

SB 1193

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

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 AGRICULTURE & ENVIRONMENT

FEBRUARY 13, 2017
1:15 P.M.
CONFERENCE ROOM 224

SENATE BILL NO. 1193
RELATING TO AGRICULTURE

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 1193. This bill seeks establish an income tax credit of up to \$5,000 for agricultural producers whose annual gross incomes total no more than \$50,000 from the sale of certain agricultural commodities produced in the State and sold directly to consumers, including direct farm sales, sales at farmers' markets and roadside stands, and community supported agriculture. The tax credit is to be administered by the Department of Taxation. Department of Agriculture offers comments.

We note that many agricultural commodities are not included in the definition of "agricultural commodity" (Bill, page 4, line 19 to page 5, line 2) such as livestock (beef cattle, sheep, goats), swine, aquaculture, poultry, and eggs. According to the 2012 Census of Agriculture – Hawaii State Data (Table 65, "Summary by Market Value of Agricultural Products Sold: 2012; page 76), about 1,546 farms with gross sales of less than \$50,000 are in this category and will not benefit from this tax credit. The Department of Agriculture is uncomfortable with this exclusionary form of tax credit.

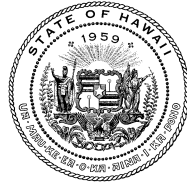


We also note that a separate measure, SB 1194, seeks to exempt from the general excise tax, up to \$50,000 of gross income to farmers who sell the same certain commodities at the same certain venues.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
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FAX NO: (808) 587-1560

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

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

Date: Monday, February 13, 2017
Time: 1:15 P.M.
Place: Conference Room 224, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 1193, Relating to Agriculture

The Department of Taxation (Department) appreciates the intent of S.B. 1193 and provides the following comments for your consideration.

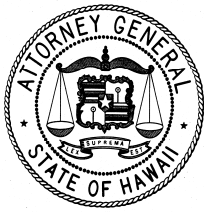
S.B. 1193 provides a new income tax credit for the sale of agricultural commodities by producers directly to consumers. The amount of the credit is equal to the gross income received from the sale of agricultural commodities directly to consumers and has a per-taxpayer cap of \$5,000 per year. The definition of “producer” provided in the credit limits the exemption to taxpayers engaged in the growing or production for market of agricultural commodities with less than \$50,000 in gross income from the sale of agricultural commodities for the most recent fiscal year. The measure applies to taxable years beginning after December 31, 2016.

First, the Department notes that the tax credit proposed by this measure is limited to income from the sale of agricultural commodities grown or produced within the state. Providing a tax credit only for taxpayers who grow and sell agricultural commodities in the State may violate the Commerce Clause of the United States Constitution. The Department ultimately defers to the Department of the Attorney General on the constitutionality of this provision.

Second, the income limitation in the definition of “producer” is not effective because it only places a limit on the gross income from selling agricultural commodities. In other words, a taxpayer could earn \$100 million dollars of sales of dairy or meat products and still qualify for this credit. If the Committee wishes to advance this measure the Department suggests putting a limit on gross income from all sources during the previous tax year. The Department also is not able to do any verification of a taxpayer’s fiscal year because submissions to the Department are filed by tax years.

Finally, the Department requests that the measure be made effective for taxable years beginning after December 31, 2017 to allow sufficient time to make changes to the relevant forms, instructions and the computer system.

Thank you for the opportunity to provide comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 1193, RELATING TO AGRICULTURE.

BEFORE THE:

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

DATE: Monday, February 13, 2017 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Hugh R. Jones, Deputy Attorney General

Chair Gabbard and Members of the Committee:

The Department of the Attorney General submits comments to note that if passed in its current form, this bill could be subject to a legal challenge for violating the Commerce Clause of the United States Constitution

The purpose of this bill is amend chapter 235, Hawaii Revised Statutes, to allow taxpayers to claim an income tax credit for the sale of agricultural commodities to consumers, if those commodities are produced in this 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 “exclusion” 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.

Only Hawaii produced agricultural commodities would qualify for the tax credit created by this bill. This tax credit appears to have similar purpose and effect as the exemption that violated the Commerce Clause in Bacchus.

This potential constitutional challenge could be avoided if the bill were to be amended to delete the phrase "produced in this State" from the definition of "agricultural commodity" on page 5, line 2 of this bill.

The Attorney General recommends that this bill be passed out only if these changes are made.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 9, 2017 7:27 PM
To: AEN Testimony
Cc: cmanfredi@kaufarmandranch.com
Subject: *Submitted testimony for SB1193 on Feb 13, 2017 13:15PM*

SB1193

Submitted on: 2/9/2017

Testimony for AEN on Feb 13, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Manfredi	Hawaii Coffee Association	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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Testimony for SB1193 and SB1194

I attended and graduated from GoFarm Hawaii farmer training program last year in 2016. This year, I am continuing with farming on a 1/4 acre plot through the program's incubator phase where I am growing a variety of vegetables to sell directly to consumers (CSA). My intention is to obtain organic certification by following the National Organic Program's guidance.

These bills will help defray some of the high costs of starting out as a farmer. Also these bills will help me stay in business by allowing me to keep more of the income I earn as profit which I can use to reinvest in the farming business.

Thank you for your time and consideration.

Augusto Decastro

www.maliafarms.com

me@augustodecastro.com

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 3:18 PM
To: AEN Testimony
Cc: lfreed@hawaii.rr.com
Subject: *Submitted testimony for SB1193 on Feb 13, 2017 13:15PM*

SB1193

Submitted on: 2/6/2017

Testimony for AEN on Feb 13, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Freed	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 12:17 PM
To: AEN Testimony
Cc: fu_dog_5@yahoo.com
Subject: *Submitted testimony for SB1193 on Feb 13, 2017 13:15PM*

SB1193

Submitted on: 2/6/2017

Testimony for AEN on Feb 13, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
robert	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 5:15 PM
To: AEN Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB1193 on Feb 13, 2017 13:15PM*

SB1193

Submitted on: 1/30/2017

Testimony for AEN on Feb 13, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 12, 2017 2:46 AM
To: AEN Testimony
Cc: bmurphy420@mail.com
Subject: *Submitted testimony for SB1193 on Feb 13, 2017 13:15PM*

SB1193

Submitted on: 2/12/2017

Testimony for AEN on Feb 13, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Murphy	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 12, 2017 1:45 AM
To: AEN Testimony
Cc: mary@mauivortex.com
Subject: *Submitted testimony for SB1193 on Feb 13, 2017 13:15PM*

SB1193

Submitted on: 2/12/2017

Testimony for AEN on Feb 13, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Overbay	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 11, 2017 7:45 PM
To: AEN Testimony
Cc: audgereee@yahoo.com
Subject: *Submitted testimony for SB1193 on Feb 13, 2017 13:15PM*

SB1193

Submitted on: 2/11/2017

Testimony for AEN on Feb 13, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Audrey Tamashiro-Kamii	Individual	Support	No

Comments:

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"Grown with Love"

Kakalina Farms
PO Box 534
Waimanalo, Hawai'i 96795

Senate Committee on Agriculture and Environment
Monday, February 13, 2017 1:15 pm

Testimony in SUPPORT of SB 1193 – Relating to Agriculture

Chair Gabbard, Vice Chair Riviere and Members of the Committee:

SB 1193 establishes an income tax credit for agricultural commodities produced in the state of Hawai'i and sold directly to consumers up to a limit of \$5,000.

Small farmers are a mix of new farmers, old farmers, recent immigrants, family farmers, subsistence farmers and traditional farmers. In the past they were called "truck farmers", providing fresh fruits and vegetables to their local communities. They are the farms that we visited as children and the farms we bring our children and grandchildren to today.

In Hawai'i, small farms grow 48% of the agricultural products that are sold directly to individuals for human consumption. In 2015, direct sales to consumers totalled \$70 million for fresh produce, \$84 million including value-added products.

Many small farms sell produce at the more than 350 farmers markets held each week, which serve both local residents and visitors. They increasingly sell Community Supported Agriculture (CSA) packages. Many of them use and promote sustainable practices. They are valuable partners in the farm to table movement among local restaurants, agricultural tourism and in the burgeoning farm to school movement.

The 2012 UDSA Census of Agriculture identified 7,000 farms in Hawaii and reported that 6,171 farms, or 88%, had sales of less than \$50,000. 4,180, or 60%, grew fruits and vegetables. In 2012, small farms produced \$78 million, or 12% of the total sales of agricultural products.

In order to double our food production, we need to focus on each segment of

the agricultural production market. These bills provide financial incentives for new and small farmers who sell directly to consumers to enter the market or increase production.

If we can double the number of small farms and double small farm production, i.e., an increase of 10% of total sales, this will allow \$313 million to remain in the State's Economy (2012 *Increased Food Security and Food Self-Sufficiency* report).

Small farms provide the most direct agricultural link to our community. Promoting CSAs and farmers markets are priority items in the 2012 *Self-Sufficiency* report. This bill provides a direct means to help achieve those priority items and to work toward our goal of doubling our food production.

Thank you very much.

Tom Grande

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

LATE

SUBJECT: INCOME, Tax Credit for Retail Sale of Agricultural Commodities

BILL NUMBER: SB 1193

INTRODUCED BY: GABBARD, HARIMOTO, NISHIHARA, Ihara, Kim, Riviere

EXECUTIVE SUMMARY: Provides a tax credit for retail sale of agricultural commodities produced in the State. The measure would grant a tax preference to products grown in Hawaii, and as such it is questionable whether such a credit 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).

SYNOPSIS: Adds a new section to HRS chapter 235 to allow a qualified taxpayer an income tax credit for the sale of agricultural commodities sold directly to consumers by producers, including direct farm sales, sales at farmers' markets and roadside stands, and community supported agriculture.

Defines "agricultural commodity" as fresh fruits and fresh vegetables of every kind and character; nuts; coffee, whether cherry or parchment or green beans; and raw unprocessed honey produced in the State.

Defines "producer" as any person engaged within the State in the growing or production for market of any agricultural commodity, or any cooperative association of such persons, whose gross income from the sale of agricultural commodities for the most recently reported fiscal year totals no more than \$50,000.

The credit is nonrefundable but may be carried forward until exhausted.

Requires all claims for the credit to be filed on or before the end of the twelfth month following the close of the taxable year. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

The director of taxation may adopt rules pursuant to HRS chapter 91 and prepare the necessary forms to claim the credit and may require proof of the claim for the credit.

EFFECTIVE DATE: Upon approval, applies to taxable years beginning after December 31, 2016.

STAFF COMMENTS: This measure proposes to grant preferential treatment in the form of an income tax credit 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 “agricultural commodities,” which the bill defines as fresh fruits or vegetables and other commodities produced in the State. *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 2/10/2017

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2017 7:17 AM
To: AEN Testimony
Cc: vidafarms@gmail.com
Subject: Submitted testimony for SB1193 on Feb 13, 2017 13:15PM

SB1193

Submitted on: 2/13/2017
Testimony for AEN on Feb 13, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Priscilla Carbajal	Vida Farms, LLC	Support	No

Comments: This bill will to further my start-up farming business as it applies to the markets I sale to, CSAs and farmer's market. These markets supply local families with local, fresh, & low cost produce.

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LATE

P.O. Box 253, Kunia, Hawai'i 96759
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e-mail info@hfbf.org; www.hfbf.org

February 13, 2017

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON SB 1193
RELATING TO AGRICULTURE

Room 224
1:15 PM

Aloha Chair Gabbard, Vice Chair Riviere, 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 interests of our diverse agricultural community.

HFB supports SB 1193, which establishes an income tax credit for producers who sell agricultural commodities directly to consumers.

Farmers' Markets, farm stands, community supported agriculture (CSA) and other retail sales opportunities can be significant revenue enhancing opportunities for our farmers and ranchers and thereby increase the viability of their businesses. They provide an alternative distribution method that is economically advantageous to farmers. Instead of selling farm products to wholesalers or other distributors at a relatively low price, farmers can sell directly to the consumer at a price that is more profitable. In addition, direct sales provide a convenient channel for farmers to engage directly with customers, which in turn enhances the customers' appreciation for local farmers' hard work and what they produce.

HFB believes that farmers' markets, farm stands, and CSAs are an opportune way to highlight and promote Hawaii's agriculture industry to consumers. They accomplish the following:

- Increase exposure of locally-grown farm products to consumers
- Increase consumers' accessibility to fresh and healthy locally-grown farm products
- Increase farm revenue for farmers
- Build connection between farmers and consumers
- Support the local agriculture industry
- Create the atmosphere of a social event that becomes a community building activity

HFB respectfully requests continuing dialogue on this measure to resolve any concerns and to provide Hawaii's growers with broader opportunities to ensure their long-term success.

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

Thank you for this opportunity to provide comments on this measure.