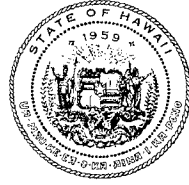


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SENATE JOINT COMMITTEE ON INTERGOVERNMENTAL AFFAIRS
AND TRANSPORTATION & GOVERNMENT OPERATIONS

TESTIMONY ON SB 2814
RELATING TO TAXATION

February 7, 2006

The purpose of this bill is to authorize a county electing to exercise the authority to adopt a county surcharge on the state general excise tax to collect the county's tax and to make other clarifying amendments.

The Department of Taxation ("Department") **strongly supports** this bill and requests this committee pass this measure.

The bill accomplishes the following:

1. **County Administration.** In order to avoid the governor's veto of Act 247 last legislative session, an agreement was reached among the Governor, the Senate President, and the Speaker of the House, that legislation would be introduced this legislative session to provide that the counties would administer the county surcharge. In conformance with "home rule" principles, a local government that imposes and benefits from a tax should also be responsible for the administration and collection of that tax. This bill effectuates the agreement reached regarding Act 247 and provides for county administration and collection of the county surcharge. *Please see attached agreement.*

However, one issue that may need to be addressed concerns who should determine rules regarding apportionment and sourcing of the tax because this affects all of the counties. For example, residents of counties who have not enacted a surcharge could be affected by the surcharge enacted by another county depending upon how the rules are written that determine what transactions are subject to the county surcharge.

2. **Deletes Special Effective Date for Written Contracts.** Act 247 provided that gross proceeds or gross income from written contracts entered into before June 30, 2006 that did not provide for the passing-on of an increased rate of tax would not be subject to the county surcharge. This bill would impose the

county surcharge on gross proceeds from all written contracts in effect at the time that the county surcharge becomes effective, regardless of whether the contract allows for the passing-on of any tax or tax increase. The change is needed to close the significant loophole that would allow lessors with leases that prevent the lessor from passing-on the tax increase to escape taxation. The county should not lose money because of inartful drafting of leases or other written contracts.

3. **Subjects Out-of-State Contractors to County Surcharge.** A correction is needed to HRS section 238-2.6 to list contracting as subject to the county surcharge on the use tax. Without this change, in-state contractors will be subject to a tax rate of 4.5%, while non-O'ahu contractors (*e.g.*, a Tokyo, Hong Kong or San Francisco architect) will be subject to a tax rate of only 4% because the county surcharge will not apply to the use tax on contracting services.
4. **Imposition of Penalties on County Employees for Unauthorized Disclosure of Tax Information.** The bill imposes the same penalties on county officers or employees for unauthorized disclosure of tax information as are imposed on state officers and employees. This change is necessary to allow the state to share tax information with the counties so that counties are subject to the same safeguards as the State in protecting confidential state tax information.
5. **Reduction in Penalty for Failure to File or Correctly Report the County Surcharge.** Act 247 imposed a penalty of 10% of the county surcharge and tax due for the failure to file the schedule of, or the failure to correctly report, the assignment of the tax to the proper county required on the schedule. Typically, state tax penalties are 5%. To level the playing field so that a taxpayer does not pay the county surcharge before paying the state general excise tax to avoid the higher penalty due the county, the penalty has been lowered to 5%, the same as the state penalties.
6. **Technical Amendment.** The Department requests that the bill be amended to include in HRS Chapter 231, regarding the administration of taxes, the definitions provided in sections 8 and 9 of the bill. Accordingly, we suggest that a new section be added to the bill as follows:

"Section 231-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

""Department of taxation" or "department" means the department of taxation or a county department of finance of a county electing to exercise the authority to adopt a county surcharge on state tax,

unless otherwise indicated. A county department of finance may only exercise the powers in this chapter with respect to a county surcharge on state tax."

"Director of taxation" or "director" means the director of the department of taxation or the director of a county department of finance of a county electing to exercise the authority to adopt a county surcharge on state tax, unless otherwise indicated. A director of a county department of finance may only exercise the powers in this chapter with respect to a county surcharge on state tax."

The bill is effective upon approval.

On behalf of the Department, I respectfully request the committee adopt this measure to fulfill the agreement reached by the Governor, the Senate President, the Speaker of the House, and the Mayor of the City and County of Honolulu and to make technical corrections to Act 247.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kurt Kawafuchi', written in a cursive style.

KURT KAWAFUCHI
Director of Taxation

COPY



HAWAII STATE LEGISLATURE
STATE CAPITOL
HONOLULU, HAWAII 96813

July 11, 2005

The Honorable Linda Lingle
Governor
State of Hawaii
State Capitol, 5th Floor
Honolulu, Hawaii 96813

Dear Governor Lingle:

As we stated in our letter to you of July 8, 2005, we strongly believe that the time is right to take responsible and decisive action to plan for our transportation infrastructure.

Based on this shared goal, it is important that core issues you have raised in HB 1309 be addressed clearly and quickly. To this end, we pledge to introduce legislation in the 2006 session to revise those sections of HB 1309 such that the counties who vote to impose a 0.5% surcharge on the GET tax, will be fully responsible for the assessment and collection of this tax. We will also propose language to address several technical flaws in the current bill.

Further, we will work with the relevant committees in the House and Senate to schedule hearings early in the session on the amendments to this HB 1309. Additionally, we will publicly support and work with our respective members to seek their support and subsequent vote for prompt passage of the amendments.

In turn we ask that the counties who intend to impose the surcharge take immediate and deliberate steps to develop the collection and disbursement systems that will need to be in place by January 1, 2007. And we ask that you pledge the resources of the State Administration to work with these counties in the implementation process.

Through these mutual efforts the longstanding transportation needs of our State can be effectively addressed.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert Bunda".

Senator Robert Bunda
President of the Senate

A handwritten signature in black ink, appearing to read "Calvin Say".

Representative Calvin Say
Speaker of the House