

JAN 25 2006

S.B. NO. 3212

A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

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

1 SECTION 1. The legislature finds that the excise tax on
2 food should be reduced since food is a basic commodity of life.
3 This exemption is similar to the excise tax exemption for
4 prescription drugs.

5 The purpose of this Act is to reduce the general excise tax
6 on food to two per cent.

7 SECTION 2. Section 237-13, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§237-13 Imposition of tax.** There is hereby levied and
10 shall be assessed and collected annually privilege taxes against
11 persons on account of their business and other activities in the
12 State measured by the application of rates against values of
13 products, gross proceeds of sales, or gross income, whichever is
14 specified, as follows:

15 (1) Tax on manufacturers.

16 (A) Upon every person engaging or continuing within
17 the State in the business of manufacturing,
18 including compounding, canning, preserving,



1 packing, printing, publishing, milling,
2 processing, refining, or preparing for sale,
3 profit, or commercial use, either directly or
4 through the activity of others, in whole or in
5 part, any article or articles, substance or
6 substances, commodity or commodities, the amount
7 of the tax to be equal to the value of the
8 articles, substances, or commodities,
9 manufactured, compounded, canned, preserved,
10 packed, printed, milled, processed, refined, or
11 prepared for sale, as shown by the gross proceeds
12 derived from the sale thereof by the manufacturer
13 or person compounding, preparing, or printing
14 them, multiplied by one-half of one per cent.

15 (B) The measure of the tax on manufacturers is the
16 value of the entire product for sale, regardless
17 of the place of sale or the fact that deliveries
18 may be made to points outside the State.

19 (C) If any person liable for the tax on manufacturers
20 ships or transports the person's product, or any
21 part thereof, out of the State, whether in a
22 finished or unfinished condition, or sells the

1 same for delivery to points outside the State
2 (for example, consigned to a mainland purchaser
3 via common carrier f.o.b. Honolulu), the value of
4 the products in the condition or form in which
5 they exist immediately before entering interstate
6 or foreign commerce, determined as hereinafter
7 provided, shall be the basis for the assessment
8 of the tax imposed by this paragraph. This tax
9 shall be due and payable as of the date of entry
10 of the products into interstate or foreign
11 commerce, whether the products are then sold or
12 not. The department shall determine the basis
13 for assessment, as provided by this paragraph, as
14 follows:

- 15 (i) If the products at the time of their entry
16 into interstate or foreign commerce already
17 have been sold, the gross proceeds of sale,
18 less the transportation expenses, if any,
19 incurred in realizing the gross proceeds for
20 transportation from the time of entry of the
21 products into interstate or foreign
22 commerce, including insurance and storage in



1 transit, shall be the measure of the value
2 of the products;
3 (ii) If the products have not been sold at the
4 time of their entry into interstate or
5 foreign commerce, and in cases governed by
6 clause (i) in which the products are sold
7 under circumstances such that the gross
8 proceeds of sale are not indicative of the
9 true value of the products, the value of the
10 products constituting the basis for
11 assessment shall correspond as nearly as
12 possible to the gross proceeds of sales for
13 delivery outside the State, adjusted as
14 provided in clause (i), or if sufficient
15 data are not available, sales in the State,
16 of similar products of like quality and
17 character and in similar quantities, made by
18 the taxpayer (unless not indicative of the
19 true value) or by others. Sales outside the
20 State, adjusted as provided in clause (i),
21 may be considered when they constitute the
22 best available data. The department shall



1 prescribe uniform and equitable rules for
2 ascertaining the values;

3 (iii) At the election of the taxpayer and with the
4 approval of the department, the taxpayer may
5 make the taxpayer's returns under clause (i)
6 even though the products have not been sold
7 at the time of their entry into interstate
8 or foreign commerce; and

9 (iv) In all cases in which products leave the
10 State in an unfinished condition, the basis
11 for assessment shall be adjusted so as to
12 deduct the portion of the value as is
13 attributable to the finishing of the goods
14 outside the State.

15 (2) Tax on business of selling tangible personal property;
16 producing.

17 (A) Upon every person engaging or continuing in the
18 business of selling any tangible personal
19 property whatsoever (not including, however,
20 bonds or other evidence of indebtedness, or
21 stocks), there is likewise hereby levied, and
22 shall be assessed and collected, a tax equivalent

1 to four per cent of the gross proceeds of sales
2 of the business; provided that insofar as certain
3 retailing is taxed by section 237-16, the tax
4 shall be that levied by section 237-16, and in
5 the case of a wholesaler, the tax shall be equal
6 to one-half of one per cent of the gross proceeds
7 of sales of the business; provided that insofar
8 as the sale of tangible personal property is a
9 wholesale sale under section 237-4(a)(8)(B), the
10 sale shall be subject to section 237-13.3. Upon
11 every person engaging or continuing within this
12 State in the business of a producer, the tax
13 shall be equal to one-half of one per cent of the
14 gross proceeds of sales of the business, or the
15 value of the products, for sale, if sold for
16 delivery outside the State or shipped or
17 transported out of the State, and the value of
18 the products shall be determined in the same
19 manner as the value of manufactured products
20 covered in the cases under paragraph (1)(C).

21 (B) Gross proceeds of sales of tangible property in
22 interstate and foreign commerce shall constitute



1 a part of the measure of the tax imposed on
2 persons in the business of selling tangible
3 personal property, to the extent, under the
4 conditions, and in accordance with the provisions
5 of the Constitution of the United States and the
6 Acts of the Congress of the United States which
7 may be now in force or may be hereafter adopted,
8 and whenever there occurs in the State an
9 activity to which, under the Constitution and
10 Acts of Congress, there may be attributed gross
11 proceeds of sales, the gross proceeds shall be so
12 attributed.

13 (C) No manufacturer or producer, engaged in such
14 business in the State and selling the
15 manufacturer's or producer's products for
16 delivery outside of the State (for example,
17 consigned to a mainland purchaser via common
18 carrier f.o.b. Honolulu), shall be required to
19 pay the tax imposed in this chapter for the
20 privilege of so selling the products, and the
21 value or gross proceeds of sales of the products
22 shall be included only in determining the measure



1 of the tax imposed upon the manufacturer or
2 producer.

3 (D) When a manufacturer or producer, engaged in such
4 business in the State, also is engaged in selling
5 the manufacturer's or producer's products in the
6 State at wholesale, retail, or in any other
7 manner, the tax for the privilege of engaging in
8 the business of selling the products in the State
9 shall apply to the manufacturer or producer as
10 well as the tax for the privilege of
11 manufacturing or producing in the State, and the
12 manufacturer or producer shall make the returns
13 of the gross proceeds of the wholesale, retail,
14 or other sales required for the privilege of
15 selling in the State, as well as making the
16 returns of the value or gross proceeds of sales
17 of the products required for the privilege of
18 manufacturing or producing in the State. The
19 manufacturer or producer shall pay the tax
20 imposed in this chapter for the privilege of
21 selling its products in the State, and the value
22 or gross proceeds of sales of the products, thus

1 subjected to tax, may be deducted insofar as
2 duplicated as to the same products by the measure
3 of the tax upon the manufacturer or producer for
4 the privilege of manufacturing or producing in
5 the State; provided that no producer of
6 agricultural products who sells the products to a
7 purchaser who will process the products outside
8 the State shall be required to pay the tax
9 imposed in this chapter for the privilege of
10 producing or selling those products.

11 (E) A taxpayer selling to a federal cost-plus
12 contractor may make the election provided for by
13 paragraph (3) (C), and in that case the tax shall
14 be computed pursuant to the election,
15 notwithstanding this paragraph or paragraph (1)
16 to the contrary.

17 (F) The department, by rule, may require that a
18 seller take from the purchaser of tangible
19 personal property a certificate, in a form
20 prescribed by the department, certifying that the
21 sale is a sale at wholesale; provided that:



1 (i) Any purchaser who furnishes a certificate
2 shall be obligated to pay to the seller,
3 upon demand, the amount of the additional
4 tax that is imposed upon the seller whenever
5 the sale in fact is not at wholesale; and
6 (ii) The absence of a certificate in itself shall
7 give rise to the presumption that the sale
8 is not at wholesale unless the sales of the
9 business are exclusively at wholesale.

10 (3) Tax upon contractors.

11 (A) Upon every person engaging or continuing within
12 the State in the business of contracting, the tax
13 shall be equal to four per cent of the gross
14 income of the business; provided that insofar as
15 the business of contracting is taxed by section
16 237-16, which relates to certain retailing, the
17 tax shall be that levied by section 237-16.

18 (B) In computing the tax levied under this paragraph
19 or section 237-16, there shall be deducted from
20 the gross income of the taxpayer so much thereof
21 as has been included in the measure of the tax

1 levied under subparagraph (A) or section 237-16,
2 on:

3 (i) Another taxpayer who is a contractor, as
4 defined in section 237-6;

5 (ii) A specialty contractor, duly licensed by the
6 department of commerce and consumer affairs
7 pursuant to section 444-9, in respect of the
8 specialty contractor's business; or

9 (iii) A specialty contractor who is not licensed
10 by the department of commerce and consumer
11 affairs pursuant to section 444-9, but who
12 performs contracting activities on federal
13 military installations and nowhere else in
14 this State;

15 provided that any person claiming a deduction
16 under this paragraph shall be required to show in
17 the person's return the name and general excise
18 number of the person paying the tax on the amount
19 deducted by the person.

20 (C) In computing the tax levied under this paragraph
21 against any federal cost-plus contractor, there
22 shall be excluded from the gross income of the

1 contractor so much thereof as fulfills the
2 following requirements:

3 (i) The gross income exempted shall constitute
4 reimbursement of costs incurred for
5 materials, plant, or equipment purchased
6 from a taxpayer licensed under this chapter,
7 not exceeding the gross proceeds of sale of
8 the taxpayer on account of the transaction;
9 and

10 (ii) The taxpayer making the sale shall have
11 certified to the department that the
12 taxpayer is taxable with respect to the
13 gross proceeds of the sale, and that the
14 taxpayer elects to have the tax on gross
15 income computed the same as upon a sale to
16 the state government.

17 (D) A person who, as a business or as a part of a
18 business in which the person is engaged, erects,
19 constructs, or improves any building or
20 structure, of any kind or description, or makes,
21 constructs, or improves any road, street,
22 sidewalk, sewer, or water system, or other



1 improvements on land held by the person (whether
2 held as a leasehold, fee simple, or otherwise),
3 upon the sale or other disposition of the land or
4 improvements, even if the work was not done
5 pursuant to a contract, shall be liable to the
6 same tax as if engaged in the business of
7 contracting, unless the person shows that at the
8 time the person was engaged in making the
9 improvements the person intended, and for the
10 period of at least one year after completion of
11 the building, structure, or other improvements
12 the person continued to intend to hold and not
13 sell or otherwise dispose of the land or
14 improvements. The tax in respect of the
15 improvements shall be measured by the amount of
16 the proceeds of the sale or other disposition
17 that is attributable to the erection,
18 construction, or improvement of such building or
19 structure, or the making, constructing, or
20 improving of the road, street, sidewalk, sewer,
21 or water system, or other improvements. The
22 measure of tax in respect of the improvements



1 shall not exceed the amount which would have been
2 taxable had the work been performed by another,
3 subject as in other cases to the deductions
4 allowed by subparagraph (B). Upon the election
5 of the taxpayer, this paragraph may be applied
6 notwithstanding that the improvements were not
7 made by the taxpayer, or were not made as a
8 business or as a part of a business, or were made
9 with the intention of holding the same. However,
10 this paragraph shall not apply in respect of any
11 proceeds that constitute or are in the nature of
12 rent; all such gross income shall be taxable
13 under paragraph (9); provided that insofar as the
14 business of renting or leasing real property
15 under a lease is taxed under section 237-16.5,
16 the tax shall be levied by section 237-16.5.

17 (4) Tax upon theaters, amusements, radio broadcasting
18 stations, etc.

19 (A) Upon every person engaging or continuing within
20 the State in the business of operating a theater,
21 opera house, moving picture show, vaudeville,
22 amusement park, dance hall, skating rink, radio



1 broadcasting station, or any other place at which
2 amusements are offered to the public, the tax
3 shall be equal to four per cent of the gross
4 income of the business, and in the case of a sale
5 of an amusement at wholesale under section
6 237-4(a)(13), the tax shall be subject to section
7 237-13.3.

8 (B) The department may require that the person
9 rendering an amusement at wholesale take from the
10 licensed seller a certificate, in a form
11 prescribed by the department, certifying that the
12 sale is a sale at wholesale; provided that:

13 (i) Any licensed seller who furnishes a
14 certificate shall be obligated to pay to the
15 person rendering the amusement, upon demand,
16 the amount of additional tax that is imposed
17 upon the seller whenever the sale is not at
18 wholesale; and

19 (ii) The absence of a certificate in itself shall
20 give rise to the presumption that the sale
21 is not at wholesale unless the person

1 rendering the sale is exclusively rendering
2 the amusement at wholesale.

3 (5) Tax upon sales representatives, etc. Upon every
4 person classified as a representative or purchasing
5 agent under section 237-1, engaging or continuing
6 within the State in the business of performing
7 services for another, other than as an employee, there
8 is likewise hereby levied and shall be assessed and
9 collected a tax equal to four per cent of the
10 commissions and other compensation attributable to the
11 services so rendered by the person.

12 (6) Tax on service business.

13 (A) Upon every person engaging or continuing within
14 the State in any service business or calling
15 including professional services not otherwise
16 specifically taxed under this chapter, there is
17 likewise hereby levied and shall be assessed and
18 collected a tax equal to four per cent of the
19 gross income of the business, and in the case of
20 a wholesaler under section 237-4(a)(10), the tax
21 shall be equal to one-half of one per cent of the
22 gross income of the business. Notwithstanding

1 the foregoing, a wholesaler under section
2 237-4(a)(10) shall be subject to section
3 237-13.3.

4 (B) The department may require that the person
5 rendering a service at wholesale take from the
6 licensed seller a certificate, in a form
7 prescribed by the department, certifying that the
8 sale is a sale at wholesale; provided that:

9 (i) Any licensed seller who furnishes a
10 certificate shall be obligated to pay to the
11 person rendering the service, upon demand,
12 the amount of additional tax that is imposed
13 upon the seller whenever the sale is not at
14 wholesale; and

15 (ii) The absence of a certificate in itself shall
16 give rise to the presumption that the sale
17 is not at wholesale unless the person
18 rendering the sale is exclusively rendering
19 services at wholesale.

20 (C) Where any person engaging or continuing within
21 the State in any service business or calling
22 renders those services upon the order of or at

1 the request of another taxpayer who is engaged in
2 the service business and who, in fact, acts as or
3 acts in the nature of an intermediary between the
4 person rendering those services and the ultimate
5 recipient of the benefits of those services, so
6 much of the gross income as is received by the
7 person rendering the services shall be subjected
8 to the tax at the rate of one-half of one per
9 cent and all of the gross income received by the
10 intermediary from the principal shall be
11 subjected to a tax at the rate of four per cent.
12 Where the taxpayer is subject to both this
13 subparagraph and to the lowest tax rate under
14 subparagraph (A), the taxpayer shall be taxed
15 under this subparagraph. This subparagraph shall
16 be repealed on January 1, 2006.

17 (D) Where any person is engaged in the business of
18 selling interstate or foreign common carrier
19 telecommunication services within and without the
20 State, other than as a home service provider, the
21 tax shall be imposed on that portion of gross
22 income received by a person from service which is



1 originated or terminated in this State and is
2 charged to a telephone number, customer, or
3 account in this State notwithstanding any other
4 state law (except for the exemption under section
5 237-23(a)(1)) to the contrary. If, under the
6 Constitution and laws of the United States, the
7 entire gross income as determined under this
8 paragraph of a business selling interstate or
9 foreign common carrier telecommunication services
10 cannot be included in the measure of the tax, the
11 gross income shall be apportioned as provided in
12 section 237-21; provided that the apportionment
13 factor and formula shall be the same for all
14 persons providing those services in the State.

15 (E) Where any person is engaged in the business of a
16 home service provider, the tax shall be imposed
17 on the gross income received or derived from
18 providing interstate or foreign mobile
19 telecommunications services to a customer with a
20 place of primary use in this State when such
21 services originate in one state and terminate in
22 another state, territory, or foreign country;



1 provided that all charges for mobile
2 telecommunications services which are billed by
3 or for the home service provider are deemed to be
4 provided by the home service provider at the
5 customer's place of primary use, regardless of
6 where the mobile telecommunications originate,
7 terminate, or pass through; provided further that
8 the income from charges specifically derived from
9 interstate or foreign mobile telecommunications
10 services, as determined by books and records that
11 are kept in the regular course of business by the
12 home service provider in accordance with section
13 239-24, shall be apportioned under any
14 apportionment factor or formula adopted under
15 section 237-13(6)(D). Gross income shall not
16 include:

- 17 (i) Gross receipts from mobile
18 telecommunications services provided to a
19 customer with a place of primary use outside
20 this State;



- 1 (ii) Gross receipts from mobile
- 2 telecommunications services that are subject
- 3 to the tax imposed by chapter 239;
- 4 (iii) Gross receipts from mobile
- 5 telecommunications services taxed under
- 6 section 237-13.8; and
- 7 (iv) Gross receipts of a home service provider
- 8 acting as a serving carrier providing mobile
- 9 telecommunications services to another home
- 10 service provider's customer.

11 For the purposes of this paragraph, "charges for

12 mobile telecommunications services", "customer",

13 "home service provider", "mobile

14 telecommunications services", "place of primary

15 use", and "serving carrier" have the same meaning

16 as in section 239-22.

17 (7) Tax on insurance solicitors and agents. Upon every

18 person engaged as a licensed solicitor, general agent,

19 or subagent pursuant to chapter 431, there is hereby

20 levied and shall be assessed and collected a tax equal

21 to .15 per cent of the commissions due to that

22 activity.

1 (8) Tax on receipts of sugar benefit payments. Upon the
2 amounts received from the United States government by
3 any producer of sugar (or the producer's legal
4 representative or heirs), as defined under and by
5 virtue of the Sugar Act of 1948, as amended, or other
6 Acts of the Congress of the United States relating
7 thereto, there is hereby levied a tax of one-half of
8 one per cent of the gross amount received; provided
9 that the tax levied hereunder on any amount so
10 received and actually disbursed to another by a
11 producer in the form of a benefit payment shall be
12 paid by the person or persons to whom the amount is
13 actually disbursed, and the producer actually making a
14 benefit payment to another shall be entitled to claim
15 on the producer's return a deduction from the gross
16 amount taxable hereunder in the sum of the amount so
17 disbursed. The amounts taxed under this paragraph
18 shall not be taxable under any other paragraph,
19 subsection, or section of this chapter.

20 (9) Tax on food sales. Beginning July 1, 2007, the taxes
21 levied and assessed under this chapter on food shall
22 be two per cent. For purposes of this paragraph,

1 "food" means edible items intended for human
2 consumption.
3 ~~(9)~~ (10) Tax on other business. Upon every person
4 engaging or continuing within the State in any
5 business, trade, activity, occupation, or calling not
6 included in the preceding paragraphs or any other
7 provisions of this chapter, there is likewise hereby
8 levied and shall be assessed and collected, a tax
9 equal to four per cent of the gross income thereof.
10 In addition, the rate prescribed by this paragraph
11 shall apply to a business taxable under one or more of
12 the preceding paragraphs or other provisions of this
13 chapter, as to any gross income thereof not taxed
14 thereunder as gross income or gross proceeds of sales
15 or by taxing an equivalent value of products, unless
16 specifically exempted."

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

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

20

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Report Title:

General Excise Tax, Food, Taxed at 2%

SB. NO. 3212

Description:

Changes the general excise tax rate on food to two per cent.

