

# HB1929

# Testimony

Defines the term "farmers' market". Exempts produce that is sold at farmers' markets for human consumption within the State from the general excise tax. Effective July 1, 2030

**NEIL ABERCROMBIE**  
Governor



**SCOTT E. ENRIGHT**  
Chairperson, Board of Agriculture

**KEN H. KAKESAKO**  
Deputy to the Chairperson

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

**BEFORE THE SENATE COMMITTEE ON AGRICULTURE  
TUESDAY, MARCH 11, 2014  
2:45 P.M  
CONFERENCE ROOM 229**

**HOUSE BILL NO. 1929 H.D.2  
RELATING TO FARMERS MARKETS**

Chairperson Nishihara and Members of the Committee,

Thank you for the opportunity to testify on House Bill 1929 H.D.2. 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) offers comments.

HDOA believes 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.

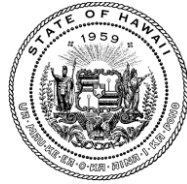
Should the HDOA be tasked to determine the documentation requirements for compliance, we would work with DoTAX to establish enforcement that will be difficult without additional resources for training, collection of penalties and record keeping.

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



NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



FREDERICK D. PABLO  
DIRECTOR OF TAXATION

JOSHUA WISCH  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**

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To: The Honorable Clarence K. Nishihara, Chair  
and Members of the Senate Committee on Agriculture

Date: Tuesday, March 11, 2014  
Time: 2:45 p.m.  
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: H.B. No. 1929, H.D. 2, Relating to Farmers Markets

The Department of Taxation (Department) appreciates the intent of H.B. 1929, H.D. 2, but is **opposes** this measure, as the Department is unable to enforce the proposed exemption.

H.B. 1929, H.D. 2, 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. This draft has a defective effective date of July 1, 2030.

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 applying this measure to gross proceeds received after December 31, 2013, will allow this exemption to be applied retroactively. Thus, any taxpayers who may have already filed a periodic General Excise tax return and applicable payment may be due a refund by filing an amended return. If the Legislature is able to address the above-noted concerns to allow for the enforcement of the exemption, the Department instead suggests prospective application for "gross income received after December 31, 2014".

Thank you for the opportunity to provide comments.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [AGL Testimony](#)  
**Cc:** [pamelaboyar@gmail.com](mailto:pamelaboyar@gmail.com)  
**Subject:** \*Submitted testimony for HB1929 on Mar 11, 2014 14:45PM\*  
**Date:** Sunday, March 09, 2014 5:14:14 AM

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**HB1929**

Submitted on: 3/9/2014

Testimony for AGL on Mar 11, 2014 14:45PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pamela Boyar	Farm Lovers Farmers' Market	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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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
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**Cc:** [sustainablesakala@gmail.com](mailto:sustainablesakala@gmail.com)  
**Subject:** \*Submitted testimony for HB1929 on Mar 11, 2014 14:45PM\*  
**Date:** Sunday, March 09, 2014 7:19:37 PM

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**HB1929**

Submitted on: 3/9/2014

Testimony for AGL on Mar 11, 2014 14:45PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Steve Sakala	Kona Chapter Hawaii Farmers Union United	Support	No

Comments:

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# 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-2

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Proposes a general excise tax exemption for the sale of Hawaii grown produce at a farmers' market in the state. Adoption of this measure would grant preferential treatment in the form of a general excise tax exemption to a select group of taxpayers. The measure would grant a tax preference to products grown in Hawaii, and as such it is questionable whether such an exemption would violate the Commerce Clause of the U.S. Constitution, under *In re Hawaiian Flour Mills, Inc.*, 76 Hawai'i 1, 868 P.2d 419 (1994).

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: July 1, 2030; applicable to gross income or gross proceeds received after 12/31/13.

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.

The measure would grant a tax preference to "produce," which the bill defines as fresh fruits or vegetables sold in the same general condition as when they were harvested. *In re Hawaiian Flour Mills, Inc.*, 76 Hawai'i 1, 868 P.2d 419 (1994), involved a general excise tax exemption for "agricultural, meat, or fish products grown, raised or caught in Hawaii" which the department of taxation interpreted to "include only those commodities which are sold in their original or natural state." Our supreme court held that this exemption unconstitutionally discriminated against other states' agricultural, meat, or fish products in violation of the Commerce Clause. The exemption, as proposed, is sufficiently similar to the one struck down in *Hawaiian Flour Mills* to warrant extreme caution before proceeding.

Digested 3/10/14



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March 11, 2014

HEARING BEFORE THE  
SENATE COMMITTEE ON AGRICULTURE

TESTIMONY ON HB 1929, HD2  
RELATING TO FARMERS MARKETS

Room 229  
2:45 PM

Chair Nishihara, Vice Chair Kouchi, 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 HD2** 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, HD2.**

Mahalo!





1768 Kalawi Place  
Wailuku (Maui), Hawaii 96793

March 10, 2014

**Email Testimony**

The Honorable Clarence Nishihara  
Chairman Senate Agriculture Committee  
[sennishihara@capitol.hawaii.gov](mailto:sennishihara@capitol.hawaii.gov)  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Senate Agriculture Committee hearing for House Bill 1929

Vincent Mina  
President  
Maui

Aloha Chair Nishihara, Vice-Chair Kouchi honorable committee members.

HFUU is **in Strong 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