

TAX FOUNDATION OF HAWAII

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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

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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.

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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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.