/2/10 at 8:30 a.m.

To the Committee on Economic Revitalization, Business & Military Affairs

Attn: Honorable Angus McKelvey, Chair

I am asking you to reconsider your position on HB 2844 relating to the film industry.

The bill is misaligned with broadcasters; it assumes broadcasters profit from the Hawaii film industry and should be taxed at a greater rate as a result. I know of NO broadcaster who profits in any way from the Hawaii film industry's ability to bring film and or commercial productions to the State of Hawaii.

The targets of this tax surcharge should be the many organizations that profit directly and those that may subsist solely on the Hawaii film industry. Those would include production companies, equipment rental facilities, certain unions, hotels, transportation groups for air, land and sea, and all those other film industry-related vendors too numerous to list.

I am sure you are aware of the recent struggles of the local television stations with three stations merging in an effort to survive and another filing for bankruptcy reorganization. The last thing we all need is an additional tax on what little, if any, profit we have.

I apologize for the late notice on my position on this bill; I only became aware of it today. I look forward to your thoughts on this and hope you will give serious consideration to my position at you hearing on February 2, 2010.

Regards, Joe Mac

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From: Rosenberg, Michael A [mrosenberg@hearst.com]
Sent: Monday, February 01, 2010 1:48 PM
To: EBMtestimony
Subject: FW: HB 2844

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808-535-0206

From: Rosenberg, Michael A
Sent: Monday, February 01, 2010 1:47 PM
To: 'EBMtestimony@Capitol.hawaii.gov/emailtestimony'
Cc: 'azama@capitol.hawaii.gov'
Subject: HB 2844

To the Committee on Economic Revitalization, Business & Military Affairs
Honorable Angus McKelvey, Chair

I am testifying against this bill today. The bill, as I read it, is flawed in that it evidently assumes that broadcasters somehow profit from the Hawaii film industry and so should be taxed at a greater rate as a result. If this isn't the reason that broadcasters are singled out, then it is simply discriminatory.
First, broadcasters do not specifically profit from the Hawaii film industry's ability to bring film or commercial productions to Hawaii. We are in a completely separate and distinct business. We are local broadcasters.
Second, many organizations do seemingly profit from these local productions, including the Teamsters who drive the production vans, the hotels who fill rooms, the HTA which gets free publicity for Hawaii tourism and various other vendors who are hired by producers for the completion of local film projects. Perhaps they should be the targets of a tax surcharge.
You might also not be aware of how difficult it is for broadcasters to collect GET from national advertisers, since Hawaii is the only state seeking such collection. About 25% of our total broadcast revenue comes from national advertisers and many of them simply tell us to discount our inventory if we want to collect the tax and that it is not their problem. I realize this is a business decision we are not forced to make, but in todays terribly weakened broadcast economy it often is our best solution. This additional surcharge would add to this issue as we'd need to re-train those national customers who we might have already convinced to pay the GET.
I apologize for the lateness of this testimony, but just became aware of it today. I would be happy to discuss this further with the committee but cannot be at the hearing on February 2, 2010.

Regards,
Mike Rosenberg
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KITV & kitv.com
801 S. King St.
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Testimony of Thomas J. Smyth, CEcD
Before the
Committee on Economic Revitalization and Military Affairs
Tuesday, February 2, 2010, 8:30 p.m. Conference Room 312
On

HB 2844 Relating to the Film Industry

Chair McKelvey, Vice Chair Choy and Committee Members:

I support the purpose and intent of HB 2844 which creates a special fund in the Film Industry Branch. I do have concerns with the proposed means of funding.

It is ironic that after two of the most successful years of film activities in Hawaii, funds for the Film Office are being cut drastically. I have previously testified before this committee on the illogic of this budget cut. Just last week the efforts of those who were laid off were rewarded with the announcement of two major film projects.

Creating a new special fund may be an effective staff financing mechanism; however, charging an "application fee" for processing a film permit is contrary to the principles of the Association of Film Commisoners International, the prestigious trade organization that has long viewed the Hawaii Film Office as a model of efficient and economical film permitting.

Adding a fee for processing Act 88 (Sec 235-17, HRS) tax credit applications may not have the same connotation and does seem a reasonable source of some funding. The diversion of GET revenue from film operators will surely be seen as a stretch, as it relates to the Film Office. Diversion of TV station GET is also not a nexus to the Film Office.

Having concerns with the source of funding does not mean that I oppose this special fund. Consideration should be given to diverting some of the general fund revenue created by the film industry itself as is proposed in SB 2144. This can be measured by Act 88 reporting to DBEDT.

It is important to create a Film Office staff funding mechanism if the Administration feels it cannot afford general funds, even though this office very directly produces more revenue per staff member than any other entity in state government.

This reasoned approach will go far in re-establishing Hawaii as a desirable place to shoot. Not just because we have the scenery and qualified personnel, but because the State of Hawaii does want to market and facilitate this most important industry.

Thank you for the opportunity to provide comments.