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To: The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: Friday, March 20, 2015
Time: 9:15 A.M.
Place: Conference Room 016, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 966, H.D. 1, Relating to Section 237-23, Hawaii Revised Statutes

The Department of Taxation (Department) strongly supports H.B. 966, H.D. 1, an Administration measure. The application of the General Excise Tax (GET) to non-profit organizations is complex, and the change presented in H.B. 966 ensures consistency in how the issue will be treated by the courts. H.D.1 is effective retroactively and applies to taxable years beginning after December 31, 2011.

Act 184, Session Laws of Hawaii 2012 (Act 184), amended section 237-23, Hawaii Revised Statutes (HRS) to add potable water companies to the existing exemption provided to certain non-profit organizations. In the process, the words "as such" were inadvertently deleted from the section. These words have been important for courts in the past and should be returned to the statute to ensure consistent treatment of non-profit organizations entitled to this exemption.

Section 237-23, HRS, states, and Hawaii courts have consistently held, that non-profit organizations are only entitled to a GET exemption for activities that are undertaken in pursuit of the organization's exempt purpose. Income from any activity the sole purpose of which is the generation of income, regardless of how that income is eventually used, is subject to tax. Determination of what income is entitled to the exemption can be complex, and several cases on the subject have reached the Hawaii Supreme Court in the past.

In one such case, In re Queen's Medical Center, 66 Haw. 318 (1983), the Hawaii Supreme Court held that certain activities of a non-profit hospital were not entitled to the exemption, because the activities were not activities of a hospital "as such." In that case the presence of this wording in the statute was critical to the Court's decision.

Since the deletion of the words "as such" were inadvertent, and there is nothing presented to suggest a change in application of GET law to non-profit organizations, the Department respectfully requests that the amendment proposed in this measure be adopted.

Thank you for the opportunity to provide comments.

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SUBJECT: GENERAL EXCISE, Clarify language

BILL NUMBER: HB 966, HD-1

INTRODUCED BY: House Committee on Judiciary

BRIEF SUMMARY: Amends HRS section 237-23(b)(3) to add the phrase “as such” which was inadvertently omitted.

EFFECTIVE DATE: Retroactive to tax years beginning after December 31, 2011

STAFF COMMENTS: This is an administration measure submitted by the department of taxation TAX-03 (15). It appears that when Act 184, SLH 2012, amended HRS section 237-23 to add potable water companies to the list of general excise tax exempt organizations, the phrase “as such” was omitted inadvertently. That phrase is important because *In re The Queen’s Medical Center*, 66 Haw. 318, 661 P.2d 1201 (1983), held that it significantly limited the exemption given to hospitals, infirmaries, and sanitararia.

Given the circumstances, this bill is a technical fix to a prior act so the retroactive effective date is appropriate.

Digested 3/3/15