Hawai'i Association of REALTORS®
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LATE

March 15, 2010

The Honorable Carol Fukunaga, Chair
Senate Committee on Economic Development and Technology

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 016
Honolulu, Hawaii 96813

RE: H.B. 2877, H.D.1, Relating to Taxation

HEARING: Tuesday, March 16, 2010 at 10:00 a.m.

Aloha Chair Fukunaga, Chair Baker and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, here to testify on behalf of its 8,800 members in Hawai'i. HAR would like to make the following **comments** with respect to H.B. 2877, H.D.1, which suspends temporarily certain General Excise and Use Tax exemptions and requires the payment of the tax on the previously exempted amounts at a 1% rate.

This bill proposes to tax at 1% the receipts of condominium associations on its maintenance fees. This tax will unexpectedly increase housing costs for condominium association owners who may be on fixed incomes or budgets. HAR believes that, while the Legislature is reviewing a variety of measures to address the budget shortfall, proposed HRS Section 237-(a)(12) in H.B. 2877, H.D.1, will adversely impact all Condominium Property Regimes.

HAR believes that the present GET exemption for associations of apartment owners organized under both HRS Chapter 514A and HRS Chapter 514B should be permanently retained.

Mahalo for the opportunity to testify.

OUTRIGGER®
ENTERPRISES GROUP
Hospitality • Retail • Development

LATE

THE SENATE
25th LEGISLATURE
REGULAR SESSION of 2010

COMMITTEE ON ECONOMIC DEVELOPMENT & TECHNOLOGY
Senator Fukunaga, Chair

COMMITTEE ON COMMERCE & CONCUMER PROTECTION
Senator Rosalyn H Baker, Chair

3/16/10

HB 2877, HD 1
Relating to Transient Accommodation Tax (TAT)

Chair Fukunaga & Chair Baker, my name is Max Sword, here on behalf of Outrigger Hotels to offer testimony on this measure.

Outrigger Hotels is in opposition to language in HB 2877, as stated in Section 1: 237-, (12) & (19).

The Hawaii Revised Statutes currently grants a tax exemption on employee's wages and benefits when a management company receives funds to pay its employees from the owner of a property. Under this bill in Section 1: 237-, (12) & (19), that exemption would be suspended and a 1% tax accessed.

The intent of granting the original tax exemption almost 20 years ago was to protect Hawaii employees.

Secondly, a management company receiving funds to pay their employees do not make any money off of that transaction. The funds for wages and benefits are a pure pass thru from the property owner to employees.

Third, this section is important to the industry, especially local management companies, because it levels the playing field when it comes to managing a hotel, timeshare or a condo-tel. It allows the local companies to compete with the larger out-of state companies.

Lastly, the imposition of a 1% tax will not generate the revenue that some may perceive it will bring in.

Mahalo for considering my testimony, and we urge your support for the number one industry in Hawaii by not suspend this exemption. We need your help.

2375 Kuhio Avenue, Honolulu, Hawaii 96815-2992 • Phone: 808-921-6600 • Fax: 808-921-6655

LATE

Bill **HB2877 HD1**
Date **March 16, 2010**
Time **10:00am**
Place **Conference Room 229**
Committee **EDT/CPN**
Chair **The honorable Senator Carol Fukunaga**
Vice Chair **The honorable Senator Rosalyn Baker**
Chair **The honorable Senator Rosalyn Baker**
Vice Chair **The honorable Senator David Ige**

Aloha Chairs, Vice Chairs and Members of the Committee,

Hawaii Science and Technology Council (HSTC) is opposed to HB2877 HD1.

Hawaii Science and Technology Council would like to oppose the proposed amendments to this measure. Chapter 237 in the Hawaii Revised Statutes of temporarily suspending the exemption of certain amounts; levy of tax at one per cent rate for:

(22) Amounts received as high technology development grants as described under section 237-24.7(10);

(27) Gross proceeds, as described under section 237-26, received by:
(A) Contractors or subcontractors with the United States for the performance of scientific work;

We believe that this bill unfavorably focuses all the pain on a subset of the economy. We would favor a bill or an amendment that would favor an across the board increase.

Thank you for your time and consideration.

Respectfully yours,

Jamie Ayaka Moody
Government Relations
Hawaii Science & Technology Council
733 Bishop Street. #1800
Honolulu, HI 96813

HB2877 HD1 - Relating to Tax Credits

LATE

DATE: March 16, 2010
TIME: 10:00 AM.
PLACE: Room 016
TO: Senate Committee on Economic Development and Technology
Senator Fukunaga, Chair
Senator Baker, Vice Chair

FROM: James P. Karins
President and CEO
Pukoa Scientific

Re: Opposition on HB2877 HD1

Chair, Vice-Chair and Committee Members:

Thank you for the opportunity to provide testimony opposing HB2877 HD1. My name is Jim Karins and I am the President of Pukoa Scientific. Pukoa Scientific is a 17 person company started in 2004 specializing in the interpretation of image and signal data to identify objects, threats or targets for military, security, medical and industrial applications. Pukoa Scientific is in the dual use sector which has proven to be one of the fastest growing technology sectors. Even during the trying year of 2009 we were able to grow to 17 employees; 13 of our 17 employees are full time and 16 of those 17 reside in Hawaii. Of the 12 full time staff in Hawaii, 10 graduated from high schools in Hawaii, 10 graduated from the University of Hawaii or Hawaii Pacific University and at least 4 worked on the mainland prior to finding work in Hawaii. We currently generate more than $2.5M in revenue and pay over $1.5M in compensation.

All of us understand the difficult financial condition of the state and want to help. However, HB2877 HD1 singles out a group of companies that export goods and services, and provide research for the federal government. This generates some funds but still requires nickel and diming of various tax incentives that encourage job creation. It would be better for the state and fairer to levy an across the board 1% increase on all sales. Allow the 1% on currently exempt items in this bill but also increase the in-state GET to 5% (5.5% County of Honolulu). This would generate sufficient funds to stop the nickel and diming of small industries, balance the budget, provide funds to end school furloughs, and provide much need social programs.

I therefore encourage the committee to defer this bill or amend it to add a 1% increase to the overall GET. Thank you for the opportunity to testify.

/s/James P Karins

James P. Karins
President and CEO
Pukoa Scientific
karins@pukoa.com

Proservice HAWAII HR ADMINISTRATION

LATE

Testimony to the Senate Committees on
Economic Development and Technology, and
Commerce and Consumer Protection
Tuesday, March 16, 2010
10:00 a.m.
Conference Room 229

OPPOSES

RE: HOUSE BILL 2877 HD 1 RELATING TO TAXATION

Chairs, Vice Chairs, and Members of the Committees:

ProService Hawaii provides employee administration services to over 900 small businesses in Hawaii. We strongly oppose HB2877 HD1, specifically the provision that extends the General Excise Tax (GET) to employees' wages, insurance premiums on healthcare and workers' compensation, and other pass-through funds, where the employer engages a PEO to provide its administrative services. .

Professional Employer Organizations (PEOs) provide outsourced human resources and employee administration services to over 2,000 small businesses through Hawaii. By partnering with a PEO, small businesses are able to focus on their core operations, while cost-effectively outsourcing their human resources management needs. PEOs also play a valuable role by assisting small businesses with providing their employees with mandatory employment benefits (e.g., workers' compensation, prepaid healthcare, TDI coverage, etc.), and by providing these businesses compliance assistance with Hawaii labor and employment laws. In addition, by partnering with PEOs, small businesses are able to provide their employees with enhanced employee benefits packages normally only available to the largest employers in the state.

We understand that HB2877 is designed to increase revenues by expanding the types of transactions that are subject to GET. Under the current exemption in H.R.S 237-24.75(3), PEOs currently pay GET on all service fees they collect from their clients. It is important to note that the wages and benefits processed through the PEO are pass-through items, and as such, are not subject to GET, as would be the case if paid directly from the employer to the employee. Wages are already subject to payroll taxes and income taxes, and we do not believe it is necessary to tax these pass-through items further.

Imposing an additional tax on these pass-through amounts would increase the cost of doing business for many small businesses during a time when they are struggling to survive. In a time in which employers are faced with record-high unemployment taxes and shrinking margins, an additional tax simply because they choose to outsource their administrative services will make our PEO services less affordable. It may lead to small business laying off employees, improperly taking away employee benefits, or moving to a cash paying economy. Each of these consequences would reduce the revenues for the state, instead of increasing them.

For these reasons, ProService opposes HB2877 HD1, which imposes an unnecessary double-taxation on the wages and benefits of the employees and small businesses we serve.

Thank you for the opportunity to submit testimony.

ASTON
Hotels & Resorts

LATE

March 15, 2010

Via Email: EDTTestimony@capital.hawaii.gov

Senate Committee on Economic Development & Technology
Senator Carol Fukunaga, Chairperson
Hawaii State Capital Room 216
415 South Beretania Street
Honolulu, Hawaii 96813

Senate Committee on Commerce & Consumer Protection
Senator Rosalyn Baker
Hawaii State Capital Room 231
415 South Beretania Street
Honolulu, Hawaii 96813

RE: HB 2877, HD1
Hearing Scheduled for March 16, 2010 at 10:00 a.m.

Dear Senators Fukunaga and Baker:

My name is Kelvin Bloom. I am President of Aston Hotels & Resorts, LLC. Aston opposes HB 2877, HD1 and requests you hold the bill in your committee.

The purpose HB 2877, HD1 is to temporarily suspend the general excise, use, and public service company tax exemptions for certain amounts received by certain persons, including hotel operators and sub-operators and, instead, require those persons to pay a tax at the rate of one per cent on the previously exempt gross income. If HB 2877, HD1, is enacted the proposed legislation will have a substantial and detrimental impact on all condominium managing agents and hotel operators in the State.

The current law grants a tax exemption on employee's wages and benefits when a management company receives funds from the owner of the property to pay its employees. This exemption allows condominium managing agents and hotel operators to structure their business operations in a manner to gain economies of scale. If the proposed legislation is enacted, these businesses will have to re-structure their employment practices and increase their operating costs. The additional operating costs would undoubtedly be passed on to local businesses and transient

KB2010-007

visitors to the State of Hawaii. Further increases in the overall price of a Hawaii vacation would have a negative impact on the tourism industry which drives a major portion of the state's economy.

Aston currently employs approximately 1,300 individuals at 27 locations in the state and the direct impact of the legislation would exceed $400,000 annually in current dollars. The increased tax burden would be in the tens of millions across all operators in the state and invariably force some operators to go out of business. Aston believes alternative actions to increase tourism, bring more visitors to Hawaii and ultimately increase the overall state revenue base would be a more sustainable long term plan.

Accordingly, we urge you to hold HB 2877, HD1 in committee.

Sincerely,

Kelvin Bloom
Manager and President

KB:krs

William C. Loeffler Construction, Inc.
1451 Kinoole Street
Hilo, HI 96720
(808) 935-4422
Fax: 961-5588
cloeffler@interpac.net
AC-18017

LATE

March 15, 2010

Chair Fukunaga, Vice Chair Baker
Senate Committee on Economic Development and Technology
State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: OPPOSITION TO HB2877; H.D. 1 – RELATED TO TAXATION
AMENDMENTS TO SECTION 237 HRS

Chair Fukunaga, Vice Chair Baker and Members of the Committee:

My name is Carolyn Loeffler, Vice President of William C. Loeffler Construction, Inc. We strongly oppose HB 2877; H.D. 1 – Related to Taxation, with amendments to Section 237 HRS

Unlike most of the businesses that are affected by the proposed tax levy, construction contractors have a fixed price to any owner. We are not able to pass on this new tax levy on existing contracts. This will effect our current operations and contracts. The proposed tax levy under sections 237-13 (3) (B), will have a significant financial impact on construction contractors.

We also utilize private employment services companies which is also subject to the proposed tax levy under section 237-23.5(b).

We understand the State's financial difficulties and understand that we must find additional revenue sources. We respectfully request your consideration to amend sections related to construction contracting, to take effect on any project bid after July 1, 2010. Such an amendment will allow us to make adjustments to our bids and cover the cost of this new levy.

Sincerely,

Carolyn A Loeffler
Vice President
William C. Loeffler Construction, Inc.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 16, 2010 9:07 AM
To: EDTTestimony
Cc: rick@nova-sol.com
Subject: Testimony for HB2877 on 3/16/2010 10:00:00 AM

LATE

Testimony for EDT/CPN 3/16/2010 10:00:00 AM HB2877

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Rick Holasek
Organization: NovaSol
Address: 1001 Bishop St., suite 2950 Honolulu, HI
Phone: 808.441.3666
E-mail: rick@nova-sol.com
Submitted on: 3/16/2010

Comments:
This bill punishes one of the most important and growing sectors doing R&D work in Hawaii and should not be passed.
The GET exemption for scientific work for the federal government is of critical importance to the local growing but fragile technology industry. This additional tax on this industry would place an restrictive burden on them almost certainly requiring a cutback in jobs.

LATE

LAND USE RESEARCH
FOUNDATION OF HAWAII
700 Bishop Street, Ste. 1928
Honolulu, Hawaii 96813
Phone 521-4717
Fax 536-0132

Via: Capitol Website

March 16, 2010

Opposition to HB 2877, HD1 Relating to Taxation
(Suspends AH GET Exemptions for Affordable Housing Projects)

Senate Committees on Economic Development and Technology and Commerce and Consumer Protection
Hearing Date: Tuesday, March 16, 2010 at 10:00 a.m. in CR 229

Honorable Chair Carol Fukunaga, Vice Chair Rosalyn Baker and Members of the Senate Committee on Economic Development and Technology and Honorable Chair Rosalyn Baker, Vice Chair David Ige and Members of the Senate Committee on Commerce and Consumer Protection:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF is in **opposition** to HB 2877, HD1, which would temporarily suspend the exemption for certain amounts of gross income or proceeds from the general excise tax and requires the payment of the tax at a one-half per cent rate. LURF is in opposition because of the negative impact it will have on the financial condition of various industries, and a particular negative impact on the building of more affordable housing units in Hawaii.

HB 2877, HD1. The purpose of this bill is to temporarily suspend the general excise, use and public service company tax exemptions for certain amounts received by certain persons, and instead, require those persons to pay the applicable tax on those amounts at one percent rate. This suspension of exemption takes effect on 07/01/2010 and is repealed on 06/30/2015. In particular, HB 2877, HD1 will suspend tax exemptions for one of the most troubled facets of our community – affordable housing.

LURF'S OBJECTIONS TO HB 2877, HD1 in areas of affordable housing, sugarcane production and high tech development grants. LURF ***opposes* HB 2877, HD1**, which would temporarily suspend the exemption for certain amounts of gross income or proceeds from the general excise tax and requires the payment of the tax at a one-half per cent rate.

Over the years, the GET exemption program for **affordable housing** has satisfied its original intent – which was to assure the economic feasibility in the development of a housing project which will encourage and enable the production of as many lower cost housing units as possible.

LURF also objects to the temporary suspension of the following exemptions:

- Amounts deducted from the gross income received by contractors as described under section 237-13(3)(B);
- Amounts received by common paymasters and disbursed as employee compensation or benefits as described under section 237-23.5(b);
- Amounts received by sugarcane producers as described under section 237-24(14);
- Amounts received by cooperative housing corporations from shareholders as reimbursement for expenses as described under section 237-24(16);
- Amounts received from the loading, transportation, and unloading of agricultural commodities shipped interisland as described under section 237-24.3(1);
- Amounts received by managers, submanagers, or boards of directors of condominium property regime owner, nonprofit homeowner, or nonprofit community associations as described under section 237-24.3(3) in the form in which it exists on July 1, 2010;
- Amounts received by hotel operators or suboperators and disbursed for employee compensation and benefits as described under section 237-24.7(1) in the form in which it exists on July 1, 2010;
- Amounts received by operators of orchard properties and disbursed for employee compensation and benefits as described under section 237-24.7(4);
- Amounts received as high technology development grants as described under section 237-24.7(10);
- Gross proceeds received from the sale of tangible personal property to the United States and state-chartered credit unions as described under section 237-25(a)(3);
- Gross proceeds, as described under section 237-26, received by: (A) Contractors or subcontractors with the United States for the performance of scientific work; and (B) Sellers of tangible personal property to such contractors or subcontractors;

BACKGROUND. While this bill will negatively impact the financial condition of the various industries listed above, it will have a particular negative impact on the building of more affordable housing units in Hawaii. The lack of affordable housing remains a significant problem affecting Hawaii. Finding ways to provide sufficient affordable housing and market housing for Hawaii's residents has been a major objective for our elected officials, and state and county agencies, and members of the housing industry and business community.

For the past two years, LURF has participated in a statewide task force comprised of representatives from all four counties, business, labor, developers, architects, nonprofit providers of services, the State, and the legislature, whose purpose was to identify, address and propose regulatory reform and solutions to remove the barriers to the production of affordable housing. The Task Force made a number of legislative recommendations which would assist in increasing the amount of state-wide affordable housing units,

LURF's RECOMMENDATIONS. We regretfully recommend that your Committees **<u>delete</u>** from HB 2877, HD1, the references to GET exemptions for the above-referenced industries and business operators, and especially certified or approved housing projects from this bill.

However, we understand that the intent of this bill is to address the budget shortfall due to the fiscal downturn by increasing tax revenues and we understand that the Hawaii Housing Finance and Development Corporation (HHFDC) is submitting proposed revisions to the bill. We therefore, we respectfully request that your committee give favorable considerations to the revisions proposed by HHFDC.

Thank you for the opportunity to express our **<u>opposition</u> and suggested revisions to HB 2877, HD1.**

LATE

To: Senate Economic Development & Technology Committee
Senate Commerce & Consumer Protection Committee

Hearing: Tuesday, March 16, 2010
10:00
Conference Room 229

Re: HB 2877, relating to taxation

From: Society for Human Resource Management - Hawaii Chapter

The Society for Human Resource Management – Hawaii Chapter ("SHRM Hawaii") represents more than 1,500 human resource professionals in the State of Hawaii. On behalf of our members, we would like to thank the committee for giving us an opportunity to comment on HB 2877, relating to taxation.

We are commenting on HB 2877.

This bill suspends the tax exemption for the value or gross income received by nonprofit organizations from certain conventions, conferences, trade shows, or display spaces as described under section 237-16.8. We recognize that the legislature is faced with a budget shortfall in excess of an estimated $1 billion. However, non-profit organizations are least able to absorb or pass on any additional costs. Educational activities such as conferences are extremely important to sustaining the economy. We respectfully request that you eliminate this provision from the bill.

Thank you for the opportunity to speak on this measure.

SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840

AIRLINES COMMITTEE OF HAWAII

Honolulu International Airport
300 Rodgers Blvd., #62
Honolulu, Hawaii 96819-1832
Phone (808) 838-0011
Fax (808) 838-0231

LATE

March 16, 2010

LATE TESTIMONY

The Honorable Carol Fukunaga, Chair
Senate Committee on Economic Development and Technology

The Honorable Rosalyn Baker, Chair
Senate Committee on Commerce and Consumer Protection

Re: HB 2877 HD1, RELATING TO TAXATION - OPPOSE
EDT/CPN – March 16, 2010, 10 AM – Conference Room 229

Aloha Chair Fukunaga, Chair Baker and Members of the Committees:

The Airlines Committee of Hawaii* (ACH), which is made up of 22 signatory air carriers that underwrite the Hawaii State Airport System, opposes language contained in HB 2877, HD1, which suspends General Excise Tax exemptions for five years.

Specifically, we oppose the suspension of exemptions covered under the following sections:

Section 2:
- (13) Loading and unloading of cargo;
- (17) Rental of aircraft or aircraft engines;
- (25) Servicing and maintenance of aircraft.

Section 3:
- (1) Leasing of aircraft;
- (3) Materials, parts and tools for aircraft maintenance.

While the rental or leasing of aircraft or aircraft engines may not apply to all airline members since many are based elsewhere, the suspension of exemptions in this bill will have an inordinately adverse affect on locally-based carriers and inter-island carriers. Additionally, there are federal issues involved here that could prohibit or limit the state's ability to tax the leasing of aircraft or aircraft engines used for interstate commerce.

Finally, taxing aircraft maintenance, materials, parts and tools will only drive these jobs away from Hawaii and to states where there is no tax.

<u>For these reasons, we respectfully urge your committees to reject this bill.</u> As always, we are grateful for the opportunity to provide input on this matter.

Sincerely,

Alan Ogawa	Lori Peters
ACH Co-Chair	ACH Co-Chair

**ACH members are Air Canada, Air New Zealand, Air Pacific, Alaska Airlines, All Nippon Airways, American Airlines, China Airlines, Continental Airlines, Continental Air Micronesia, Delta Air Lines, Federal Express, go! Mokulele, Hawaiian Airlines, Japan Airlines, JALways, Korean Air, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.*

THE QUEEN'S HEALTH SYSTEMS

1099 Alakea St., Suite 1100 • Honolulu, Hawaii 96813 • Phone (808) 532-6100 • Fax: (808) 532-6118

LATE TESTIMONY

Senator Carol Fukunaga, Chair
COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Senator Rosalyn Baker, Chair
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

LATE

March 16, 2010 – 10:00 AM
State Capitol, Conference Room 229

Re: HB 2877 HD1 – Relating to Taxation

Chairs Fukunaga and Baker, Vice Chair Ige, and Members of the Committee,

My name is Mark Yamakawa, Executive Vice President and Chief Operating Officer of The Queen's Health Systems (Queen's), testifying on House Bill 2877 HD1 which suspends temporarily the exemptions for certain persons and certain amounts of gross income or proceeds from the general excise, use, and public service company tax and requires the payment of the tax at a one per cent rate.

Queen's is specifically opposed to Section 2(a)(6) related to amounts received, charged, or attributable to services furnished by related entities or the imputed or stated interests of related entities. In addition to The Queen's Medical Center, The Queen's Health Systems oversees several companies, including Queen Emma Land Company, Queen's Development Corporation, CareResource Hawaii, Diagnostic Laboratory Services, Queen's Insurance Exchange, and Molokai General Hospital and, in many cases, centrally administers legal, accounting, and other services to related entities. This arrangement was established to create economic efficiencies and maximize financial support of Queen's charitable entities.

The current tax exemption does not serve to increase the hospital's profits; rather, it defrays significant losses and allows for continued support of community programs, non-core services, and charity care. According to the Healthcare Association of Hawaii, local hospitals incurred $114 million in uncollected payments in 2009 resulting from bad debt and charity care. This does not reflect the anticipated increase in bad debt and charity care resulting from unemployed individuals relying on coverage through COBRA, or those who are delaying care until the need becomes urgent. Queen's contributes to the well-being of Hawaii by giving back to the community more than $40 million annually, including costs associated with health care services, education, and uncompensated care.

We would also note that credit rating agencies take into consideration legislation that will impact financial performance. This could lower the credit ratings of tax-exempt hospitals and lead to increased cost for debt financing. Such increased costs would make it more challenging for nonprofit hospitals to continue some of their community benefit programs, which could negatively impact the community's access to health care.

Queen's wholly appreciates the Legislature's budgetary challenges in light of the State's economic outlook. However, we respectfully request thorough evaluation of the impact of HB 2877 HD1 on nonprofit hospitals.

Thank you for the opportunity to testify.

COMPLETE CONSTRUCTION SERVICES CORP.
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LATE

March 16, 2010

Senator Carol Fukunaga, Chair
Committee on Economic Development and Technology
and
Senator Rosalyn Baker, Chair
Committee on Commerce and Consumer Protection
State Capitol, Room 229

RE: HB2877, HD1, "Relating to Taxation"

Dear Chair Fukunaga and Chair Baker and Members of the Joint Committee:

I am the Owner of Complete Construction Services Corp. We are a General Contractor specializing in construction of new homes and remodeling existing homes.

I am writing to oppose HB2877, HD1, "Relating to Taxation".

As a General Contractor I see first hand the pyramiding impact of the GET. Materials are bought and sold two or three times before I am charging the cost off to my customers. The materials purchased by Subcontractors are a classic example of this. The deductions we are given help offset the cost of this pyramiding effect. This bill will decrease our ability to make a profit and increase the costs our customers pay. It will aggravate and ad to the already huge problem of "cash" Contractors operating without paying these expenses and make competition from legitimate businesses like mine that much more difficult. We are already struggling to make ends meet and carry the burden imposed by State Taxes and Regulation. Please don't add more weight to our shoulders.

Thank you for the opportunity to share my views with you.

Sincerely,

Greg Thielen

President/RME

LINDA LINGLE
Governor

MIKE MCCARTNEY
President and
Chief Executive Officer

Hawai‘i Tourism Authority

Hawai‘i Convention Center, 1801 Kalākaua Avenue, Honolulu, Hawai‘i 96815
Website: www.hawaiitourismauthority.org
Telephone: (808) 973-2255
Fax: (808) 973-2253

LATE

Testimony of
Mike McCartney
President and Chief Executive Officer
Hawai‘i Tourism Authority
on
H.B. 2877, H.D.1
Relating to Taxation

Senate Committee on Economic Development and Technology
Senate Committee on Commerce and Consumer Protection
Tuesday, March 16, 2010
10:00 a.m.
Conference Room 229

The Hawai‘i Tourism Authority (HTA) opposes H.B. 2877, H.D. 1, which proposes to amend chapter 237, Hawai‘i Revised Statutes, by proposing to temporarily suspend certain general excise tax exemptions and levy an excise tax of one per cent on the previously exempt gross income.

Among the exemptions suspended by H.B. 2877, H.D. 1, are:

- The exemption of income received by certain conventions, conferences, and trade shows for exhibit or display spaces; and
- The exemption provided to the Hawai‘i Convention Center operator for amounts received as reimbursement of costs or advances made pursuant to a contract with the Hawai‘i Tourism Authority.

<u>Exemption of fees received for exhibit or display spaces</u>

Section 237-16.8 exempts from the general excise tax amounts received by organizations from convention, conference, or tradeshow registration fees, fees for convention, conference, or tradeshow exhibit or display spaces, and fees for advertising and promotion at the convention, conference, or trade show in brochures. These fees are an important of the event organizer’s operating revenues in putting on the event, and the GET adds an additional cost for the event.

In 2003, the 7,500-member American Academy of Neurology (AAN) met at the Hawaii Convention Center. Expo booth sales for AAN totaled $1.5 million. AAN asked the Department of Taxation if they had to pay the general excise tax on the booth sales. The Department advised AAN that, under section 237-13, the tax should be paid, which amounted to $60,000.

The AAN said that this additional cost would have affected their decision to hold their convention in Hawaii because it added $60,000 in costs that they had not anticipated. This hurts the efforts to market Hawaii as a conference and convention destination by adding to the cost of putting on a conference, convention, or trade show in Hawaii. Often, such fees are used as part of the operating costs for putting on the conference, convention, or trade show. The AAN generated $25.3 million in visitor spending and produced $2.1 million in tax revenues.

Although H.B. 2877, proposes a tax of one per cent on the amounts received for these fees, it is still an additional cost for organizations proposing an event in Hawaii, which puts Hawaii at a competitive disadvantage, when other venues are heavily discounting prices to attract events.

<u>Exemption of reimbursement of costs or advances to the Convention Center operator</u>

In Act 173, Session Laws of Hawai‘i 2007, the operator of the Hawai‘i Convention Center was exempt from the payment of excise taxes on the amounts received for reimbursement of costs or advances made pursuant to a contract with the Hawai‘i Tourism Authority under section 201B-7, Hawai‘i Revised Statutes. Act 173 was enacted because, in 2007, SMG, the operator of the Hawai‘i convention center under contract with the Hawai‘i tourism authority is paid $500,000 to operate and market the Hawai‘i convention center. SMG, however, in 2007, received $16,000,000 in advances for the costs of operating and marketing the Hawai‘i convention center. The department of taxation, under section 237-16.8, HRS, considered the reimbursement of the $16,000,000 in costs and advances to the operator as gross income on which the general excise tax was levied, in the amount of $700,000, because the operator receives additional monetary consideration in the form of the $500,000 payment. In effect, this meant that $700,000 of TAT funds used to reimburse SMG for the costs and advances for operating the convention center cannot be used for operating and marketing the Hawai‘i convention center.

Under its current contract with the HTA, SMG is authorized to be paid during FY 2010 the following:

- $500,000 to operate and manage the center;
- $13,250,000 for reimbursement and advancement costs; and
- $6,000,000 to market the center.

If this bill is enacted, SMG will be required to pay approximately $96,250.00 in GET on these moneys that it received from the HTA as advances or reimbursements for the costs of operating and marketing HCC. This will divert $96,250 in TAT revenues from the operating and marketing the center to pay the GET.

We urge you to amend Section 2 of H.B. 2877, H.D.1 by deleting in subsection (a) of the new section to chapter 237, Hawai‘i Revised Statues, paragraphs (5) and (23).

Thank you for the opportunity to comment on H.B. 2877, H.D.1.

L E G I S L A T I V E

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LATE

SUBJECT: GENERAL EXCISE, USE, PUBLIC SERVICE COMPANY, Suspend exemptions; impose 1% rate

BILL NUMBER: HB 2877, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS chapter 237 to provide that the following shall be subject to a 1.0% tax rate:

237-13(3)(B) - amounts deducted from the gross income received by contractors;
237-13(3)(C) - reimbursements received by federal cost-plus contractors for the costs of purchased materials, plant, and equipment;
237-13(6)(D) - gross receipts of telecommunications home service providers acting as service carriers for other home service providers;
237-16.5 - amounts deducted from the gross income of real property lessees because of receipt from sublessees;
237-16.8 - gross income received by nonprofit organizations from conventions, conferences, trade shows, or display spaces;
237-23.5(a) - amounts received, charged, or attributable to services furnished by related entities or the imputed or stated interests of related entities;
237-23.5(b) - amounts received by common paymasters and disbursed as employee compensation or benefits;
237-24(14) - amounts received by sugarcane producers;
237-24(16) - amounts received by cooperative housing corporations from shareholders as reimbursement for expenses;
237-24.3(1) - amounts received from the loading, transportation, and unloading of agricultural commodities shipped interisland;
237-24.3(2) - amounts received from the sale of intoxicating liquor, cigarettes and tobacco products, and agricultural, meat, or fish products to person or common carriers engaged in interstate commerce;
237-24.3(3) - amounts received by managers, submanagers, or boards of directors of condominium property regime owner, nonprofit homeowners, or nonprofit community associations;
237-24.3(4)(A) - amounts received or accrued from the loading or unloading of cargo;
237-24.3(4)(B) - amounts received or accrued from tugboat and towage services;
237-24.3(4)(C) - amounts received or accrued from the transportation of pilots or government officials and other maritime related services;
237-24.3(10) - amounts received by labor organizations for real property leases;
237-24.3(12) - amounts received as rent for aircraft or aircraft engines used for interstate air transportation;
237-24.5 - amounts received by stock exchanges and exchange members;

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237-24.7(1) - amounts received by hotel operators or suboperators and disbursed for employee compensation and benefits;
237-24.7(4) - amounts received by orchard property operators and disbursed for employee compensation and benefits;
237-24.7(9) - amounts received by management companies from related telecommunications services common carriers and disbursed for employee compensation and benefits;
237-24.7(10) - amounts received as high technology development grants;
237-24.75(2) - amounts received by the Hawaii convention center operator as reimbursements of costs or advances;
237-24.75(3) - amounts received by professional employment organizations from client companies and disbursed for employee benefits and compensation;
237-24.9 - amounts received from the servicing and maintenance of aircraft and maintenance facilities;
237-25(a)(3) - gross proceeds received from the sale of tangible personal property to the United States and state-chartered credit unions;
237-26 - gross proceeds received by contractors with the U.S, for scientific work and sellers of tangible personal property to such contractors or subcontractors;
237-27 - amounts received by petroleum product refiners from other refiners for further refining of petroleum products;
237-27.5 - gross proceeds received from the construction, reconstruction, erection, operation, use, maintenance of furnishing of air pollution facilities.
237-28.1 - gross proceeds received from shipbuilding and ship repairs;
237-29(a) - gross income received from the planning, design, financing, construction, sale, or lease of affordable housing projects that do not have valid certificates of exemption or approval under HRS section 201H-36 on July 1, 2010;
237-29(b) - gross income received by nonprofit or limited distribution mortgagors for low-and moderate-income housing projects that were not certified or approved under section 201H-36 on July1, 2010;
237-29.5 - gross proceeds received from tangible personal property shipped out of state;
237-29.53 - gross proceeds received from contracting or services performed for use outside the state;
237-29.55 - gross proceeds or gross income received from the sale of tangible personal property imported for subsequent resale at wholesale;
237-29.8 - amounts received by telecommunications common carriers from call center operators for interstate or foreign telecommunications services; and
209E-11 - gross proceeds received by qualified businesses in enterprise zones that do not have valid certificates of qualifications from the DBEDT on July 1, 2010.

Amends HRS chapter 238 to provide that the following shall be subject to a 1.0% tax rate:

238-1(6) - the leasing or renting of aircraft or keeping of aircraft solely for leasing or renting for commercial transportation of passengers and goods or the acquisition or importation of aircraft or aircraft engines by a lessee or renter engaged in interstate air transportation;
238-1(7) - the use of oceangoing vehicles for passenger or passenger and goods transportation from one point to another within the state as a public utility;
238-1(8) - the use of material, parts, or tools imported or purchased by a person licensed under HRS chapter 237 which are used for aircraft service and maintenance or the construction of an

aircraft service and maintenance facility;
238-1(9) - the use of services or contracting imported for resale where the contracting or services are for resale, consumption, or use outside the state;
238-3(g) - the use or sale of intoxicating liquor and cigarette and tobacco products imported into the state and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out-of-state by the person, crew, or passengers on the shipper's vessels or airplanes;
238-3(h) - the use of any vessel constructed under HRS section 189-25 prior to July 1, 1969;
238-3(j) - the use of property, services, or contracting subject to HRS section 237-26 or HRS section 237-29; and
238-3(k) - the use of any air pollution control facility subject to HRS section 237-27.

Amends HRS chapter 239 to provide that the following shall be subject to a 1.0% tax rate:

239-6.5 - the credit for costs incurred by a telephone public utility for establishment of lifeline telephone service rates; and
239-12 - the exemption for amounts received by a person operating a call center by a person engaged in business as a telecommunications common carrier for interstate or foreign telecommunications.

The director of taxation may establish additional requirements, procedures, and forms pursuant to rules adopted under HRS chapter 91 to effectuate this section.

The department of taxation shall have the authority to postpone the payment of any tax imposed under this act until the deadline to file the annual general excise, use, or public service company tax returns, as applicable, (without regard to any extension).

Sections of this act suspending certain exemptions of HRS section 237-24, shall not be affected by the repeal and re-enactment of that section on December 31, 2013, pursuant to Act 70, SLH 2009.

Sections of this act suspending certain exemptions of HRS sections 237-24.3 and 237-24.7, shall not be affected by the repeal and re-enactment of those sections on December 31, 2010, pursuant to Act 196, SLH 2009.

This act shall be repealed on June 30, 2015.

EFFECTIVE DATE: July 1, 2010

STAFF COMMENTS: This measure proposes to suspend the selected general excise tax, use, and public service company exemptions and credits to provide that the amount of the exempt income or the amount of the credit claimed shall be taxed at the rate 1.0% temporarily between 7/1/10 and 6/30/15. While this measure imposes a rate of 1.0% on selected exemptions, the prior draft of the measure would have imposed a rate of 0.5%. If the prior draft of the measure had been enacted, its estimated revenue impact, as prepared by the director of taxation, was an increase in general revenues by $58.7 million in fiscal 2011, $60.3 million in fiscal 2012, $62.4 million for fiscal 2013, $65 million for fiscal 2014 and $67.8 for fiscal 2015. While the estimates may "look good on paper" it is another thing to actually receive those revenues since some of these exemptions may be obsolete in which case they will not result in any

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increased revenue while other exemptions or tax treatments may not be fully utilized and may not yield the estimated revenue upon the adoption of this measure, i.e., the lifeline telephone service tax credit which has been experiencing a reduction in subscribers over the last few years.

It should be remembered that many of the exemptions exist because if the general excise, use, or public service company tax were imposed on these entities or transactions it would impose an undue burden or cause businesses to structure transactions in an inefficient manner. Some of these exemptions were adopted to ensure that transactions, such as reimbursements or amounts disbursed as employee compensation and/or benefits are not subject to taxation. There are those exemptions that exist because to tax the transaction would be a violation of superior law or may be deemed unconstitutional. Other deductions, exclusions and exemptions exist because they help to reduce the pyramiding effect of the general excise tax. It should be remembered that any imposition of tax will not only result in the increase in the cost of doing business in Hawaii but may create inequitable taxing situations that were addressed by the specific general excise tax exemption.

For example, gross income received as a result of stevedoring activities, that is the loading and loading of ships or aircraft that is currently exempt, would be subject to the proposed 1% general excise tax rate. While it will generate much needed revenue for the state, the added cost represented by the new tax would ripple through the entire economy as nearly 96% of everything residents consume comes over the docks. In other cases, imposing the new tax would constitute double taxation as would be the case on telecommunications home service providers who collect charges for another home service provider in another sate where that same amount is subject to the other state's tax. In the case of goods and services sold for consumption outside the state, taxing those goods or services would not only violate interstate commerce, but it would also subject those goods or services to double taxation, being taxed first by Hawaii and then by the other state where the consumer lives or works. Then, as noted above, there are those exemptions that are obsolete where the activity no longer exists such as payments to independent sugar growers or gross income of petroleum refiners of which there are none technically in the state as the existing petroleum refiners are located within the foreign trade zone. As in the case of the credit for lifeline telephone subsidies, the 1% rate will probably generate less than one thousand dollars per year as the number of lifeline customers has dwindled dramatically over the last few years.

While this measure is proposed to extract additional revenues to address the state's fiscal crisis, it should be remembered that the adoption of measures like this that temporarily propose a "tax increase" on certain transactions, will not be effective unless government expenditures are also curtailed.

Digested 3/15/10