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SUBJECT: GENERAL EXCISE, Exempt sale of wind resistive devices

BILL NUMBER: HB 643

INTRODUCED BY: Say and 1 Democrat

BRIEF SUMMARY: Adds a new section to HRS chapter 237 to exempt from the general excise tax, the gross proceeds arising from the sale and installation of a wind resistive device installed between 1/1/16 and 12/31/17. This exemption shall take effect beginning on 1/1/16 and expire on 12/31/17.

Requires the department of commerce and consumer affairs to certify whether the wind resistive device meets the requirements to qualify for the exemption.

Defines “wind resistive devices” as devices and techniques that increase a building’s or structure’s resistance to damage from wind forces. The bill enumerates five nonexclusive examples.

EFFECTIVE DATE: July 1, 2015; applicable to gross income received on or after January 1, 2016

STAFF COMMENTS: It should be remembered that the general excise tax is a tax imposed for the privilege of doing business in Hawaii. The tax is measured against the gross proceeds received by a business as a result of providing goods or services to a customer. While this measure proposes to exempt the sale of wind assistive devices from the general excise tax, it would grant a tax preference for those selling such devices while other taxpayers would remain subject to the tax. Generally tax relief is granted to alleviate an undue burden on the taxpayer based on that taxpayer’s ability to pay the tax. This proposed exemption would grant relief to taxpayers without regard to their ability to pay the tax.

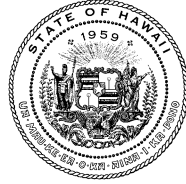
We need to keep in mind that the general excise tax is imposed upon the seller, not the end user. We would like to think that the savings generated by the exemption would be passed on to the end user, but the actual amount passed on, if any, would depend on economics.

In any event, exemptions like this erode the tax base which runs counter to good tax policy. Even the National Conference on State Legislatures cautions that: “Tax deductions, credits and exemptions shift tax burdens from a favored set of taxpayers to less favored taxpayers.”

Digested 2/6/15

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MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

LATE

To: The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Consumer Protection & Commerce

Date: Monday, February 9, 2015
Time: 2:30 P.M.
Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 643, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 643 and provides the following comments for your consideration.

H.B. 643 creates a general excise tax (GET) exemption for amounts arising from the sale and installation of a "wind restrictive device". The bill defines "wind restrictive devices" as "devices and techniques that increase a building's or structure's resistance to damage from wind forces." The bill requires the Department of Commerce and Consumer Affairs (DCCA) to certify whether a wind restrictive device meets the definitional requirement. The bill has an effective date of July 1, 2015.

First, the Department notes that the bill is ambiguous as to whether the January 1, 2016 to December 31, 2017 timeframe applies to when gross proceeds are received (as stated on page 2, lines 15-17), as opposed to when the wind restrictive device is installed (as stated on page 1, lines 5-9). Accordingly, the Department suggests that subsection (a) on page 1, lines 5-9 is amended to clarify that the exemption applies to gross proceeds received between January 1, 2016 and December 31, 2017.

Second, the Department notes that the definition of "wind resistive device" is very broad. The phrase "increase a building's or structure's resistance to damage from wind forces" may be interpreted to include anything that will provide resistance to even negligible wind forces. Therefore, the Department recommends defining terms such as "increase", "resistance", and "wind forces" so that the Department can determine the amount of gross proceeds eligible for the exemption. Because the DCCA is tasked with certifying whether wind resistive devices meet the definitional requirement, the Department defers to the DCCA on this issue.

Thank you for the opportunity to provide comments.