



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

ON THE FOLLOWING MEASURE:

H.B. NO. 747, H.D. 1, RELATING TO AGRICULTURE.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 22, 2013

TIME: 11:00 a.m.

LOCATION: State Capitol, Room 308

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

Chair Luke 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 interstate commerce.

The stated purpose of this bill is to “[e]xempt from the general excise tax amounts received for the slaughter and processing of poultry and livestock.” However, the exemption is only applicable to poultry and livestock “which have been produced in the State.” Based on this preferential language, this bill creates a general excise tax exemption to favor products that are raised or produced exclusively in the State.

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 At issue in Bacchus was the Hawaii liquor tax, which was originally enacted in 1939 to defray the costs of police and other governmental services.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 poultry and livestock “which have been produced in the State”, as created by this bill, appears to have similar purpose and effect as the exemption that violated the Commerce Clause in Bacchus.

Thus, we recommend that the “which have been produced in the State” requirement be deleted from the bill.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Wednesday, February 22, 2013
Time: 11:00 A.M.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. 747, H.D. 1, Relating to Agriculture

The Department appreciates the intent of H.B. 747, H.D. 1, and provides the following information and comments for your consideration.

H.B. 747, H.D. 1, provides an exemption from Hawaii's general excise tax for amounts received from the slaughter and processing of poultry or livestock which have been produced in the State and are to be consumed in the State.

The Department defers to the Department of the Attorney General for an analysis of the constitutionality of this bill, but notes that the holding in Bacchus Imports Ltd. v. Dias, 468 U.S. 263 (1984) indicates that provisions that result in taxation that is discriminatory against products imported from outside the State would likely violate the Commerce Clause of the United States Constitution. This bill's requirement that the poultry or livestock or carcasses or meat thereof be produced within the State may be viewed as discriminatory against interstate commerce.

The Department estimates that this bill would result in a revenue loss of \$1.8 million annually.

Thank you for the opportunity to provide comments.



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
Fax: (808) 848-1921 • Email: info@hfbf.org
www.hfbf.org

February 22, 2013

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 747, HD1
RELATING TO AGRICULTURE

Room 308
11:00 AM

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson 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 interest of our diverse agricultural community

HFBF supports of HB 747, HD1 which exempts from the general excise tax the amounts received for the slaughter and processing of poultry and livestock.

Hawaii's livestock industry faces numerous challenges. These challenges have been a contributing factor to the decline of the state's livestock industry. Sustainability, self-sufficiency and growing agriculture are popular concepts seen in many of the measures before the legislature this year. This Legislative Session, there have been many bills introduced that support of Hawaii's Agricultural Industry.

This year, HFBF has introduced a package of measures addressing the real needs of our farmers and ranchers all associated with increasing farm and ranch viability. These include infrastructure needs, permitting, and regulatory assistance.

This measure will provide a GET exemption for services paid for animal processing. This will help to reduce the operating costs and eventually help reduce the cost of purchasing local livestock products to local consumers..

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

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempt amounts received from the slaughter and processing of poultry or livestock produced and consumed in the state

BILL NUMBER: HB 747, HD-1

INTRODUCED BY: House Committee on Agriculture

BRIEF SUMMARY: Amends HRS section 237-24.3 to exempt from the general excise tax, the amounts received from the slaughter and processing of poultry, poultry carcasses, livestock, livestock carcasses or meat processed and consumed in the state.

EFFECTIVE DATE: July 1, 2050; provided that the amendments made to HRS section 237-24.3 of this act shall not be repealed when that section is reenacted on December 31, 2014, pursuant to Act 239, SLH 2007, as amended by Act 196, SLH 2009, and Act 91, SLH 2010.

STAFF COMMENTS: This measure proposes a general excise tax exemption to encourage the slaughter and processing of poultry and livestock in the state provided that they are also consumed in the state. 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 the general excise tax rate imposed on producing and processing is set at the lesser 0.5% rate. Thus, the exemption being proposed in this bill will have little, if any, impact or consequence. The other point to remember is that the lesser rate does provide economists, planners, and industry officials with important information about the industry, the size, economic impact, and growth statistics. All of this information would be lost should the exemption in this measure be adopted. It should be noted that in 1977 the department of taxation discontinued asking taxpayers to allocate their general excise income by industry and activity. As a result, a year's worth of information was lost which, in turn, handicapped forecasters of the state's economy. Given the lesser rate and the fact that the tax does not appear to be an insurmountable barrier to the success of these select businesses, this proposed exemption cannot be justified.

That said, 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 taxpayers 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.

Finally, from a technical and administrative, if not compliance perspective, the exemption is granted only if the products slaughtered are consumed in the state. There is no reasonable way a slaughterhouse business will know where the products they processed will be consumed - on a Hawaii table or in another country or state or for that matter in transit on a ship or a plane. Thus, this proposal, as drafted, is unworkable.

Digested 2/20/13



Hawaii Cattlemen's Council, Inc.

P O Box 437199 Kamuela HI 96743
Phone (808) 885-5599 • Fax (808) 887-1607
e-mail: HCattlemens@hawaii.rr.com

HOUSE COMMITTEE ON FINANCE
February 22, 2013 11:00 a.m. Room 308

HB 747 HD1 RELATING TO AGRICULTURE

Exempts from the general excise tax amounts received for
the slaughter and processing of poultry and livestock.

Chair Luke and Members of the Committees:

My name is Alan Gottlieb, and I am a rancher and the Government Affairs Chairperson of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council strongly supports HB 747 HD1 which exempts from the General Excise Tax the slaughter and processing of poultry and livestock

This exemption from the G.E.T. will help to reduce the operating costs to these local industries and eventually help reduce the cost of purchasing local meat by local consumers.

Several slaughterhouses and processors around the State are already exempt from the General Excise tax because they are either a coop (which was exempted from G.E.T. years ago) or are in an Enterprise Zone. We estimate that the cost of such an exemption would be less than \$50,000 per year, a very small amount for the State but a big amount for local livestock producers. In the future, if we can help improve the economics of livestock production in Hawaii, we hope to increase our production, and help the State with its agricultural self sufficiency and improve our food security.

The Department of the Attorney General and The Department of Taxation had some concerns with the language of a similar bill in the Senate as they said this violated the Commerce Clause of the U.S. Constitution, but we look forward to working with them to suit the language to your intent.

We appreciate this opportunity to provide testimony on this matter.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 20, 2013 4:04 PM
To: FINTestimony
Cc: cochonlibre@gmail.com
Subject: Submitted testimony for HB747 on Feb 22, 2013 11:00AM

HB747

Submitted on: 2/20/2013

Testimony for FIN on Feb 22, 2013 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Animal Rights Hawai'i	Oppose	No

Comments: We oppose this attempt to make the taxpayers underwrite the foundering livestock industry - every year we see more bills- to pay for feed, for construction, for photo voltaic cells- it is beyond time for those who kill animals for profit and cannot make a profit- to survive or not on their own.

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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Email: communications@uluponoinitiative.com

HOUSE COMMITTEE ON FINANCE
Friday, February 22, 2013 — 11 a.m. — Room 308

Ulupono Initiative Supports HB 747 HD 1, Relating to Agriculture

Chair Luke, Vice Chairs Nishimoto & Johanson and Members of the Committees:

My name is Kyle Datta and I am General Partner of the Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally grown food, increase renewable energy, and reduce/recycle waste. Ulupono invests in projects that have the potential to create large-scale, innovative change.

Ulupono strongly supports **HB 747 HD 1**, which would reduce the cost of processing poultry and livestock by exempting these activities from the General Excise Tax (GET).

The Legislature earlier exempted agricultural commodities from the GET and this bill includes a similar exemption for services paid for animal processing. These actions would support homegrown poultry, livestock and farm-raised seafood. Ulupono is concerned that the GET multiplies along the food supply chain, increasing the price and making local food less competitive than imports. In addition, applying the GET at the processing level penalizes food processing, which is a wholesale transaction.

Ulupono has joined with a diverse group of organizations who have come together for the first time as the Local Food Coalition to support proposals designed to help grow more local food. The coalition brings together farmers, ranchers, livestock producers, investors and other organizations. The idea is that putting more local food on local plates can best be accomplished by bringing people and organizations together who can work on the entire food value chain in a systematic way.

We believe that working together we can help produce more local food, support an economically strong homegrown agriculture industry, which strengthens our community with fresh, healthy food. Thank you for this opportunity to testify.

Respectfully,

Kyle Datta
General Partner

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 21, 2013 9:23 AM
To: FINTestimony
Cc: nomie_34@yahoo.com
Subject: *Submitted testimony for HB747 on Feb 22, 2013 11:00AM*

HB747

Submitted on: 2/21/2013

Testimony for FIN on Feb 22, 2013 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Naomi Egami	Individual	Oppose	No

Comments:

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Sent: Wednesday, February 20, 2013 9:41 PM
To: FINTestimony
Cc: kmt.amos@gmail.com
Subject: *Submitted testimony for HB747 on Feb 22, 2013 11:00AM*

HB747

Submitted on: 2/20/2013

Testimony for FIN on Feb 22, 2013 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Kelsey Amos	Individual	Support	No

Comments:

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To: FINTestimony
Cc: kula96712@gmail.com
Subject: *Submitted testimony for HB747 on Feb 22, 2013 11:00AM*

HB747

Submitted on: 2/21/2013

Testimony for FIN on Feb 22, 2013 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
kirsten garrabrant	Individual	Support	No

Comments:

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To: FINTestimony
Cc: nredfeather@kohalacenter.org
Subject: Submitted testimony for HB747 on Feb 22, 2013 11:00AM

HB747

Submitted on: 2/21/2013

Testimony for FIN on Feb 22, 2013 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Redfeather	Individual	Support	No

Comments: Supporting our livestock industries that are here, and giving support so that new ones can emerge is critical. This will be one incentive.

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