

# **HB503**

## **Testimony**

**NEIL ABERCROMBIE**  
Governor



**RUSSELL S. KOKUBUN**  
Chairperson, Board of Agriculture

**SCOTT E. ENRIGHT**  
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State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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**TESTIMONY OF RUSSELL KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON AGRICULTURE  
March, 12, 2013  
Room 229  
2:45 P.M.**

**HOUSE BILL NO. 503 HD 1  
RELATING TO GENERAL EXCISE TAX**

Chairperson Nishihara and Members of the Committee:

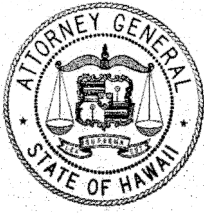
Thank you for this opportunity to provide testimony on HB 503 HD 1. The Department of Agriculture supports efforts to encourage food production for local consumption, but has concerns with this measure. This measure provides a GET exemption on amounts received by farmers for the sale of fresh farm produce intended for consumption within the State.

The Department of Agriculture is concerned with parity, as this measure only supports producers of fresh fruits and vegetables, and not other agricultural commodities such as coffee, poultry, or cattle. Additionally, the Department of Agriculture is concerned with the amount of resources that would be necessary to effectively monitor this exemption to ensure that it is not being abused.

As this measure requires the Department of Taxation to monitor and regulate the GET exemption, the Department of Agriculture defers to the Department of Taxation. The Department of Agriculture would also defer to the Attorney General's Office as to any possible conflicts in regards to the Commerce Clause.

Thank you, again, for the opportunity to testify on this measure.





**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 503, H.D. 1, RELATING TO GENERAL EXCISE TAX.

**BEFORE THE:**

SENATE COMMITTEE ON AGRICULTURE

**DATE:** Tuesday, March 12, 2013

**TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Cynthia M. Johiro, Deputy Attorney General

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Chair Nishihara and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill. The bill may be challenged as violating the Commerce Clause of the United States Constitution because it could be found to discriminate against inter-state commerce.

The stated purpose of this bill is to establish a preference for “fresh farm produce.” The bill defines “fresh farm produce” to mean “fresh fruits and vegetables . . . in the same condition generally as when they are harvested.” For this purpose, this bill creates a general excise tax exemption to favor products that are raised or produced exclusively in the State. Produce from abroad must be harvested at a growing time that will allow for freight transport to state markets whereas local produce may be harvested at a later growing time given the shortened transport distance.

A cardinal rule of Commerce Clause jurisprudence is that “[n]o State, consistent with the Commerce Clause, may ‘impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business.’” Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 268 (1984), *citing* Boston Stock Exchange v. State Tax Comm’n, 429 U.S. 318, 329 (1977).

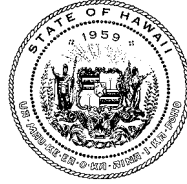
In Bacchus, the United States Supreme Court found that an exemption similar to the exemption proposed in this bill violated the Commerce Clause. At issue in Bacchus was the Hawaii liquor tax, which was originally enacted in 1939 to defray the costs of police and other governmental services. Because the Legislature sought to encourage development of the Hawaiian liquor industry, it enacted an exemption from the liquor tax for okolehao (a brandy

distilled from the root of the ti plant, an indigenous shrub of Hawaii) and for certain fruit wine manufactured in Hawaii. The United States Supreme Court concluded that the exemption violated the Commerce Clause because the exemption had both the purpose and effect of discriminating in favor of local products.

The general excise tax exemption for fresh farm produce, as created by this bill, appears to have similar purpose and effect as the exemption that violated the Commerce Clause in Bacchus. Moreover, the proposed exemption does not apply to products “sold abroad”, which also may discriminate against interstate commerce.

NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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FREDERICK D. PABLO  
DIRECTOR OF TAXATION

JOSHUA WISCH  
DEPUTY DIRECTOR

To: The Honorable Clarence K. Nishihara, Chair  
and Members of the Senate Committee on Agriculture

Date: Tuesday, March 12, 2013

Time: 2:45 p.m.

Place: Conference Room 229, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: H.B. 503, H.D.1 Relating to General Excise Tax

The Department **appreciates the intent** of H.B. 503, H.D.1 and provides the following information and comments for your consideration.

H.B. 503, H.D.1 creates a general excise tax exemption for amounts received by farmers for the sale of fresh farm produce intended to be consumed in Hawaii. This measure has a defective effective date.

The Department notes that the exemption granted by H.B. 503, H.D.1 will be difficult to administer. As drafted the exemption will apply to both small and large farmers and will apply only to sales of certain produce. With the current definition, the threshold question of which products qualify as fresh farm produce could cause extensive litigation.

Additionally, the exemption only applies to produce intended to be consumed in the state of Hawaii. Enforcement of this provision would require the Department to monitor the intent of the buyer of fresh farm produce, as perceived by the farmer who sells to that buyer. Such an inquiry into the intent of the buyer, who is not even the taxpayer under scrutiny or audit, would be very difficult to define or develop administrative rules for. It would be unfair to assess a farmer for additional taxes based on a misrepresentation made by the seller as to the seller's intent. Predicating one party's eligibility for the exemption based on another party's intent is ripe for abuse and will lead to litigation.

Upon further analysis, the Department believes that the bill as drafted would provide an exemption that goes beyond its original intent. There is no provision in the bill requiring that the

exempted sales be sales by the farmer that actually cultivated the produce. For example, if a supermarket bought a farm it would qualify under the bill's definition of a farmer and could take advantage of the exemption to the extent of all its sales of fresh farm produce. This would allow a supermarket to avoid general excise tax on all its receipts from sales of fresh farm produce, just by buying and operating any farm in Hawaii. The exemption as written creates a very broad application that may go beyond the scope of the original intent of the bill.

The Department is also concerned about the certification requirements of this exemption. The Department does not have the resources or expertise to properly determine the eligibility for the exemption. The Department believes that the Department of Agriculture may be better suited to make eligibility determinations.

The exemption in this measure also raises a constitutional issue. Due to the potential for discriminatory impact on sellers of produce sourced from outside Hawaii, from where it is unlikely a farmer could sell his or her produce here and benefit from the exemption, there is a possibility the exemption runs afoul of United States Supreme Court commerce clause jurisprudence. The Department defers to the Department of the Attorney General for further guidance as to the constitutionality of this measure.

The Department notes that there is no revenue impact in the budget window due to the defective date of 2050; however, if this measure were effective July 1, 2013, the annual revenue loss is estimated to be \$33 million.

Thank you for the opportunity to provide comments.

Taro Security and Purity Task Force  
TESTIMONY

**House Bill HB503 HD1  
RELATING TO GENERAL EXCISE TAX**

HB503 HD1 provides a General Excise Tax exemption on gross income or proceeds received by farmers for the sale of fresh farm produce intended for consumption within the State. The Taro Security and Purity Task Force is a legislative body dedicated in part to encouraging through various means the economic viability of current and upcoming taro farmers in Hawai'i. As fresh farm produce, including raw taro, rises in local demand this bill will help to support the growth of local markets and help small farms especially to stay in business.

HB503 HD1 fits within our stated mission and goals and will provide much needed economic support for taro farmers in particular. The Taro Security and Purity Task Force strongly supports this measure.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark Alapaki Luke', with a stylized flourish at the end.

Mark Alapaki Luke, Chair  
Taro Security and Purity Task Force



**Hawaii Farm Bureau**  
F E D E R A T I O N

2343 Rose Street • Honolulu, Hawaii 96819  
Phone: (808) 848-2074 • Neighbor-Islands: (800) 482-1272  
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[www.hfbf.org](http://www.hfbf.org)

March 12, 2013

HEARING BEFORE THE  
SENATE COMMITTEE ON AGRICULTURE

TESTIMONY ON HB 503, HD1  
RELATING TO GENERAL EXCISE TAX

Room 229  
2:45 PM

Aloha Chair Nishihara, Vice Chair Kouchi, and Members of the Committee:

I am Dean Okimoto, President of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,950 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate, and advance the social, economic and educational interests of our diverse agricultural community.

HFBF supports the intent of HB 503, HD1 in that the measure seeks to lower costs for some locally produced foodstuffs. Generally, HFBF supports any measure that safely reduces the cost of production so that locally produced goods can compete with their mainland counterparts, strengthening our local economy.

HFBF would like to see this concept more broadly applied to include all locally produced agricultural products.

Thank you for this opportunity to provide our opinion on this important matter.



# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempt fresh produce

BILL NUMBER: HB 503, HD-1

INTRODUCED BY: House Committee on Agriculture

BRIEF SUMMARY: Amends HRS section 237-24 to exempt from the general excise tax, the amounts received by farmers for the sale of fresh farm produce that is intended for human consumption within the state; provided that the farmers register with the department of taxation and pay a fee of \$\_\_\_ annually and the department of taxation approves the exemption.

Defines “farmer” and “fresh farm produce” for purposes of the measure.

EFFECTIVE DATE: Gross income or gross proceeds received after December 31, 2050

STAFF COMMENTS: It appears that the general excise tax exemption proposed in the measure is to encourage the farming and purchasing of locally grown produce. It should be remembered that the use of the tax system for such purposes is an inefficient means to accomplish such goals. Exemptions from the excise tax recognize that the imposition of the tax would impose an unusual burden or would otherwise cause the taxpayer to do business in an inefficient manner just to circumvent the tax. Exemptions from the general excise tax are also granted because the entity is a nonprofit or if the tax imposed would have a severe economic impact on the state’s economy. The proposed exemption from the general excise tax meets none of these criteria.

It should be noted that farmers are considered “producers” for the purpose of the general excise tax as the tax assumes that the farmer is selling his produce to a wholesaler or retailer. Inasmuch as those are sales for resale, the tax rate imposed is 0.5%. However, when the farmer’s produce is sold at retail, such as at the farmers’ markets, to customers who will be consuming the produce, that sale is taxed at the 4% rate. Thus, unless the farmer is selling at retail, the burden of the general excise tax is 0.5% or 50 cents on a \$100 sale. Thus, it is not the cost of the tax that adds to the price of locally grown products as much as it is the external factors such as the cost of land, labor, and regulatory compliance. Granting a general excise tax exemption to the farmer will not significantly reduce the cost of the produce.

Lawmakers need to take a good look and see that, on one hand they are scrounging for money attempting to raise new funds with everything from user fees to taxes on specific groups of people and, on the other hand, introduce measures like this one. If all of the tax give-aways that have no rational basis were adopted, they would probably bankrupt the treasury. It should be repeated over and over again that the tax system is not designed to provide some sort of lure to attract the taxpayer into doing or acting in some sort of unusual way, but the tax system exists to raise the funds necessary to operate government. Lawmakers may want to propose various tax breaks for their constituents while continuing to squander the tax resources on more public programs and personnel. However, doing so raises the question of whether or not elected officials have any clue about what their fiduciary responsibility is. This is indeed

sad as the voting public has entrusted these elected officials with their hard-earned tax dollars. Instead of attempting to give away the state treasury with such myopic tax breaks, lawmakers need to pay more attention to the overall economic climate of the state which currently suffers from a continuing burden of taxes and regulations. Lawmakers should remember, giving a tax break to one type of activity comes at a cost to all other taxpayers not so favored unless they are willing to effect a commensurate decrease in state spending. So one has to ask what is the unusual burden of taxes borne by this particular industry or activity or is this proposal nothing more than pandering to the fad industry of the day? There is literally no justification for this proposal.

Digested 2/20/13

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [AGL Testimony](#)  
**Cc:** [foodsovereignty@now@gmail.com](mailto:foodsovereignty@now@gmail.com)  
**Subject:** Submitted testimony for HB503 on Mar 12, 2013 14:45PM  
**Date:** Monday, March 11, 2013 5:44:11 PM

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HB503

Submitted on: 3/11/2013

Testimony for AGL on Mar 12, 2013 14:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Mitsuko Hayakawa	Individual	Support	No

Comments: I support tax breaks for small farmers who grow produce for local consumption and support this bill so long as it does not benefit large corporate chemical companies who already get a lot of tax breaks . Mahalo.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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