

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: Thursday, March 14, 2013  
Time: 2:00 P.M.  
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. No. 1193, S.D. 1, Relating to Section 237-24.3, Hawaii Revised Statutes

The Department of Taxation (Department) **strongly supports** S.B. 1193, S.D. 1, and offers the following information and comments for your consideration.

S.B. 1193, S.D. 1 repeals the general excise tax (GET) exemption for liquor, cigarettes, tobacco products, and agricultural, meat or fish products sold to common carriers under Hawaii Revised Statutes section 237-24.3(2). This measure has a defective effective date of July 1, 2050.

The intent of the general excise tax exemptions in section 237-24.3(2) was to benefit Hawaii agriculture by creating a tax incentive for common carriers to purchase foodstuffs from local agricultural producers. However, all references to locally grown agricultural products were removed in 2003, pursuant to the Hawaii Supreme Court's determination that such an exemption was unconstitutional as a violation of the Commerce Clause of the United States Constitution.

The Department supports repeal of this exemption because its present form does not serve the original legislative intent to incentivize the purchase of agricultural products from local sources. Instead, this exemption provides a broad industry-wide exemption for all common carriers and catering companies serving those common carriers.

Thank you for the opportunity to provide comments.



# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** GENERAL EXCISE, Repeal exemption sales to common carriers in interstate or foreign commerce

**BILL NUMBER:** SB 1193, SD-1

**INTRODUCED BY:** Senate Committee on Ways and Means

**BRIEF SUMMARY:** Amends HRS section 237-24.3 to repeal the general excise tax exemption for the sales of: (1) liquor; (2) cigarettes and tobacco products; and (3) agricultural, meat, or fish products sold to any person or ocean-going or air common carrier in interstate and/or foreign commerce for consumption out of state on the shipper's vessels or airplanes.

**EFFECTIVE DATE:** July1, 2050

**STAFF COMMENTS:** This is an administration measure submitted by the department of taxation TAX-11 (13). As a result of Act 105, SLH 2011, this general excise tax exemption was suspended on July 1, 2011 until June 30, 2013 due to the state's dire economic condition at that time.

This measure repeals the general excise tax exemption for goods sold to common or foreign carriers, i.e., ships and airplanes engaged in interstate or foreign commerce for consumption outside the state. This exemption was originally adopted to encourage the purchase of locally grown agricultural products like meat, fish, dairy, vegetables and fruit. That law was later challenged as being unconstitutional because it gave preference to locally grown products and was struck down. A subsequent legislature amended the law by taking out the offending provision that the products had to be locally produced.

While it might be argued that the goods are going to be consumed in interstate commerce outside the boundaries of Hawaii and the United States, the sale of the goods nevertheless takes place in the state and, therefore, should be subject to the general excise tax. Inasmuch as the exemption applies to sales of goods to any and all common carriers that may or may not have been produced in Hawaii, there seems little justification for continuing it as it discriminates against sales of similar products that are not being sold to common carriers.

Digested 3/12/13