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To: The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Senate Committee on Ways and Means

Date: Monday, February 11, 2019  
Time: 10:00 A.M.  
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: S.B. 1433, Relating to Taxation

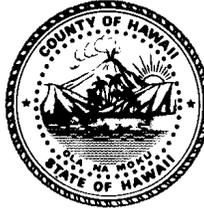
The Department of Taxation (Department) offers the following comments on S.B. 1433 for the Committee's consideration.

S.B. 1433 extends the deadline for a county to adopt an ordinance to establish a general excise tax surcharge (CS) from March 31, 2019 to March 31, 2021. The bill is effective upon its approval. To date, Honolulu, Kauai, and Hawaii Counties have adopted a CS. Thus, this measure would provide Maui County with the extension.

S.B. 1433 provides that if the county ordinance is adopted on or after March 31, 2019, but prior to March 31, 2021, the imposition and collection of the CS will begin January 1, 2022. Thus, the Department is able to administer the measure as currently written because the measure provides the Department a minimum of nine months to prepare for the new CS.

Thank you for the opportunity to provide comments.

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**Chair:** Committee on Agriculture,  
Water, Energy, and Environmental  
Management

**Vice Chair:** Committee on Finance

**HERBERT M. "TIM" RICHARDS, III**  
**HAWAI'I COUNTY COUNCIL - DISTRICT 9**  
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February 8, 2019

**Senate Committee on Ways and Means**

Honorable Senator Donovan M. Dela Cruz, Chair

Honorable Senator Gilbert S.C. Keith-Agaran, Vice Chair

**Submission via online testimony**

RE: **Support of SB 1433**

Hearing Date/Time: February 11, 2019 at 10:00 a.m.

Dear Senators:

As the Chair of the Committee on Agriculture, Water, Energy, and Environmental Management and Vice Chair for the Committee on Finance for the Hawai'i County Council, I thank you for the opportunity to submit **testimony in SUPPORT of SB 1433**. Extending the period in which a county may adopt an ordinance to establish a surcharge on state tax is very critical for those counties who may need additional time to identify their needs and expectations for the near future.

Please feel free to contact me should you need to discuss my position and knowledge of this matter further.

Sincerely,

HERBERT M. "TIM" RICHARDS, III  
Hawai'i County Council, District 9

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Extends Period for Counties to Opt-In on GET Surcharge

BILL NUMBER: SB 1433

INTRODUCED BY: ENGLISH, BAKER, S. CHANG, INOUE, KEITH-AGARAN, NISHIHARA, K. RHOADS, RUDERMAN, Gabbard, Harimoto, Ihara, Moriwaki, Shimabukuro

EXECUTIVE SUMMARY: Extends by two years the period that a county may adopt a surcharge on state GET.

SYNOPSIS: Amends section 46-16.8(c), HRS, to give all counties the option to adopt a general excise and use tax surcharge for an additional three months, to June 30, 2018.

In addition, for counties with population of 500,000 or less, no less than 60% of the surcharges received are to be used for transportation purposes. Prohibits more than 2% of the surcharge money from being used on any roadway used by the general public.

Makes conforming amendments in sections 237-8.6 and 238-2.6, HRS.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This measure concerns the 0.5% surcharge on the general excise tax that is currently imposed in the City and County of Honolulu, sometimes known as the “rail surcharge.” As originally enacted in 2006, the rail surcharge was scheduled to sunset on December 31, 2022. The surcharge authority was extended to December 31, 2027, by Act 240, Session Laws of Hawaii 2015, and the City & County of Honolulu extended the surcharge by Ordinance 16-1. To date, Kauai County has adopted a 0.5% surcharge and Hawaii County has opted for 0.25%. Maui County has not adopted the surcharge (yet).

How can counties raise money to balance their budgets?

One source of funding that is available to any county is the real property tax. Article VIII, section 3 of the Hawaii Constitution exclusively and directly gives power to the counties to impose real property tax. *State ex rel. Anzai v. City and County of Honolulu*, 99 Hawai‘i 508, 57 P.3d 433 (2002), established that for at least the past twenty years, any county is “free to exercise its exclusive authority to increase, diminish, enact, or repeal any exemptions involving real property taxes without interference by the legislature.” *Id.*, 57 P.3d at 446. The real property tax is imposed by county ordinance, it is imposed on those under the jurisdiction of the county and not of the state, and the money raised belongs to the county imposing it.

Another source of funding is state tax; specifically, state tax that is shared with the counties. Article VIII, section 3 of the Hawaii Constitution provides:

The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions.

Where the funds raised are by state statute imposing a state tax, the money raised is the State's money. The Hawaii Constitution, in the language quoted above, explicitly empowers the Legislature to apportion that money to one or more political subdivisions however the Legislature sees fit. Money can be raised for general revenue purposes, as is the case with most taxes including the Transient Accommodations Tax. That money can also be directed to special funds used for specific purposes, as is the case with the fuel tax that feeds the Highway Fund. Sometimes the tax money raised is directed to a multitude of uses, as with the TAT and the Conveyance Tax. It has been held that such funds can be disbursed to one or more counties through grants in aid, and that the State can enact conditions upon the power to disburse or give discretion to the Executive Branch to withhold disbursement. *Fasi v. Burns*, 56 Hawai'i 615, 618-19, 546 P.2d 1122, 1125 (1976).

The county surcharge on the GET, which is the subject of this bill, is imposed by county ordinance and not state law, although state statute delegates the power to tax. So far Oahu, Hawaii, and Kauai have adopted ordinances imposing the surcharge.

Digested 2/7/2019