



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON Committee on AGRICULTURE

LATE

DATE: Thursday, January 31, 2013

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): David M. Louie, Attorney General, or
Damien A. Elefante, Deputy Attorney General

Chair Wooley 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 At issue in *Bacchus* was the Hawaii liquor tax, which was originally enacted in 1939 to defray the costs of police and other governmental services.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.

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SUBJECT: GENERAL EXCISE, Exempt fresh produce

BILL NUMBER: SB 816; HB 503 (Identical)

INTRODUCED BY: SB by Chun Oakland and 3 Democrats; HB by Wooley

LATE

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, 2013

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 1/30/13

onishi1-Jerry

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 7:12 AM
To: AGRtestimony
Cc: Gleafs@hawaiiantel.net
Subject: Submitted testimony for HB503 on Jan 31, 2013 09:00AM



HB503

Submitted on: 1/31/2013

Testimony for AGR on Jan 31, 2013 09:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Marta greenleaf	Individual	Support	No

Comments: As a small farmer I understand how difficult it is to make a living growing food. If this bill is approved, it will be a great step to support local food and small farmers.

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onishi1-Jerry

From: mailinglist@capitol.hawaii.gov
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Cc: michaelbroady@gmail.com
Subject: Submitted testimony for HB503 on Jan 31, 2013 09:00AM

LATE

HB503

Submitted on: 1/30/2013

Testimony for AGR on Jan 31, 2013 09:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Broady Jr.	Individual	Support	Yes

Comments: Aloha, My name is Michael Broady Jr. I have been a resident of O'ahu for my entire life of 24 years. I am currently a student at Leeward Community College, and a small farmer with limited land. My testimony today is addressed to The House Committees on AGR and FIN. For the hearing on Thursday, January 31, 2013, at 09:00 A.M. I support HB 503. I support a GE Tax exemption for local produce intended for local consumption. This is a sensible way to encourage local food production without the costly increase of added bureaucracy.

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NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613



TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON AGRICULTURE
January, 31, 2013
Room 312
9:00 A.M.

HOUSE BILL NO. 503
RELATING TO GENERAL EXCISE TAX

Chairperson Wooley and Members of the Committee:

Thank you for this opportunity to provide testimony on HB 503. 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.

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

