

SB 2440

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



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DEPARTMENT OF AGRICULTURE
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SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON WATER, LAND, AND AGRICULTURE

February 3, 2016
2:45 P.M.
CONFERENCE ROOM 224

**SENATE BILL NO. 2440
RELATING TO FARMS**

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2440 that seeks to support small farming businesses by excluding from income tax, the first \$50,000 of income earned for farmers who earn more than 75 percent of their annual gross income from the sales of farm products sold in Hawaii. The Department of Agriculture supports the intent, defers to the Department of Taxation, and offers comments.

According to the 2012 Census of Agriculture (Hawaii, Volume 1, Chapter 1: State Level Data, Table 60, page 44), of Hawaii's 7,000 farmers (includes all business entities), approximately 618 (9 percent) earn more than 75 percent of their total household income from farming. Further, about 6,650 Hawaii farmers (95 percent) earn less than \$200,000 annually from the sale of their agricultural products (op.cit., Table 3, page 10).

The definition of a "farmer" (Bill, page 7, lines 10-12) is an individual that earns 75 percent of annual gross income "...from farm products sold within the State." We recommend the following clarification to the definition of "farmer":



“For purposes of this paragraph, “farmer” means an individual earning more than seventy-five per cent of the individual’s annual gross income from farm products grown and sold by the individual within the State.”

We also note that by limiting the proposed partial tax exclusion to individuals, this may exclude small partnerships. We also suggest “farm products” be separately defined for the purposes of this paragraph as “production from agricultural activities as defined in Section 205-4.5(a)(1), (2) and (3)”.

Thank you for the opportunity to submit our testimony.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
DEPUTY DIRECTOR

To: The Honorable Mike Gabbard, Chair
and Members of the Senate Committee on Water, Land, and Agriculture

Date: February 3, 2016
Time: 2:45 P.M.
Place: Conference Room 224, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2440, Relating to Farms

The Department of Taxation (Department) appreciates the intent of S.B. 2440, and offers the following comments for your consideration.

S.B. 2440 excludes the first \$50,000 of income earned by a farmer from the Hawaii income tax, provided that the farmer's annual gross income does not exceed \$200,000. "Farmer" is defined as an individual earning more than seventy-five percent of their annual gross income from farm products sold within the State.

The Department first notes that the definition of "farmer" is limited to individuals, but it is unclear how it would apply to individuals involved in, for example, a partnership, if the partnership's income was derived from the sale of farm products and more than seventy-five percent of an individual's income was received from the partnership. This provision may also lead to disparate impacts of the exclusion on different taxpayers. For example, a married couple filing separately may structure their income in such a way as to take greater advantage of this exclusion than an unmarried individual.

Second, the term "annual gross income" should be changed, as the word "annual" is unnecessary in this context. By its terms, the subsection being amended applies to gross income and adjusted gross income for a given taxable year.

Finally, the Department notes that the requirement that the income be derived from the sale of farm products within the State may be impermissible based on the Commerce Clause of

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the United States Constitution. The Department defers to the Department of the Attorney General for a more thorough analysis of the constitutionality of the proposed exclusion.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, Exclusion of income received by farmers

BILL NUMBER: SB 2440

INTRODUCED BY: KEITH-AGARAN, BAKER, ENGLISH, GABBARD, GALUTERIA, KIDANI, NISHIHARA, RUDERMAN, SHIMABUKURO, Dela Cruz, Inouye, Riviere

EXECUTIVE SUMMARY: Excludes the first \$50,000 of income received by a family farm, family farm community, or family farm cooperative from state income taxation. The exclusion creates a class of persons who will not have to pay for the government services they use while the rest of us will have to make up for them.

BRIEF SUMMARY: Amends HRS section 235-7(a) to add a new paragraph excluding the first \$50,000 of income earned by a farmer; provided that the farmer's annual gross income does not exceed \$200,000. For purposes of this paragraph, "farmer" means an individual earning more than seventy-five per cent of the individual's annual gross income from farm products sold within the State.

EFFECTIVE DATE: Upon approval, applies to taxable years beginning after 12/31/15.

The amendments made to HRS section 235-7(a) by this measure shall not be repealed when that section is reenacted on January 1, 2018, pursuant to Act 220, SLH 2012 (which provided a temporary exemption of capital gains realized from the conversion of residential leasehold interest to fee simple ownership).

STAFF COMMENTS: This measure proposes to grant preferential treatment in the form of an income tax exclusion 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.

To the extent that this select group of taxpayers would enjoy the preferential tax treatment, they would still need the services provided by state government. As a result, the burden of paying for those services will be shifted to another group of taxpayers who cannot avail themselves of this proposed exemption. Thus, existing businesses that are not so blessed with a similar exclusion must pick up the additional cost either in higher taxes or lower quality of service. Finally, it should be remembered that tax relief is provided to those who do not have the ability to carry their share of the tax burden. There is no indication that these particular taxpayers do not have the ability to pay their fair share of the state tax burden. The only criteria to access this tax benefit is that the farm receive 75% of its income from farm products sold within the state, and that the farmer's annual gross income does not exceed \$200,000. Thus, if a farmer earned \$50,000 and was married to a corporate CEO earning \$2 million, the farmer could still take the

full exclusion even though the couple clearly has the ability to bear their fair share of the tax burden for government services.

Digested 1/29/2016



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February 3, 2016

HEARING BEFORE THE
SENATE COMMITTEE ON WATER, LAND, AND AGRICULTURE

TESTIMONY ON SB 2440
RELATING TO FARMS

Room 224
2:45 PM

Aloha Chair Gabbard, Vice Chair Nishihara, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

HFB supports SB 2440 which creates an income tax exemption on the first \$50,000 of income for farmers whose annual gross income is \$200,000 or less.

HFB supports any initiative that support Hawaii's small farmers and encourages new farming businesses.

Thank you for the opportunity to testify on this measure.

From: mailinglist@capitol.hawaii.gov
To: [WLA Testimony](#)
Cc: crystalkpaul@yahoo.com
Subject: *Submitted testimony for SB2440 on Feb 3, 2016 14:45PM*
Date: Monday, February 01, 2016 6:40:10 PM

SB2440

Submitted on: 2/1/2016

Testimony for WLA on Feb 3, 2016 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Crystal Kia Paul	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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