

JAN 26 2009

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 Code of Federal
4 Regulations section 101.36, as amended or renumbered
5 as of January 1, 2003.

6 "Food" or "food ingredients":

7 (1) Means substances, whether in liquid, concentrated,
8 solid, frozen, dried, or dehydrated form, that are
9 sold for ingestion or chewing by humans and are
10 consumed for their taste or nutritional value.

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

17 "Prepared food":

18 (1) Means:

19 (A) Food sold in a heated state or heated by the
20 seller;

21 (B) Food sold with eating utensils provided by the
22 seller, including plates, knives, forks, spoons,



1 glasses, cups, napkins, or straws. A "plate"
2 does not include a container or packaging used to
3 transport the food; or

4 (C) Two or more food ingredients mixed or combined by
5 the seller for sale as a single item, except:

6 (i) Food that is only cut, repackaged, or
7 pasteurized by the seller; or

8 (ii) Raw eggs, fish, meat, poultry, or foods
9 containing these raw animal foods requiring
10 cooking by the consumer as recommended by
11 the United States Food and Drug
12 Administration in chapter 3, part 401.11 of
13 the Food Code, published by the United
14 States Food and Drug Administration, as
15 amended or renumbered as of January 1, 2003,
16 to prevent foodborne illness.

17 (2) Does not include the following food or food
18 ingredients:

19 (A) Food sold in an unheated state by weight or
20 volume as a single item; or

21 (B) Bakery items, such as bread, rolls, buns,
22 biscuits, bagels, croissants, pastries,



1 doughnuts, Danish pastries, cakes, tortes, pies,
2 tarts, muffins, bars, cookies, or tortillas.

3 "Soft drinks" means nonalcoholic beverages that contain
4 natural or artificial sweeteners. "Soft drinks" does not
5 include beverages that contain:

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

10 "Tobacco" means cigarettes, cigars, chewing or pipe
11 tobacco, or any other item that contains tobacco."

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

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

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



1 the same manner as they are defined in section 147-1;
2 provided that agricultural commodities need not have
3 been produced in the State;

4 (2) Amounts received from sales of:

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

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

9 (C) Agricultural, meat, or fish products;

10 to any person or common carrier in interstate or
11 foreign commerce, or both, whether ocean-going or air,
12 for consumption out-of-state on the shipper's vessels
13 or airplanes;

14 (3) Amounts received by the manager, submanager, or board
15 of directors of:

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

19 (B) A nonprofit homeowners or community association
20 incorporated in accordance with chapter 414D or
21 any predecessor thereto and existing pursuant to
22 covenants running with the land,



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



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

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

21 ~~(7)]~~ (6) Amounts received by a hospital, infirmary,
22 medical clinic, health care facility, pharmacy, or a



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

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

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

22 "prosthetic device" shall not mean any auditory,



1 ophthalmic, dental, or ocular device or appliance,
2 instrument, apparatus, or contrivance;

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

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

14 ~~[(+10)]~~ (9) Amounts received by a labor organization for real
15 property leased to:

16 (A) A labor organization; or

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



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

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

9 ~~(12)~~ (11) Amounts received as rent for the rental or
10 leasing of aircraft or aircraft engines used by the
11 lessees or renters for interstate air transportation
12 of passengers and goods. For purposes of this
13 paragraph, payments made pursuant to a lease shall be
14 considered rent regardless of whether the lease is an
15 operating lease or a financing lease. The definition
16 of "interstate air transportation" is the same as in
17 49 U.S.C. 40102."

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

20 SECTION 4. This Act shall take effect on July 1, 2009;
21 provided that the amendments made to section 237-24.3, Hawaii
22 Revised Statutes, by section 2 of this Act shall not be repealed



1 when section 237-24.3 is reenacted on December 31, 2009, by
2 section 4 of Act 239, Session Laws of Hawaii 2007.

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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.

