

DAVID Y. IGE  
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To: The Honorable Chris Lee, Chair  
The Honorable Lorraine R. Inouye, Vice Chair  
and Members of the Senate Committee on Transportation

From: Isaac W. Choy, Director  
Department of Taxation

Date: Thursday, February 10, 2022  
Time: 3:00 P.M.  
Place: Via Video Conference, State Capitol

**Re: S.B. 2475, Relating to Taxation**

The Department of Taxation (Department) has serious concerns about S.B. 2475 and offers the following comments for your consideration.

S.B. 2475 amends the general excise tax (GET) exemption for certain activities related to shipping. Specifically, the bill adds "stevedoring services and related services," as defined in Hawaii Revised Statutes (HRS) section 382-1, to the exemption for loading or unloading cargo from ships at HRS section 237-24.3(3). H.B. 1627 also adds wharfage and demurrage imposed under HRS chapter 266 to the exemption. The bill is effective July 1, 2022.

First, the Department notes that although this measure's stated purpose is a clarification of law, it actually makes the exemption more ambiguous. Adding the undefined term "related services" will drastically expand the current exemption. If the Legislature's intent is to expand the exemption, then the additional exempted activities must be specified in the bill. As currently written, this proposed amendment will cause more confusion and likely result in an unintended revenue loss for the State. Therefore, the Department strongly suggests deleting "and related services" from the proposed amendment on page 5, line 9.

Second, the Department notes that the added exemption of wharfage and demurrage is unclear. As currently written, the exemption would cover amounts paid by shipping companies to the Department of Transportation rather than amounts received by shipping companies. Because GET is tax based on receipts, the Department suggests amending this provision that so that it is exempting specific income, not payments.

Finally, if this measure is moved forward, the Department requests the effective date of any changes be made effective on January 1, 2023. Thank you for the opportunity to provide testimony on this measure.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

GLORIA CHANG  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
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**STATE OF HAWAII**  
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ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEE ON TRANSPORTATION  
ON  
SENATE BILL NO. 2475

**February 10, 2022**  
**3:00 p.m.**  
**Via Videoconference**

RELATING TO TAXATION

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 2475 amends Section 237-24.3, HRS, to clarify that stevedoring and related services, as defined in Section 382-1, HRS, and wharfage and demurrage imposed under Chapter 266, HRS, are exempt from State general excise tax law.

B&F notes that the federal American Rescue Plan (ARP) Act restricts states from using ARP Coronavirus State Fiscal Recovery Funds (CSFRF) to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the CSFRF have been spent. If a state cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than the CSFRF, such as:

- By enacting policies to raise other sources of revenue;
- By cutting spending; or
- Through higher revenue due to economic growth.

If the CSFRF provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the U.S. Treasury.

The U.S. Department of Treasury has issued rules governing how this restriction is to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with this ARP restriction.

Thank you for your consideration of our comments.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

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SUBJECT: GET, Exemptions; Shipping Activities; Stevedoring; Wharfage; Demurrage

BILL NUMBER: SB 2475, HB 1627

INTRODUCED BY: SB by DELA CRUZ, CHANG, DECOITE, KEITH-AGARAN, LEE, SAN BUENAVENTURA, Baker; HB by SAIKI

EXECUTIVE SUMMARY: Clarifies that amounts received or accrued for stevedoring services and related services, wharfage, and demurrage are exempt under the general excise tax law.

SYNOPSIS: Amends section 237-24.3(3), HRS, to state explicitly that stevedoring services and related services defined in section 382-1, HRS, are eligible for the GET exemption for the loading or unloading of cargo from ships, barges, vessels, or aircraft.

Also states that wharfage and demurrage imposed under chapter 266, HRS, that is paid to the Department of Transportation would be eligible for the same GET exemption.

EFFECTIVE DATE: July 1, 2022.

STAFF COMMENTS: GET is now applied on transportation industries in an uneven way.

First, we can't tax air transportation. There are federal laws prohibiting us from applying a gross receipts tax (like our General Excise Tax) to transportation charges. Back in the late 70's and early 80's, we tried to tax air carriers by imposing our Public Service Company Tax, which applies to public utilities in lieu of GET. We were very creative. The Hawaii Supreme Court held, and our state told the U.S. Supreme Court, that our tax was actually a tax on real and personal property (which was allowed), but because it was so difficult to value the kinds of property that utilities had, like airspace rights, rights-of-way for power and cable lines, or easements for water pipes, the tax used the gross income of an airline as a proxy for valuing its property.

The U.S. Supreme Court didn't buy the argument. "It's still a tax measured by gross receipts, which is a gross receipts tax under federal law, and we get to interpret that federal law," they said, in effect, in a unanimous 8-0 decision in 1983.

Despite this ruling, zealous tax auditors still tried to go after helicopter tour companies and those companies pushed back, leading the Department of Taxation to rule, in Tax Information Release 89-10, that those gross receipts were immune both from the Public Service Company Tax and the GET.

There are also federal restrictions on taxing transportation by water. Federal law prohibits anyone other than the federal government to tax a vessel, its passengers, or its crew while the vessel is operating on navigable waters. In 2010, our Intermediate Court of Appeals ruled that the GET as applied to charges for chartering a sport fishing boat was valid because it was a tax

on the business and not on the vessel, passengers, or crew. The court reasoned that the federal law was meant to prohibit fees and taxes on a vessel simply because the vessel sails through a given jurisdiction and didn't mean to affect whether sales or income taxes can apply in general. The Hawaii Supreme Court declined to review the case, as did the U.S. Supreme Court. So, GET can be applied to transportation by water, at least for now.

In the meantime, fine distinctions are already being made. In cases involving UPS and Lynden Air Freight, the Hawaii Supreme Court held that when a shipper pays for a shipment to go from your office to your counterpart on the Mainland, GET can apply only to the transportation by ground between your office and the airport.

In short, the landscape here is filled with complexity and disparities between transportation industries. Are there good reasons why, as a matter of tax policy, we should tax water and ground transportation when air transportation can't be taxed? (Other than, "Because we can.") We're an island state. One of the reasons often given to explain our astronomical cost of living is that goods and people need to be shipped in and out, and that isn't done for free. If the tax is lessened or eliminated, the transportation industries would compete on a more level playing field, residents would feel some relief in the cost of living department (or at least sellers wouldn't be able to use the tax as an excuse), and the government revenues might not go down because fewer costs may lead to more buying, and thus more total revenue subject to GET taxation.

We welcome efforts to lessen the tax burden on transportation or provide clarity to the area.

Digested: 2/8/2022

Testimony of Matson Navigation Company, Inc.  
Support of SB2475  
Before the Committee on Transportation  
February 10, 2022

Dear Chair Lee, Vice Chair Inouye, and Members of the Committee on Transportation,

Matson Navigation Company, Inc. (Matson) supports SB2475, which clarifies and codifies current tax treatment for stevedoring services. We respectfully request that your Committee make technical, nonsubstantive amendments to this measure.

Thank you for providing Matson the opportunity to provide testimony in support.