

JAN 24 2013

A BILL FOR AN ACT

RELATING TO SECTION 237-24.3, HAWAII REVISED STATUTES.

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

1 SECTION 1. The exemption to Hawaii's General Excise Tax
2 described in Section 237-24.3(2)(C), Hawaii Revised Statutes,
3 was originally designed to incentivize the purchase of food from
4 local agricultural sources, but has not resulted in such an
5 incentive. The exemption was unconstitutional in its original
6 form, as detailed in In re Tax Appeal of Hawaiian Flour Mills,
7 Inc., 76 Haw. 1, 868 P.2d 419 (Hawaii 1994), and was amended in
8 2003 to repair the constitutional fault. However, in its
9 present form, the exemption may apply to any person selling any
10 food to common carriers for consumption out-of-state. Such a
11 broad exemption defeats the exemption's original purpose and
12 provides an unneeded tax break to common carriers and the
13 catering companies that serve those common carriers.

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

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

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1 (1) Amounts received from the loading, transportation, and
2 unloading of agricultural commodities shipped for a
3 producer or produce dealer on one island of this State
4 to a person, firm, or organization on another island
5 of this State. The terms "agricultural commodity",
6 "producer", and "produce dealer" shall be defined in
7 the same manner as they are defined in section 147-1;
8 provided that agricultural commodities need not have
9 been produced in the State; and

10 [~~(2)~~] ~~Amounts received from sales of:~~

11 ~~(A) Intoxicating liquor as the term "liquor" is~~
12 ~~defined in chapter 244D;~~

13 ~~(B) Cigarettes and tobacco products as defined in~~
14 ~~chapter 245; and~~

15 ~~(C) Agricultural, meat, or fish products;~~
16 ~~to any person or common carrier in interstate or~~
17 ~~foreign commerce, or both, whether ocean-going or air,~~
18 ~~for consumption out of state on the shipper's vessels~~
19 ~~or airplanes;~~

20 ~~(3)]~~ (2) Amounts received by the manager, submanager, or
21 board of directors of:

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- 1 (A) An association of owners of a condominium
- 2 property regime established in accordance with
- 3 chapter 514A or 514B; or
- 4 (B) A nonprofit homeowners or community association
- 5 incorporated in accordance with chapter 414D or
- 6 any predecessor thereto and existing pursuant to
- 7 covenants running with the land,
- 8 in reimbursement of sums paid for common expenses;
- 9 [~~4~~] (3) Amounts received or accrued from:
- 10 (A) The loading or unloading of cargo from ships,
- 11 barges, vessels, or aircraft, whether or not the
- 12 ships, barges, vessels, or aircraft travel
- 13 between the State and other states or countries
- 14 or between the islands of the State;
- 15 (B) Tugboat services including pilotage fees
- 16 performed within the State, and the towage of
- 17 ships, barges, or vessels in and out of state
- 18 harbors, or from one pier to another; and
- 19 (C) The transportation of pilots or governmental
- 20 officials to ships, barges, or vessels offshore;
- 21 rigging gear; checking freight and similar
- 22 services; standby charges; and use of moorings
- 23 and running mooring lines;

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1 ~~[(5)]~~ (4) Amounts received by an employee benefit plan by
2 way of contributions, dividends, interest, and other
3 income; and amounts received by a nonprofit
4 organization or office, as payments for costs and
5 expenses incurred for the administration of an
6 employee benefit plan; provided that this exemption
7 shall not apply to any gross rental income or gross
8 rental proceeds received after June 30, 1994, as
9 income from investments in real property in this
10 State; and provided further that gross rental income
11 or gross rental proceeds from investments in real
12 property received by an employee benefit plan after
13 June 30, 1994, under written contracts executed prior
14 to July 1, 1994, shall not be taxed until the
15 contracts are renegotiated, renewed, or extended, or
16 until after December 31, 1998, whichever is earlier.
17 For the purposes of this paragraph, "employee benefit
18 plan" means any plan as defined in section 1002(3) of
19 title 29 of the United States Code, as amended;

20 ~~[(6)]~~ (5) Amounts received for purchases made with United
21 States Department of Agriculture food coupons under
22 the federal food stamp program, and amounts received
23 for purchases made with United States Department of

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

18 "Prosthetic device" means any artificial device or
19 appliance, instrument, apparatus, or contrivance,
20 including their components, parts, accessories, and
21 replacements thereof, used to replace a missing or
22 surgically removed part of the human body, which is
23 prescribed by a licensed practitioner of medicine,

1 osteopathy, or podiatry and which is sold by the
2 practitioner or which is dispensed and sold by a
3 dealer of prosthetic devices; provided that
4 "prosthetic device" shall not mean any auditory,
5 ophthalmic, dental, or ocular device or appliance,
6 instrument, apparatus, or contrivance;

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

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

18 ~~[(10)]~~ (9) Amounts received by a labor organization for
19 real property leased to:

20 (A) A labor organization; or

21 (B) A trust fund established by a labor organization
22 for the benefit of its members, families, and
23 dependents for medical or hospital care, pensions

1 on retirement or death of employees,
2 apprenticeship and training, and other membership
3 service programs.

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

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

12 ~~(12)~~ (11) Amounts received as rent for the rental or
13 leasing of aircraft or aircraft engines used by the
14 lessees or renters for interstate air transportation
15 of passengers and goods. For purposes of this
16 paragraph, payments made pursuant to a lease shall be
17 considered rent regardless of whether the lease is an
18 operating lease or a financing lease. The definition
19 of "interstate air transportation" is the same as in
20 49 U.S.C. section 40102."

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

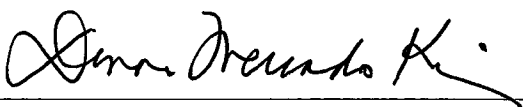
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1 SECTION 4. This Act, upon its approval, shall take effect
2 on July 1, 2013.

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INTRODUCED BY: 

6

BY REQUEST

7

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Report Title:

Section 237-24.3, Hawaii Revised Statutes

Description:

Repeal exemption for liquor, tobacco, and food sold to common carriers.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO SECTION 237-24.3, HAWAII REVISED STATUTES.

PURPOSE: To remove an unneeded tax break for liquor, tobacco, and food products sold to common carriers.

MEANS: Amend section 237-24.3, Hawaii Revised Statutes.

JUSTIFICATION: The General Excise Tax exemptions in section 237-24.3(2) were originally designed to benefit Hawaii agriculture by creating a tax incentive for common carriers to purchase foodstuffs from local agricultural producers. All reference to locally grown agricultural products was removed in 2003, pursuant to the Hawaii Supreme Court's determination that such an exemption was unconstitutional as against the Commerce Clause of the United States Constitution. The present form of this exemption does not incentivize the purchase of agricultural products from local sources, and as such only provides an unneeded tax break for common carriers and catering companies serving those common carriers. Removal of this exemption would generate revenue for the State.

Impact on the public: The department expects the impact on the public to be minimal.

Impact on the department and other agencies: By repealing unnecessary General Excise Tax exemptions, the department will be able to focus on issues dealing with the proper imposition of taxes.

GENERAL FUND: Pending.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2013.