

JAN 24 2007

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# 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:



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

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

6       (1) Contains one or more of the following dietary  
7 ingredients:

8       (A) A vitamin;

9       (B) A mineral;

10      (C) An herb or other botanical element;

11      (D) An amino acid; or

12      (E) A dietary substance for use by humans to

13       supplement a person's diet by increasing the

14       total dietary intake; or a concentrate,

15       metabolite, constituent, extract, or combination

16       of any ingredient described in this definition;

17      (2) Is intended for ingestion in tablet, capsule, powder,

18       softgel, gelcap, or liquid form, or if not intended

19       for ingestion in such form, is not represented as

20       conventional food and is not represented for use as a

21       sole item of a meal or of a diet; and



1        (3) Is required to be labeled as a dietary supplement,  
2                    identifiable by the "supplement facts" box found on  
3                    the label as required pursuant to 21 C.F.R. section  
4                    101.36, as amended or renumbered as of January 1,  
5                    2003.

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

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

16        "Prepared food" means:

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

18                    (2) Food sold with eating utensils provided by the seller,  
19                    including plates, knives, forks, spoons, glasses,  
20                    cups, napkins, or straws. A plate does not include a  
21                    container or packaging used to transport the food; or



- 1        (3) Two or more food ingredients mixed or combined by the
- 2        seller for sale as a single item, except:
- 3        (A) Food that is only cut, repackaged, or pasteurized
- 4        by the seller; or
- 5        (B) Raw eggs, fish, meat, poultry, or foods
- 6        containing these raw animal foods requiring
- 7        cooking by the consumer as recommended by the
- 8        federal food and drug administration in chapter
- 9        3, part 401.11 of the Food Code, published by the
- 10       food and drug administration, as amended or
- 11       renumbered as of January 1, 2003, to prevent
- 12       foodborne illness.

13       Prepared food does not include the following food or food  
14 ingredients:

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



1       "Soft drinks" means nonalcoholic beverages that contain  
2 natural or artificial sweeteners. Soft drinks do not include  
3 beverages that contain:

- 4       (1) Milk or milk products;
- 5       (2) Soy, rice, or similar milk substitutes; or
- 6       (3) Greater than fifty per cent vegetable or fruit juice  
7       by volume.

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

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

12       "**§237-24.3 Additional amounts not taxable.** In addition to  
13 the amounts not taxable under section 237-24, this chapter shall  
14 not apply to:

- 15       (1) Amounts received from the loading, transportation, and  
16       unloading of agricultural commodities shipped for a  
17       producer or produce dealer on one island of this State  
18       to a person, firm, or organization on another island  
19       of this State. The terms "agricultural commodity",  
20       "producer", and "produce dealer" shall be defined in  
21       the same manner as they are defined in section 147-1;



1 provided that agricultural commodities need not have  
2 been produced in the State;

3 (2) Amounts received from sales of:

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

6 (B) Cigarettes and tobacco products as defined in  
7 chapter 245; and

8 (C) Agricultural, meat, or fish products;  
9 to any person or common carrier in interstate or  
10 foreign commerce, or both, whether ocean-going or air,  
11 for consumption out-of-state on the shipper's vessels  
12 or airplanes;

13 (3) Amounts received by the manager or board of directors  
14 of:

15 (A) An association of apartment owners of a  
16 condominium property regime established in  
17 accordance with chapter 514A; or

18 (B) A nonprofit homeowners or community association  
19 incorporated in accordance with chapter 414D or  
20 any predecessor thereto and existing pursuant to  
21 covenants running with the land,  
22 in reimbursement of sums paid for common expenses;



- 1           (4)   Amounts received or accrued from:
  - 2                   (A)   The loading or unloading of cargo from ships,
  - 3                               barges, vessels, or aircraft, whether or not the
  - 4                               ships, barges, vessels, or aircraft travel
  - 5                               between the State and other states or countries
  - 6                               or between the islands of the State;
  - 7                   (B)   Tugboat services including pilotage fees
  - 8                               performed within the State, and the towage of
  - 9                               ships, barges, or vessels in and out of state
  - 10                              harbors, or from one pier to another; and
  - 11                  (C)   The transportation of pilots or governmental
  - 12                              officials to ships, barges, or vessels offshore;
  - 13                              rigging gear; checking freight and similar
  - 14                              services; standby charges; and use of moorings
  - 15                              and running mooring lines;
- 16          (5)   Amounts received by an employee benefit plan by way of
- 17                      contributions, dividends, interest, and other income;
- 18                      and amounts received by a nonprofit organization or
- 19                      office, as payments for costs and expenses incurred
- 20                      for the administration of an employee benefit plan;
- 21                      provided that this exemption shall not apply to any
- 22                      gross rental income or gross rental proceeds received



1 after June 30, 1994, as income from investments in  
2 real property in this State; and provided further that  
3 gross rental income or gross rental proceeds from  
4 investments in real property received by an employee  
5 benefit plan after June 30, 1994, under written  
6 contracts executed prior to July 1, 1994, shall not be  
7 taxed until the contracts are renegotiated, renewed,  
8 or extended, or until after December 31, 1998,  
9 whichever is earlier. For the purposes of this  
10 paragraph, "employee benefit plan" means any plan as  
11 defined in section 1002(3) of title 29 of the United  
12 States Code, as amended;

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

20 ~~+(7)]~~ (6) Amounts received by a hospital, infirmary,  
21 medical clinic, health care facility, pharmacy, or a  
22 practitioner licensed to administer the drug to an





1 individual for selling prescription drugs or  
2 prosthetic devices to an individual; provided that  
3 this paragraph shall not apply to any amounts received  
4 for services provided in selling prescription drugs or  
5 prosthetic devices. As used in this paragraph:

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

13 (B) "Prosthetic device" means any artificial device  
14 or appliance, instrument, apparatus, or  
15 contrivance, including their components, parts,  
16 accessories, and replacements thereof, used to  
17 replace a missing or surgically removed part of  
18 the human body, which is prescribed by a licensed  
19 practitioner of medicine, osteopathy, or podiatry  
20 and which is sold by the practitioner or which is  
21 dispensed and sold by a dealer of prosthetic  
22 devices; provided that "prosthetic device" shall



1 not mean any auditory, ophthalmic, dental, or  
2 ocular device or appliance, instrument,  
3 apparatus, or contrivance;

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

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

15 [~~10~~] (9) Amounts received by a labor organization for real  
16 property leased to:

17 (A) A labor organization; or

18 (B) A trust fund established by a labor organization  
19 for the benefit of its members, families, and  
20 dependents for medical or hospital care, pensions  
21 on retirement or death of employees,



1            apprenticeship and training, and other membership  
2            service programs.

3            As used in this paragraph, "labor organization" means  
4            a labor organization exempt from federal income tax  
5            under section 501(c)(5) of the Internal Revenue Code,  
6            as amended;

7        [~~(11)~~] (10) Amounts received from foreign diplomats and  
8            consular officials who are holding cards issued or  
9            authorized by the United States Department of State  
10           granting them an exemption from state taxes; and

11        [~~(12)~~] (11) Amounts received as rent for the rental or  
12            leasing of aircraft or aircraft engines used by the  
13            lessees or renters for interstate air transportation  
14            of passengers and goods. For purposes of this  
15            paragraph, payments made pursuant to a lease shall be  
16            considered rent regardless of whether the lease is an  
17            operating lease or a financing lease. The definition  
18            of "interstate air transportation" is the same as in  
19            49 U.S.C. 40102."

20            SECTION 3. Statutory material to be repealed is bracketed  
21            and stricken. New statutory material is underscored.

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



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INTRODUCED BY:

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**Report Title:**

General Excise Tax; Exemption; Food

**Description:**

Provides a general excise tax exemption for food.

