

JAN 23 2009

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. 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 a human 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 that form, is not represented as
20 conventional food and is not represented for use as
21 the 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":

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; and

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 does
2 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 federal Food and Drug Administration in
12 chapter 3, part 401.11 of the Food Code,
13 published by the Food and Drug
14 Administration, as amended or renumbered as
15 of January 1, 2003, to prevent foodborne
16 illness.

17 (2) Does not include:

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

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



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

3 "Soft drinks":

4 (1) Means nonalcoholic beverages that contain natural or
5 artificial sweeteners.

6 (2) Does not include beverages that contain:

7 (A) Milk or milk products;

8 (B) Soy, rice, or similar milk substitutes; or

9 (C) Greater than fifty per cent vegetable or fruit
10 juice by volume.

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

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

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

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



1 "producer", and "produce dealer" shall be defined in
2 the same manner as they are defined in section 147-1;
3 provided that agricultural commodities need not have
4 been produced in the State;

5 (2) Amounts received from sales of:

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

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

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

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

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

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

20 (B) A nonprofit homeowners or community association
21 incorporated in accordance with chapter 414D or



1 any predecessor thereto and existing pursuant to
2 covenants running with the land,
3 in reimbursement of sums paid for common expenses;

4 (4) Amounts received or accrued from:

5 (A) The loading or unloading of cargo from ships,
6 barges, vessels, or aircraft, whether or not the
7 ships, barges, vessels, or aircraft travel
8 between the State and other states or countries
9 or between the islands of the State;

10 (B) Tugboat services including pilotage fees
11 performed within the State, and the towage of
12 ships, barges, or vessels in and out of state
13 harbors, or from one pier to another; and

14 (C) The transportation of pilots or governmental
15 officials to ships, barges, or vessels offshore;
16 rigging gear; checking freight and similar
17 services; standby charges; and use of moorings
18 and running mooring lines;

19 (5) Amounts received by an employee benefit plan by way of
20 contributions, dividends, interest, and other income;
21 and amounts received by a nonprofit organization or
22 office, as payments for costs and expenses incurred



1 for the administration of an employee benefit plan;
2 provided that ~~[this]~~:

3 (A) This exemption shall not apply to any gross
4 rental income or gross rental proceeds received
5 after June 30, 1994, as income from investments
6 in real property in this State; and ~~[provided~~
7 ~~further that gross]~~

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

19 ~~[(6) Amounts received for purchases made with United States~~
20 ~~Department of Agriculture food coupons under the~~
21 ~~federal food stamp program, and amounts received for~~
22 ~~purchases made with United States Department of~~



1 ~~Agriculture food vouchers under the Special~~
2 ~~Supplemental Foods Program for Women, Infants and~~
3 ~~Children;~~

4 ~~(7)]~~ (6) Amounts received by a hospital, infirmary,
5 medical clinic, health care facility, pharmacy, or a
6 practitioner licensed to administer the drug to an
7 individual for selling prescription drugs or
8 prosthetic devices to an individual; provided that
9 this paragraph shall not apply to any amounts received
10 for services provided in selling prescription drugs or
11 prosthetic devices. As used in this paragraph:

12 (A) "Prescription drugs" are those drugs defined
13 under section 328-1 and dispensed by filling or
14 refilling a written or oral prescription by a
15 practitioner licensed under law to administer the
16 drug and sold by a licensed pharmacist under
17 section 328-16 or practitioners licensed to
18 administer drugs; and

19 (B) "Prosthetic device" means any artificial device
20 or appliance, instrument, apparatus, or
21 contrivance, including their components, parts,
22 accessories, and replacements thereof, used to



1 replace a missing or surgically removed part of
2 the human body, which is prescribed by a licensed
3 practitioner of medicine, osteopathy, or podiatry
4 and which is sold by the practitioner or which is
5 dispensed and sold by a dealer of prosthetic
6 devices; provided that "prosthetic device" shall
7 not mean any auditory, ophthalmic, dental, or
8 ocular device or appliance, instrument,
9 apparatus, or contrivance;

10 ~~[(8)]~~ (7) Taxes on transient accommodations imposed by
11 chapter 237D and passed on and collected by operators
12 holding certificates of registration under that
13 chapter;

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

21 ~~[(10)]~~ (9) Amounts received by a labor organization for real
22 property leased to:



- 1 (A) A labor organization; or
- 2 (B) A trust fund established by a labor organization
- 3 for the benefit of its members, families, and
- 4 dependents for medical or hospital care, pensions
- 5 on retirement or death of employees,
- 6 apprenticeship and training, and other membership
- 7 service programs.

8 As used in this paragraph, "labor organization" means

9 a labor organization exempt from federal income tax

10 under section 501(c)(5) of the Internal Revenue Code,

11 as amended;

12 [~~(11)~~] (10) Amounts received from foreign diplomats and

13 consular officials who are holding cards issued or

14 authorized by the United States Department of State

15 granting them an exemption from state taxes; and

16 [~~(12)~~] (11) Amounts received as rent for the rental or

17 leasing of aircraft or aircraft engines used by the

18 lessees or renters for interstate air transportation

19 of passengers and goods. For purposes of this

20 paragraph, payments made pursuant to a lease shall be

21 considered rent regardless of whether the lease is an

22 operating lease or a financing lease. The definition



1 of "interstate air transportation" is the same as in
2 49 U.S.C. 40102."

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

5 SECTION 4. This Act shall take effect on January 1, 2010;
6 provided that the amendments made to section 237-24.3, Hawaii
7 Revised Statutes, by section 2 of this Act, shall not be
8 repealed when section 237-24.3, Hawaii Revised Statutes, is
9 repealed and reenacted on December 31, 2009 pursuant to Act 239,
10 Session Laws of Hawaii 2007.

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Report Title:

General Excise Tax; Food; Exemption

Description:

Exempts food from payment of general excise tax.

