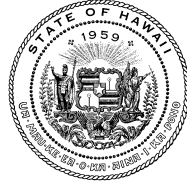


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MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
DEPUTY DIRECTOR

To: The Honorable Jill N. Tokuda, Chair
and Members of the Senate Committee on Ways and Means

Date: February 11, 2016

Time: 9:30 A.M.

Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2131, S.D. 1, Relating to Energy.

The Department of Taxation (Department) appreciates the intent of S.B. 2131, S.D. 1, and offers the following comments for your consideration.

S.B. 2131, S.D. 1, restores amendments previously made to sections 243-1 and 243-4(a), Hawaii Revised Statutes (HRS), which were repealed on December 31, 2015. The measure is effective upon approval and Section 2 of S.B. 2131, S.D. 1, has a retroactive effective date of January 1, 2016.

Section 1 of this measure adds a definition of "power generating facility" to section 243-1, HRS. Section 2 amends section 243-4, HRS, to establish the rate for Naptha fuel used for a power generating facility at 2 cents per gallon.

The Department notes that it is able to administer the changes set forth in S.B. 2131, S.D. 1. However, the retroactive effective date applicable to Section 2 of the bill creates administrative difficulties, as taxpayers will be required to file amended returns for the period between January 1, 2016 and the date this measure is approved. To ease administration of this measure and avoid confusion for taxpayers, the Department requests that the effective date be changed to July 1, 2016.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, Rate on Naphtha Used for Power Generation

BILL NUMBER: SB 2131 SD1

INTRODUCED BY: Senate Committee on Transportation and Energy

EXECUTIVE SUMMARY: This bill retroactively reinstates the 2 cent per gallon tax on naphtha sold for use in a power-generating facility. The measure highlights a much larger problem: why are we applying a fuel tax to uses of fuel that have no relation to highway use?

BRIEF SUMMARY: Amends HRS section 243-4 to add a 2 cent per gallon tax on naphtha sold for use in a power-generating facility. Amends HRS section 243-1 to add a definition for “power-generating facility” as any electricity-generating facility that requires a permit issued under the Federal Clean Air Act (42 U.S.C. 7401 through 7671q), the Hawaii air pollution control law (HRS chapter 342B), or both.

EFFECTIVE DATE: Retroactive to January 1, 2016.

STAFF COMMENTS: Act 103, SLH 2007, provided that naphtha used in a power generating facility shall be taxed at the rate of one cent per gallon until December 31, 2009. Act 198, SLH 2009, increased the tax to 2 cents per gallon effective and extended the sunset date of Act 103, SLH 2007, to 12/31/12. Act 188, SLH 2012, further extended the sunset date to 12/31/15. Because the sunset date has passed, naphtha used in a power-generating facility is now subject to fuel tax at the much higher rate for fuels other than diesel oil or aviation fuel. This measure would reinstate the lower rate and would make the lower rate permanent.

It should be remembered that receipts of the fuel tax are realizations of the state’s transportation funds, largely the state highway fund. Because this naphtha is used to generate electricity and does not power a vehicle utilizing the highway infrastructure, such fuel should not be subject to the state fuel tax. The same can and should be said about tax imposed on bunker fuel that is burned on most islands to generate electricity. Thanks to our legislators, the cost of the additional tax on fuel used to generate electricity has contributed to rising energy costs for all taxpayers including the government. Indeed, because energy costs are a necessity for most, the burden of this tax is highly regressive, meaning that it falls disproportionately on those who are least able to afford it.

If we as a policy matter are going to tax bunker fuel or LNG that is used to generate electricity, then why are we sparing naphtha? If we are going to spare naphtha, then can we also have relief for the tax on other fuels used in a power-generating facility?

Digested 2/9/2016



Testimony Before the Senate Committee on
Ways and Means

By Jim Kelly
Member Services & Communications Manager
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1, Lihue, Hawaii, 96766-2000

Thursday, February 11, 2016, 9:30 a.m.
Conference Room # 211

Senate Bill No. 2131, SD1– Relating to Energy

To the Honorable Jill N. Tokuda, Chair; Donavan M. Dela Cruz, Vice-Chair, and Members of the Committee:

Thank you for the opportunity to testify on this measure. I am Jim Kelly, Member Service and Communications Manager at Kauai Island Utility Cooperative (“KIUC”). KIUC stands in strong support of Senate Bill No. 2131, SD1.

KIUC continues to believe that the primary purpose of the fuel tax is to provide funds for highway construction and maintenance (or in the case of aviation fuels, funds for airport construction and maintenance). This has been accomplished over the years by imposing the tax on fuel sold for on-highway use. KIUC believes that the intent of the law is to exclude naphtha sold and used for power generation purposes from the State vehicle transportation and respective County fuel taxes.

Senate Bill No. 2131, SD1 clarifies this interpretation.

KIUC uses approximately 15 million gallons of naphtha annually in the generation of electricity, which represents approximately 50% of KIUC’s yearly electrical energy production.

This would result in an additional \$4.4 million tax expense that would increase KIUC’s cost of purchased fuel and raise the average residential electric bill by 7% or about \$10 a month.

As you know, KIUC is a member-owned electric cooperative. Unlike for-profit corporations (i.e. investor owned utilities), cooperatives are not-for-profit and member-run. Without the need for profits and shareholder dividends, cooperatives are free to invest what would normally be profits (cooperatives call them "margins") in the business by allocating margins to the cooperative's members as capital credit contributions, or, eventually, by making patronage capital refunds to its members; and otherwise generally using the monies collected for the general welfare of the cooperative members. Any additional expenses would be passed through to our members and reduce KIUC margins that would impact patronage capital refunds back to our members.

Thank you again for the opportunity to inform you of KIUC's position on this matter.