# 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; HB 962 (Identical)

INTRODUCED BY: SB by Kim by request; HB by Souki by request

BRIEF SUMMARY: Amends HRS section 237-24.3 to repeal the general excise tax exemption for 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, 2013

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 product 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 good 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 1/29/13