



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2015**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1307, RELATING TO KALO PRODUCTION.

**BEFORE THE:**

SENATE COMMITTEE ON AGRICULTURE

**DATE:** Thursday, February 5, 2015 **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 414

**TESTIFIER(S):** WRITTEN COMMENTS ONLY. For more information, call  
Damien Elefante, Deputy Attorney General 586-1470

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Chair Ruderman 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.

Section 2 of this bill exempts from Hawaii's general excise tax Kalo that is grown or processed 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 Exch. 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 At issue in Bacchus was the Hawaii liquor tax, which was originally enacted in 1939 to defray the costs of police and other governmental services.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 Kalo grown or processed in this State appears to have similar purpose and effect as the exemption that violated the Commerce Clause in Bacchus.

DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
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To: The Honorable Russell E. Ruderman, Chair  
and Members of the Senate Committee on Agriculture

Date: Thursday, February 5, 2015  
Time: 2:45 P.M.  
Place: Conference Room 414, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: S.B. 1307, Relating to Kalo Production

The Department of Taxation (Department) appreciates the intent of S.B. 1307 and offers the following comments for your consideration.

S.B. 1307 offers an exclusion from income tax for kalo production, as well as an exemption from General Excise Tax (GET) and Use Tax for kalo and kalo products.

Section 1 of the measure excludes from a taxpayer's gross income, adjusted gross income, and taxable income "an amount not to exceed \$75,000 that is derived from kalo production." The Department notes that a clear and unambiguous definition of "kalo production" is necessary for proper administration of this exclusion. For example, limiting the exclusion to amounts received from the sale of kalo products makes clear exactly what income is excluded.

Section 2 excludes gross proceeds of "producing a kalo product" from GET. The GET is a tax imposed on engaging in business in the state, and for the production and/or sale of tangible personal property, it is typically calculated as a percentage of the gross proceeds received by the taxpayer. The Department suggests that the language in Section 2 be clarified eliminate any potential confusion as to what income would be exempted. Under GET law, producers and manufacturers are specifically defined terms and are in most cases taxed and the one half of one percent rate.

Additionally, the definition of "kalo product" provided in section 2 of S.B. 1307 may be impossible to enforce based on Constitutional issues. Tax measures that discriminate against interstate commerce are prohibited by the Commerce Clause of the United States Constitution, and this definition of "kalo product" would provide a tax exemption only to kalo produced and

processed within the state. In order to be enforceable, this exemption needs to apply to the sale of all kalo products, regardless of origin. The Department defers to the Department of the Attorney General for a full analysis of this issue.

Section 3 of the measure states that the Use Tax shall not apply if the importer or purchaser is importing or purchasing a kalo product for purposes of resale. This provision is not necessary to effectuate the intent of this measure. Under current law, if the kalo product is imported for the purpose of inclusion within a finished product that is to be sold at wholesale, the Use Tax would not apply to that importation of property. If it is imported for inclusion in a product that is to be sold at retail, the tax would apply at the rate of one half of one percent of the landed value of the kalo product. Section 3 also contains the same definition of "kalo product" as in Section 2, which presents a similar constitutional issue.

Finally, S.B. 1307 is effective on approval. The Department requests application of these exclusions and exemptions to taxable years beginning after December 31, 2015, in order to ensure the Department is able to implement the changes needed for administration of this exemption.

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: INCOME, GENERAL EXCISE, USE, Kalo production

BILL NUMBER: SB 1307; HB 1392 (Identical)

INTRODUCED BY: SB by Riviere by request; HB by Kong, Evans, Ing, Keohokalole, C. Lee, Pouha, Tupola

STAFF COMMENTS: Adds a new section to HRS chapter 235 to exclude from state income taxation \$75,000 derived from kalo production.

Adds a new section to HRS chapter 237 to provide that amounts received for producing a kalo product shall not be taxable.

Adds a new section to HRS chapter 238 to provide that the use tax shall not be applicable to the importation or purchasing of a kalo product for purposes of resale.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This measure proposes incentives under the income, general and use tax to encourage the production of kalo in the state.

The use of the tax system to provide financial assistance in the form of preferential tax treatment under the income, general excise and use tax is an inefficient use of the tax system. This preferential treatment proposed in this measure amounts to nothing more than a subsidy as there is no obvious undue burden of taxes. If this measure is enacted, it will provide one industry with preferential treatment. That is bad tax policy.

Again it should be noted that this measure proposes an exclusion of income from the net income tax as well as an exemption from general excise and use taxes. It should be remembered, companies only pay taxes when they make a profit, that is income is greater than expenditures. As such, this bill rewards a company for making profits while all other businesses that make profits must pay the income tax. If this operation were not profitable, then income tax would not apply. It would only seem fair that some of the profits made by the company go to pay for the public services provided to that business and its employees. Further, it should be noted that by exempting the business from the state income tax on its profits, it exposes more of those profits to the federal income tax where the rates are much higher. Thus, in the end, this exemption would end up sending more tax dollars to Washington while leaving Hawaii empty handed.

It should be remembered that giving tax breaks to one select group of taxpayers comes at the expense of all other taxpayers. As such, it is an insult to all other taxpayers that they are not deserving of such tax preferences. Rather than singling out a particular area for tax relief, concurrent efforts must be made to improve Hawaii's business climate to enhance the economic prospects for all businesses.

If lawmakers want to subsidize this specific project, then an appropriation of funds is far more accountable as taxpayers will then know who is to receive the subsidy, how much is being spent and then they can judge whether or not this is an appropriate use of state taxpayer dollars.

Finally, the measure is aimed at kalo products. A definition of such products should be included in the measure.

Digested 2/4/15

To: Senators

From: Vince Dodge, `Ai Pohaku- The Stone Eaters  
86-557 Hakalina Road  
Wai`anae, Hawaii 96792  
c. 808 478-6492  
[aipohaku@hotmail.com](mailto:aipohaku@hotmail.com)

Re: SB 1307

February 4, 2015

Aloha Senators,

Thank you for hearing SB 1307 relating to a \$75,000 maximum tax break for the production of local kalo/taro and kalo/taro products. We here at `Ai Pohaku- The Stone Eaters, our families and community are in full support of SB 1307. We want and need to see more kalo and kalo products available in our community, and providing a tax break for producers would seriously help. As you probably know the reason there is so much corn and corn products in our national food supply is because the corn producers are heavily subsidized by our government. We will buy more of the cheaper priced available food.

Kalo is a wonderful food and there is a growing movement of folks hand pounding kalo and making their own poi. Presently there is a shortage of good starchy kalo for the hand pounders. The tax break would enable new farmers to take the risk and grow more starchy kalo. Also many healthy foods can and are being made with kalo such as pa`i`ai, poi, koena waffles, koena patties, koena bread, fried pa`i`ai, pa`i`ai pizza crust, ono pops, poi mochi, etc. Question- will all of these products qualify for the tax break? That would be excellent as it would promote the creation and production of a whole range of locally produced kalo based products.

We support SB 1307.

Mahalo nui,  
Vince kana`i Dodge

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**Date:** Tuesday, February 03, 2015 10:07:23 PM

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**SB1307**

Submitted on: 2/3/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alika Atay	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/3/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Barry	Individual	Support	No

Comments: Yes to this Bill, Mahalo, Ms. Barbara Barry

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**SB1307**

Submitted on: 2/3/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Blake Watson	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/4/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David B. Fisher	Individual	Support	No

Comments: All farming is expensive in Hawaii which is why we import most of our food. For food security, health, economic development, and cultural reasons I encourage you to provide this incentive to grow kalo. Mahalo and aloha David Fisher

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**SB1307**

Submitted on: 2/3/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Denise Key	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/3/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Don Heacock	Individual	Comments Only	No

Comments: I strongly support SB 1307, the taro tax exemption bill. This economic incentive is needed to allow taro farmers to more money into increasing the size of there taro production. Taro lo'i produce the triple bottom-line by making economic profits (by growing and selling taro), social/cultural profits (by teaching these cultural practices to others) and environmental profits by providing excellent feeding and nesting habitat for three species of endangered Hawaiian waterbirds: the the Hawaiian 'alae'ula, the Hawaiian stilt ('ae'o) and the Hawaiian duck (koloa). Additionally, during floods, taro lo'i function as "sedimentation basins" and trap and recycle soild, sediments, leaf litter and woody dbris, thereby protecting coastal water quality for the benefit of our coral reefs. Please pass this important bill to benefit our island community economically, culturally and environmentally. Sincerely, Donald E. Heacock P.O. Box 1323 Lihue, Kauai, Hawaii 96766

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**SB1307**

Submitted on: 2/3/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Edward Aloii	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/3/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eva Lee	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/3/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Faith Ewbank	Individual	Support	No

Comments: SUPPORT SB 1307 offering tax exemption for Kalo. This will help farmers. This will help eighth generation farmers. This will inspire more farmers. Thank you for SUPPORTING SB 1307. Mahalo, Faith Ewbank

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**SB1307**

Submitted on: 2/3/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Faye L Wallace	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/4/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Land	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/4/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james simpliciano	Individual	Support	No

Comments: As a farmer on Maui I believe in the sustainable value of our hawaiian culture to increase the production of Kalo. The ability to restore our native taro patches to open the streams that the land once was bountiful. We must protect and release more diverted water to our kalo farmers.

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**SB1307**

Submitted on: 2/3/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeff Lind	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/3/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lars Lind	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/4/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Louis Dilberto	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/3/2015

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Martha Lind	Individual	Support	No

Comments: Kalo production is an important part of the Hawaiian culture and should be encouraged. Please support this bill to help those who are producing kalo and continuing the Hawaiian tradition and culture.

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**SB1307**

Submitted on: 2/3/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Lacques	Individual	Support	No

Comments: Mahalo Senator Riviere for supporting local food cultivation and our cultural staple.

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**SB1307**

Submitted on: 2/3/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mercy Ritte	Individual	Support	No

Comments:

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**Subject:** \*Submitted testimony for SB1307 on Feb 5, 2015 14:45PM\*  
**Date:** Tuesday, February 03, 2015 1:26:51 PM

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**SB1307**

Submitted on: 2/3/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
penny levin	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/4/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Phyllis Robinson	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/4/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
robyn smith	Individual	Support	No

Comments: I strongly support this bill. Thanks.

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**SB1307**

Submitted on: 2/3/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Support	No

Comments: Strongly Support, and any bill like it. Now you're talking. Welcome back Sen. Riviere, you're a breath of fresh air. In conjunction with helping kalo farmers with tax relief, It's past time to majorly reform the Agribusiness Development Corporation and demand it get back to its original mission of helping Hawai`i farmers. Give real Hawai`i farmers the sweet lease deals and subsidies that the chem cartels are getting.

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**SB1307**

Submitted on: 2/3/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Simon Russell	Hawaii Farmers Union United	Support	No

Comments:

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**SB1307**

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tammy Lynn Ross	Individual	Support	No

Comments:

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**SB1307**

Submitted on: 2/4/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
vincent mina	Individual	Support	No

Comments: Anything that can facilitate folks growing more food for Hawaii is a prudent step. It will bring more economic growth into the community.

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**SB1307**

Submitted on: 2/4/2015

Testimony for AGL on Feb 5, 2015 14:45PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William Jacintho	Individual	Support	No

Comments:

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