

NEIL ABERCROMBIE
Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

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

BEFORE THE HOUSE COMMITTEE ON FINANCE
THURSDAY, FEBRUARY 20, 2014
11:00 A.M
CONFERENCE ROOM 308

HOUSE BILL NO. 1929 H.D.1
RELATING TO FARMERS MARKETS

Chairperson Luke and Members of the Committee,

Thank you for the opportunity to testify on House Bill 1929 H.D.1. This bill would exempt from taxes all of the gross proceeds or income arising from the sale of produce at a farmers' market that is intended for human consumption within the State. This exemption would not apply to sales of produce intended for human consumption outside of the State.

The Hawaii Department of Agriculture (HDOA) supports the intent of the bill with the comment that the enforcement of this bill would burden the farmers and vendors at the farmers' markets with having to determine where the purchased produce would be consumed. Whether to exempt a sale from taxes would likely need to be supported with documentation from the purchaser or vendor and be subject to verification by the Department of Taxation (DoTAX) in the event of an audit. Consumption documentation at the point-of-sale may add more time to a sales transaction than asking for proof-of-residency for "kamaaina discounts", which may be the intent of the bill.

Should the HDOA be tasked to determine the documentation requirements for compliance, we would work with DoTAX to establish enforcement that will be difficult without additional resources for training, collection of penalties and record keeping.

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





**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 1929, H.D. 1, RELATING TO FARMERS MARKETS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 20, 2014 **TIME:** 11:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Hugh R. Jones, Supervising 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 purpose of this bill is to exempt from the State's general excise tax gross proceeds and income from the sale of produce grown in Hawaii and consumed within the State. Based on this preferential language, this bill creates a general excise tax exemption to favor products that are produced and consumed 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 tax exemption for produce grown in Hawaii and consumed within the State, provided by this bill, appears to have similar purpose and effect as the exemption that violated the Commerce Clause in Bacchus.

Thus, we respectfully recommend that the bill be held.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exempt produce sold at farmers' markets

BILL NUMBER: HB 1929, HD-1

INTRODUCED BY: House Committee on Agriculture

BRIEF SUMMARY: Adds a new paragraph to HRS chapter 237 to exempt from general excise taxation, the gross proceeds or gross income received from the sale of produce at a farmers' market that is intended for human consumption within the state.

Defines "farmers' market" as an outdoor market where independent business operators sell agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii. Defines "produce" as any fresh fruit or vegetable grown in the soil or hydroponically, regardless of whether organic, that is sold in the same general condition as when it was harvested.

EFFECTIVE DATE: Gross income or gross proceeds received after December 31, 2013

STAFF COMMENTS: This measure proposes to grant preferential treatment in the form of a general excise tax exemption to a select group of taxpayers. If the contention is that taxes imposed on these select taxpayers/businesses in Hawaii are too high, then the overall business tax climate needs to be addressed. Rather than granting a limited tax preference, as proposed, lawmakers need to take another look at the business and tax climate in Hawaii and find ways to improve that climate for all businesses.

This select group of taxpayers would enjoy preferential tax treatment, but would still need the services provided by state government. The burden of paying for those services will be shifted to another group of taxpayers who cannot avail themselves of this proposed exemption.

Digested 2/19/14



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February 20, 2014

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 1929, HD1
RELATING TO FARMERS MARKETS

Room 308
11:00 AM

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, and Members of the
Committee:

I am Christopher Manfredi, President of the Hawaii Farm Bureau Federation (HFB). Organized since 1948, the HFB is comprised of 1,832 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.

HFB supports HB 1929 HD1 which establishes tax exemptions for locally produced products sold at farmers markets and defines 'Farmers Markets'

The HD1 adopted Hawaii Farm Bureau's simplified, common sense approach to this effort that encourages the production and sale of locally produced products while protecting consumers.

Please support HB 1929 HD1.

Mahalo!

FIN-Jo

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 18, 2014 7:41 PM
To: FINTestimony
Cc: lilis@hawaii.edu
Subject: *Submitted testimony for HB1929 on Feb 20, 2014 11:00AM*

HB1929

Submitted on: 2/18/2014

Testimony for FIN on Feb 20, 2014 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
lili shan	Individual	Support	No

Comments:

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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LATE

1768 Kalawi Place
Wailuku (Maui), Hawaii 96793

February 19, 2014

Email Testimony

The Honorable Sylvia Luke
Chairwoman House Finance Committee
repluke@capitol.hawaii.gov
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

House Finance Committee hearing for House Bill 1929

Vincent Mina
President
Maui

Aloha Chair Luke, Vice-Chairs Ling and Johansen, honorable committee members.

HFUU is **in Support of HB 1929**; an exemption for farmers from excise tax on food sold for human consumption at farmers markets.

Simon Russell
Vice-President
Maui

Farmers have very slim profit margins, and every dollar they can keep means more food will be produced with those dollars. We support this concept, and hope that House and Senate can agree on this measure and get tax relief for our small farmers.

David Case
Secretary
Kona

Respectfully submitted,

Hawaii Farmers Union United

Ray Maki
Treasurer
Kauai

Simon Russell
Simon Russell

Vice-President and Legislative Chair

Pamela Boyar
Member
Oahu

The Hawaii Farmers Union and its Chapters is a nonprofit corporation formed under Hawaii law. It advocates for the sovereign right of farmers to create and sustain vibrant and prosperous agricultural communities for the benefit of all Hawaii through cooperation, education and legislation.

David Fisher
Member
Maui

Steve Sakala
Member
Kona

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

LATE TESTIMONY

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

Date: Thursday, February 20, 2014
Time: 11:00 a.m.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 1929, H.D. 1 Relating to Farmers Markets

The Department of Taxation (Department) appreciates the intent of H.B. 1929, H.D. 1, but has concerns about its ability to enforce the proposed exemption.

H.B. 1929, H.D. 1 creates a general excise tax exemption for produce sold at farmers' markets and intended for human consumption inside the state. The bill defines farmers' markets and produce. This measure, if approved, applies to gross income received after December 31, 2013.

First, the term "farmers' market" is defined very broadly. When the definition is broken down, the only requirements are that the market be outdoors and have independent businesses selling Hawaii grown or value-added products. The Department defers to the Department of the Attorney General as to any potential violations of the Commerce Clause created by providing a tax exemption only for products grown in Hawaii. However, presuming that the Hawaii grown portion of the definition must be struck out, this means that *any* outdoor market that sells produce or value-added products would qualify as a farmers' market.

Second, the term "value-added products" is not defined. If this exemption is intended to limit qualifying products by location of manufacture or production in Hawaii, even if not explicitly stated, there is a high likelihood that the limitation would violate the Commerce Clause.

Third, the Department notes that broadening the tax incentive to any outdoor market selling produce or value-added products will make it extremely difficult for the Department to enforce the proper claiming of the exemption.

Finally, the Department notes that the effective date will allow this exemption to be applied retroactively. Thus, any taxpayers who have already filed a periodic return and made payment would be due a refund through filing an amended return. The Department suggests a non-retroactive application date that will not generate refunds and suggests the language be amended to "gross income received after December 31, 2014".

Thank you for the opportunity to provide comments.

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