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GOVERNOR  
  
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LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
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LAWRENCE M. REIFURTH  
DIRECTOR  
  
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**TO THE HOUSE FINANCE COMMITTEE**

**THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2010**

Date: Wednesday, February 10, 2010  
Time: 4:00 p.m.  
Conference Room: 308

**TESTIMONY ON HOUSE BILL NO. 2882  
RELATING TO TAXATION**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Tung Chan, Securities Commissioner of the Business Registration Division (BREG), Department of Commerce and Consumer Affairs ("Department"). The Department opposes this bill.

In the current economic climate, this bill could potentially decimate the securities industry in Hawaii and make the underwriting of State and other bonds exorbitantly expensive or unavailable. The securities industry is a mobile industry that is particularly sensitive to the economics of transaction costs. A 4% additional tax on gross income for securities transactions would make Hawaii uncompetitive for underwriters, sellers, investors, advisers, purchasers and issuers, and would likely drive the industry to other states. This is not an industry that is vested in a geographic location and it would be

unfortunate to increase incentives to encourage the flight of an industry that is so critical to our business, investing and professional community.

This bill may also defeat the effort to encourage innovative Hawaii businesses that grow to the point of issuing shares for capital. If the bill covers public offerings of securities, for any small Hawaii business that has grown to great success and is looking to do a series of public offerings, a 4% tax on those offerings would be a significant burden on them and inhibit their ability to raise capital. It would undoubtedly encourage the company to do their offerings in another state. Investors interested in funds that support Hawaii innovation may view the 4% tax as a reduction on the amount of their target investment which would encourage them to invest elsewhere.

The securities industry is a lucrative part of our diversified economy. It is environmentally friendly, employs a wide expanse of professionals and support staff, supports capital requirements for growing innovative Hawaii businesses and is an integral part in any future role Hawaii takes in a world economy

While it is unclear how this tax would be enforced, it is evident that it could greatly harm the securities industry and steer businesses and investors alike away from Hawaii.

We respectfully ask that this bill be held. Thank you for the opportunity to testify.

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Taxation of securities

BILL NUMBER: HB 2882

INTRODUCED BY: Say

**BRIEF SUMMARY:** Adds a new section to HRS chapter 237 to impose a tax on a sole proprietorship, partnership, corporation, or limited liability entity that sells securities to another person in the amount of 4% of the gross income received from the sale of such securities, less a deduction for any commissions paid by the seller to a sales representative taxable under HRS section 237-13.5. Gross income from the casual sale of securities shall be exempt from this tax regardless of whether the sale is made by a person licensed or unlicensed under the GET.

Makes conforming amendments to HRS sections 237-1, 237-3 and repeals HRS section 237-24.5 that provides a general excise tax exemption on the sale of securities.

This act shall be repealed on June 30, 2015 and HRS sections 237-1 and 237-3 shall be reenacted in the form in which they read on the day before the effective date of this act. HRS section 237-24.5 shall not be reenacted after June 30, 2015.

**EFFECTIVE DATE:** October 1, 2010

**STAFF COMMENTS:** The legislature by Act 295, SLH 1988, provided a general excise tax exemption for stock exchanges to attract and encourage the establishment of a stock exchange in Hawaii. The exemption was initially given a one-year window and was to expire a year later in 1989. Subsequent legislation gave the stock exchange exemption another three-year lease on life which was later extended to the year 2000. Even though there was no evidence that there was anyone interested in establishing such an exchange, the administration asked that the exemption be made permanent in 1997.

At that time in 1997, lawmakers were desperate for any kind of quick fix for what had been a seven-year famine in the state's economy. Thus, the measure making the stock exchange exemption permanent was festooned with tax incentives for aircraft maintenance and film production. At the time, the DCCA and even the corporate and securities section of the Hawaii Bar endorsed the permanency of the exemption citing the fact that inquiries and attempts to establish a stock exchange in Hawaii had been received. While to date no stock exchange has been established in Hawaii, the repeal of this exemption appears to be timely.

This measure proposes to temporarily impose the general excise tax on the gross income received by securities dealers. While the commissions of such securities dealers are already subject to the general excise tax, this tax would seem to extend the tax to amounts received from clients for the purchase of securities. Given that these amounts of income do not belong to the security dealer, but are held in trust until the purchase of the equity or security is finalized, the imposition of the tax cannot be justified.

These amounts are much akin to the deposits received by a bank as funds to be held secure in a checking or savings account of the customer.

The question that should be posed is: where is the privilege of doing business when it comes to buying securities? Will taxing trades that take place between a Hawaii resident and a local brokerage house merely drive those trades to a brokerage house located say on Wall Street in New York or to one located on Montgomery Street in San Francisco? How would the tax department ever know? For that matter, a chain brokerage could just have a Financial Adviser in Dallas execute the purchase or sale.

From an economic standpoint given that Hawaii has long been known to be a capital short state, this measure will make it all that more difficult for local companies to raise investment capital that is critical to survival and expansion. If their issuance of stock or bonds is subject to the general excise tax as proposed in this measure, it will increase the cost of those equities and reduce the amount of money that can actually be raised by the sale of those securities by at least by 4% or more. Local companies like Hawaiian Electric Industries, Bank of Hawaii, or Hawaiian Telcom would be placed at a disadvantage should the GET be imposed on the sales and issuance of stock just because they are located in the state. Forget these large established companies, what about the budding entrepreneurs or even the much favored high technology darlings attempting to raise capital for their start-up businesses? This proposal just makes it even more costly to start-up or do business in Hawaii.

Digested 2/9/10



February 9, 2010

The Honorable Marcus R. Oshiro, Chair  
The Honorable Marilyn B. Lee, Vice Chair  
House Committee on Finance  
Hawaii State Capitol  
415 South Beretania Street, Room 308  
Honolulu, HI 96813

**RE: SIFMA STRONGLY OPPOSES H.B. 2882**

Dear Chair Oshiro, Vice Chair Lee and Members of the Committee:

The Securities Industry and Financial Markets Association (SIFMA)<sup>1</sup> represents the shared interests of more than 600 securities firms, banks and asset managers. SIFMA strongly opposes the 4% tax on gross income from the sale of securities found in HB 2882 and encourages the House Finance Committee to hold the bill.

We understand that the state is facing a sizeable budget deficit. However, a tax on the gross income from the sale of securities would create severe unintended consequences which would literally drive business and services from the state.

The problem with applying a gross income tax to the securities industry's high volume, low margin business is that the tax alone could well exceed the gross profit realized on the activity. This result is driven by two factors: one, the tax is imposed on a "gross proceeds" basis, with no deduction for the cost of originally buying the securities; and two, the tax does not provide for a workable apportionment methodology, potentially subjecting 100% of the gross proceeds to tax at 4% with no rational consideration given to where the securities' trading activity took place. A few hypotheticals illustrate these points:

- **Example 1:** A Hawaii retired couple wants to purchase a \$50,000 bond yielding 5% from the local Hawaii office of a multi-state securities broker-dealer. Assume the broker-dealer acquired the bond for \$49,950 and sold it for \$50,000. The dealer would have to pay a gross income tax of \$2000, which is forty times the dealer's

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<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit [www.sifma.org](http://www.sifma.org).

\$50 profit. The broker-dealer either won't enter the transaction or will pass on the 4% cost to the retired couple, wiping out most of the couple's \$2500 first year yield.

- Example 2: A New York based broker-dealer with a retail customer office located in Hawaii executes a \$35 million trade in New York (1 million shares of stock valued at \$35 per share) for a Hawaii based institutional investor. The broker-dealer's gross profit on the transaction would be approximately \$20,000, yet the gross income tax owed could be \$1.4 million (\$35 million x 4%). This single transaction would result in a net loss of approximately \$1.2 million.
- Example 3: A Texas based financial trader purchases 1000 gas contracts (one contract = 10,000 MMBTU) at \$5.255 per MMBTU and agrees to sell to a Hawaii based counterparty for \$5.26. The trader's gross profit on the sale is only \$50,000, yet he could pay approximately \$2,104,000 ( $52,600,000 \times 4\%$ ) under the gross income tax. A single transaction such as this results in a net loss of approximately \$2,054,000.

Firms need to earn profits in order to survive in an extremely competitive environment. The 4% gross income tax, however, when applied to the securities industry, would result in firms incurring substantial losses on many if not all of the transactions they conduct in the state. This would cripple the securities industry and would force firms to stop doing business in Hawaii and/or with Hawaiian based customers.

Additionally, the 4% gross tax on bond sales would make it extremely difficult for the State and local governments to raise money for public projects by selling municipal bond debt. Underwriting broker-dealers are merely intermediaries who likely would be unwilling to engage in these transactions if charged this extraordinary tax. Broker-dealers that are willing to engage in the transactions would likely pass the 4% cost back to the State and local governments in the form of higher borrowing costs.

SIFMA strongly encourages the House Finance Committee to hold the legislation. Please do not hesitate to contact me at 212-313-1311 or SIFMA's lobbyists, Red Morris and John Radcliffe, at 808-531-4551 with any questions.

Sincerely,



Kim Chamberlain  
Managing Director and Counsel  
State Government Affairs

**David F. Bello, CFP****Certified Financial Planner**

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**To each member - Via Facsimile Transmission 586-6001**

HOUSE OF REPRESENTATIVES  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2010

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

Rep. Henry J.C. Aquino

Rep. Karen Leinani Awana

Rep. Tom Brower

Rep. Isaac W. Choy

Rep. Denny Coffman

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Rep. Chris Lee

Rep. Scott Y. Nishimoto

Rep. Roland D. Sagum, III

Rep. James Kunane Tokioka

Rep. Jessica Wooley

Rep. Kyle T. Yamashita

Rep. Lynn Finnegan

Rep. Gene Ward

RE: HB 2882

Dear Member of the COMMITTEE ON FINANCE,

**I strongly oppose this bill.** I am a Registered Investment Adviser with 37 years of experience in the securities business. Not only will this bill convince more of my clients to do business in other states, it will eliminate local jobs as a result of investors moving to "non-tax" zones and the local securities industry workers will lose their jobs.

Investors are the most tax sensitive of your constituents as well as the most mobile. Before you vote on this proposal, study the effects suffered by the New York securities business as a result of recent changes to their securities laws. The Initial Public Offering business has left New York, but is still thriving.



David F. Bello, CFP  
Certified Financial Planner

**A Registered Investment Adviser**

**moshiro4-Lisa**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 09, 2010 8:33 AM  
**To:** FINTestimony  
**Cc:** monica@jenningscpa.com  
**Subject:** Testimony for HB2882 on 2/10/2010 4:00:00 PM

Testimony for FIN 2/10/2010 4:00:00 PM HB2882

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Monica Jennings  
Organization: Individual  
Address:  
Phone: 792-0088  
E-mail: [monica@jenningscpa.com](mailto:monica@jenningscpa.com)  
Submitted on: 2/9/2010

**Comments:**

I am a CFP professional and my firm has been a State-registered investment advisor for nearly six years.

I STRONGLY OPPOSE HB 2882.

This would be an egregious tax that would erode the investments of even those of modest means and could cause people to make sub-optimal investment decisions that hurt their chances for a secure retirement and future.

It is patently unfair in that it will tax not only gains, but the original investment of hard-earned and previously-taxed money.

It would also exacerbate Hawaii's bad reputation as a business-unfriendly state.

Please oppose this bill.



## moshiro1-Ann

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 09, 2010 6:47 AM  
**To:** FINTestimony  
**Cc:** marcus.boland@nmfn.com  
**Subject:** Testimony for HB2882 on 2/10/2010 4:00:00 PM

Testimony for FIN 2/10/2010 4:00:00 PM HB2882

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Marcus Boland  
Organization: Individual  
Address: 1138 Kaumailuna Place Honolulu, HI  
Phone: 808 566 -5340  
E-mail: [marcus.boland@nmfn.com](mailto:marcus.boland@nmfn.com)  
Submitted on: 2/9/2010

### Comments:

If you pass this bill, I may have to lay off one employee. I'm a small business with two staff and can't afford another tax increase. I'm getting increases in Health Insurance, Work Comp, State Income Tax, Federal Income tax for 2011, and now I will be getting a 2,600% increase in my GE? I work for my family not everyone one elses family. The state needs to start making signifigant cuts to their budget, just like everyone else.

To State of Hawaii  
Rep. Ken Ito & Rep. Pono Chong

RE: HB 2882

Hello,

My name is Wes Sakamoto and I live in Kaneohe. I realize the State of Hawaii is having its problems financially but that applies to all the citizens of Hawaii. It's well known that the State needs to raise capital to just operate just like any private company and just like the citizens of Hawaii need their income to survive in this beautiful state of ours. This letter is in regard to House Bill 2882, to impose a general excise tax on gross income from the sale of securities.

First of all this idea to tax the sale of securities is going to be a nightmare because how are you going to account for the thousands, maybe millions, of transaction that goes on in a day in the State of Hawaii. The transaction doesn't take place in Hawaii. For example, a transaction on the New York Stock Exchange takes place in New York. A transaction on the NASDAQ happens on many different computer systems spread all over the nation. So does the transaction take place in Hawaii? It will probably cost more to implement the idea than the actual income from the tax. Now a lot of the transactions happen on the internet made by consumers dealing directly with brokers online like Schwab, Scottrade, and eTrade. Are you going to tax tourists that perform trades while on vacation here? Are you going to tax Hawaii residents who perform a transaction while visiting the mainland or another country? How are you going to account for all of this?

Second, if the investor takes a loss in the trade, he will then be able to deduct the total transaction fee and a loss on his/her income taxes therefore losing revenue for the state there because the loss is bigger with the excise tax added on. Where do you make more money, in the transaction fee of 4% or the state income tax imposed on the tax payer? This will also have to be thought out.

You really have to think this on over. Accounting for this is going to be the big key.

Sincerely,

Wes Sakamoto  
(808) 527-8804

## moshiro4-Lisa

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 09, 2010 1:49 PM  
**To:** FINTestimony  
**Cc:** matthew.megorden@ubs.com  
**Subject:** Testimony for HB2882 on 2/10/2010 4:00:00 PM

Testimony for FIN 2/10/2010 4:00:00 PM HB2882

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Matt Megorden  
Organization: Individual  
Address:  
Phone: 808-526-6923  
E-mail: [matthew.megorden@ubs.com](mailto:matthew.megorden@ubs.com)  
Submitted on: 2/9/2010

**Comments:**

I've been in the securities business for over 13 years and this 2600% increase in tax from 0.15% to 4% on our production is outrageous. Why should there be punitive measures taken against such a select group of tax paying citizens. Why is this tax on our commissions on production, but not on the commissions earned by salespeople in all industries. Our firm already pays tax in Hawaii (which is taken out of our pay through reduced payouts) and your additional tax on our production is a double taxation of the very citizens you are charged with protecting. PLEASE VOTE NO ON THIS BILL.

## moshiro1-Ann

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 09, 2010 2:45 PM  
**To:** FINTestimony  
**Cc:** Jmacnaughton@greencarhawaii.com  
**Subject:** Testimony for HB2882 on 2/10/2010 4:00:00 PM

Testimony for FIN 2/10/2010 4:00:00 PM HB2882

Conference room: 308  
Testifier position: oppose  
Testifier will be present: Yes  
Submitted by: Justin MacNaughton  
Organization: GreenCar Hawaii  
Address: Po box 223684 Princeville, HI  
Phone: 808-366-0698  
E-mail: [Jmacnaughton@greencarhawaii.com](mailto:Jmacnaughton@greencarhawaii.com)  
Submitted on: 2/9/2010

**Comments:**

GreenCar Hawaii (GCH) is interested to provide testimony of the small business perspective on the existing difficulties of raising capital in the existing market and how the proposed measure could significantly further hinder this process and ability. As a company that has very recently gone through and closed on it's first round of funding to launch an alternative- energy car-share service for the hospitality industry, I feel I can provide a unique perspective on the measures implications.

- Justin MacNaughton