

JAN 25 2006

A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§237- Amounts not taxable for food. (a) The excise
5 tax assessed under this chapter shall not apply to amounts
6 received for food or food ingredients.

7 (b) The excise tax assessed under this chapter shall apply
8 to food or food ingredients that are furnished, prepared, or
9 served as meals, except:

10 (1) Under a state administered nutrition program for the
11 aged, as provided for in the Older Americans Act (P.L.
12 95-478 Title III); or

13 (2) When provided to senior citizens, disabled persons, or
14 low-income persons by a not-for-profit organization.

15 (c) As used in this section:

16 "Alcoholic beverages" means beverages that are suitable for
17 human consumption and contain one-half of one per cent or more
18 of alcohol by volume.



1 "Dietary supplement" means any product, other than tobacco,
2 intended to supplement the diet that:

3 (1) Contains one or more of the following dietary
4 ingredients:
5 (A) A vitamin;
6 (B) A mineral;
7 (C) An herb or other botanical element;
8 (D) An amino acid; or
9 (E) A dietary substance for use by humans to
10 supplement a person's diet by increasing the
11 total dietary intake; or a concentrate,
12 metabolite, constituent, extract, or combination
13 of any ingredient described in this definition;

14 (2) Is intended for ingestion in tablet, capsule, powder,
15 softgel, gelcap, or liquid form, or if not intended
16 for ingestion in such form, is not represented as
17 conventional food and is not represented for use as a
18 sole item of a meal or of a diet; and

19 (3) Is required to be labeled as a dietary supplement,
20 identifiable by the "supplement facts" box found on
21 the label as required pursuant to 21 C.F.R. section



1 101.36, as amended or renumbered as of January 1,
2 2003.

3 "Food" or "food ingredients" mean substances, whether in
4 liquid, concentrated, solid, frozen, dried, or dehydrated form,
5 that are sold for ingestion or chewing by humans and are
6 consumed for their taste or nutritional value.

7 Food or food ingredients does not include alcoholic
8 beverages, tobacco, prepared food, soft drinks, dietary
9 supplements, or food or food ingredients sold from a vending
10 machine, whether cold or hot; provided that food or food
11 ingredients sold from a vending machine that is subsequently
12 heated shall be subject to this chapter.

13 "Prepared food" means:

14 (1) Food sold in a heated state or heated by the seller;

15 (2) Food sold with eating utensils provided by the seller,
16 including plates, knives, forks, spoons, glasses,
17 cups, napkins, or straws. A plate does not include a

18 container or packaging used to transport the food; or

19 (3) Two or more food ingredients mixed or combined by the
20 seller for sale as a single item, except:

21 (A) Food that is only cut, repackaged, or pasteurized
22 by the seller; or



1 (B) Raw eggs, fish, meat, poultry, or foods
2 containing these raw animal foods requiring
3 cooking by the consumer as recommended by the
4 federal food and drug administration in chapter
5 3, part 401.11 of the Food Code, published by the
6 food and drug administration, as amended or
7 renumbered as of January 1, 2003, to prevent
8 foodborne illness.

9 Prepared food does not include the following food or food
10 ingredients:

- 11 (1) Food sold in an unheated state by weight or volume as
12 a single item; or
13 (2) Bakery items, such as bread, rolls, buns, biscuits,
14 bagels, croissants, pastries, donuts, Danish, cakes,
15 tortes, pies, tarts, muffins, bars, cookies, or
16 tortillas.

17 "Soft drinks" means nonalcoholic beverages that contain
18 natural or artificial sweeteners. Soft drinks do not include
19 beverages that contain:

- 20 (1) Milk or milk products;
21 (2) Soy, rice, or similar milk substitutes; or



1 (3) Greater than fifty per cent vegetable or fruit juice
2 by volume.

3 "Tobacco" means cigarettes, cigars, chewing of pipe
4 tobacco, or any other item that contains tobacco."

5 SECTION 2. Section 237-24.3, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§237-24.3 Additional amounts not taxable.** In addition to
8 the amounts not taxable under section 237-24, this chapter shall
9 not apply to:

10 (1) Amounts received from the loading, transportation, and
11 unloading of agricultural commodities shipped for a
12 producer or produce dealer on one island of this State
13 to a person, firm, or organization on another island
14 of this State. The terms "agricultural commodity",
15 "producer", and "produce dealer" shall be defined in
16 the same manner as they are defined in section 147-1;
17 provided that agricultural commodities need not have
18 been produced in the State;

19 (2) Amounts received from sales of:

20 (A) Intoxicating liquor as the term "liquor" is
21 defined in chapter 244D;

- 1 (B) Cigarettes and tobacco products as defined in
- 2 chapter 245; and
- 3 (C) Agricultural, meat, or fish products;
- 4 to any person or common carrier in interstate or
- 5 foreign commerce, or both, whether ocean-going or air,
- 6 for consumption out-of-state on the shipper's vessels
- 7 or airplanes;
- 8 (3) Amounts received by the manager or board of directors
- 9 of:
- 10 (A) An association of apartment owners of a
- 11 condominium property regime established in
- 12 accordance with chapter 514A; or
- 13 (B) A nonprofit homeowners or community association
- 14 incorporated in accordance with chapter 414D or
- 15 any predecessor thereto and existing pursuant to
- 16 covenants running with the land,
- 17 in reimbursement of sums paid for common expenses;
- 18 (4) Amounts received or accrued from:
- 19 (A) The loading or unloading of cargo from ships,
- 20 barges, vessels, or aircraft, whether or not the
- 21 ships, barges, vessels, or aircraft travel



1 between the State and other states or countries
2 or between the islands of the State;

3 (B) Tugboat services including pilotage fees
4 performed within the State, and the towage of
5 ships, barges, or vessels in and out of state
6 harbors, or from one pier to another; and

7 (C) The transportation of pilots or governmental
8 officials to ships, barges, or vessels offshore;
9 rigging gear; checking freight and similar
10 services; standby charges; and use of moorings
11 and running mooring lines;

12 (5) Amounts received by an employee benefit plan by way of
13 contributions, dividends, interest, and other income;
14 and amounts received by a nonprofit organization or
15 office, as payments for costs and expenses incurred
16 for the administration of an employee benefit plan;
17 provided that this exemption shall not apply to any
18 gross rental income or gross rental proceeds received
19 after June 30, 1994, as income from investments in
20 real property in this State; and provided further that
21 gross rental income or gross rental proceeds from
22 investments in real property received by an employee

1 benefit plan after June 30, 1994, under written
2 contracts executed prior to July 1, 1994, shall not be
3 taxed until the contracts are renegotiated, renewed,
4 or extended, or until after December 31, 1998,
5 whichever is earlier. For the purposes of this
6 paragraph, "employee benefit plan" means any plan as
7 defined in section 1002(3) of title 29 of the United
8 States Code, as amended;

9 ~~[(6) Amounts received for purchases made with United States~~
10 ~~Department of Agriculture food coupons under the~~
11 ~~federal food stamp program, and amounts received for~~
12 ~~purchases made with United States Department of~~
13 ~~Agriculture food vouchers under the Special~~
14 ~~Supplemental Foods Program for Women, Infants and~~
15 ~~Children;~~

16 ~~+(7)]~~ (6) Amounts received by a hospital, infirmary,
17 medical clinic, health care facility, pharmacy, or a
18 practitioner licensed to administer the drug to an
19 individual for selling prescription drugs or
20 prosthetic devices to an individual; provided that
21 this paragraph shall not apply to any amounts received

1 for services provided in selling prescription drugs or
2 prosthetic devices. As used in this paragraph:

3 (A) "Prescription drugs" are those drugs defined
4 under section 328-1 and dispensed by filling or
5 refilling a written or oral prescription by a
6 practitioner licensed under law to administer the
7 drug and sold by a licensed pharmacist under
8 section 328-16 or practitioners licensed to
9 administer drugs; and

10 (B) "Prosthetic device" means any artificial device
11 or appliance, instrument, apparatus, or
12 contrivance, including their components, parts,
13 accessories, and replacements thereof, used to
14 replace a missing or surgically removed part of
15 the human body, which is prescribed by a licensed
16 practitioner of medicine, osteopathy, or podiatry
17 and which is sold by the practitioner or which is
18 dispensed and sold by a dealer of prosthetic
19 devices; provided that "prosthetic device" shall
20 not mean any auditory, ophthalmic, dental, or
21 ocular device or appliance, instrument,
22 apparatus, or contrivance;



1 ~~[(8)]~~ (7) Taxes on transient accommodations imposed by
2 chapter 237D and passed on and collected by operators
3 holding certificates of registration under that
4 chapter;

5 ~~[(9)]~~ (8) Amounts received as dues by an unincorporated
6 merchants association from its membership for
7 advertising media, promotional, and advertising costs
8 for the promotion of the association for the benefit
9 of its members as a whole and not for the benefit of
10 an individual member or group of members less than the
11 entire membership;

12 ~~[(10)]~~ (9) Amounts received by a labor organization for real
13 property leased to:

- 14 (A) A labor organization; or
- 15 (B) A trust fund established by a labor organization
16 for the benefit of its members, families, and
17 dependents for medical or hospital care, pensions
18 on retirement or death of employees,
19 apprenticeship and training, and other membership
20 service programs.

21 As used in this paragraph, "labor organization" means
22 a labor organization exempt from federal income tax



1 under section 501(c)(5) of the Internal Revenue Code,
2 as amended;

3 ~~(11)~~ (10) Amounts received from foreign diplomats and
4 consular officials who are holding cards issued or
5 authorized by the United States Department of State
6 granting them an exemption from state taxes; and

7 ~~(12)~~ (11) Amounts received as rent for the rental or
8 leasing of aircraft or aircraft engines used by the
9 lessees or renters for interstate air transportation
10 of passengers and goods. For purposes of this
11 paragraph, payments made pursuant to a lease shall be
12 considered rent regardless of whether the lease is an
13 operating lease or a financing lease. The definition
14 of "interstate air transportation" is the same as in
15 49 U.S.C. 40102."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on July 1, 2006.

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SB. NO. 2534

Report Title:

General Excise Tax; Exemption; Food

Description:

Provides a general excise tax exemption for food.

