

**SB 1194**

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. 1194  
RELATING TO AGRICULTURE

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 1194. This bill seeks an exemption from the general excise tax for the first \$50,000 of gross income earned by agricultural producers from the sale of certain agricultural commodities grown in the State and sold directly to consumers, including direct farm sales, sales at farmers' markets and roadside stands, and community-supported agriculture. The Department of Agriculture offers comments.

We note that many agricultural commodities are not included in the definition of "agricultural commodity" (Bill, page 3, lines 4-7) 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 1,686 farms are in this excluded category and will not benefit from this tax credit. The Department of Agriculture is uncomfortable with this exclusionary form of exemption from the general excise tax.

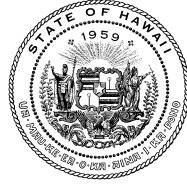


We also note that a separate measure, SB 1193, seeks to establish a tax credit for farmers who have gross income up to \$50,000 of who sell the same limited commodities at the same limited venues.

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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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. 1194, Relating to Agriculture

The Department of Taxation (Department) appreciates the intent of S.B. 1194 and provides the following comments for your consideration.

S.B. 1194 exempts from the general excise tax (GET) amounts received by an agricultural producer for the sale of agricultural commodities directly to consumers, up to \$50,000 in gross income. The measure is effective July 1, 2017.

First, the Department notes that because of the requirement that agricultural commodities be produced in the State, application of the tax exemption proposed by this measure 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 \$50,000 limitation is not effective. Due to its broad language, a company can divide itself into an unlimited number of related entities with each filing a separate GET return. This measure is in effect providing an exemption for all sales agricultural commodities sold, without limitation, because each taxpayer would be eligible for a \$50,000 exemption.

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 and instructions.

Thank you for the opportunity to provide comments.



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1194, 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

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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 to amend chapter 237, Hawaii Revised Statutes, to exempt from general excise taxes up to \$50,000 in gross income from the sale of agricultural commodities that 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.

Because only Hawaii produced agricultural commodities would qualify for the tax exclusion in this bill, it 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 definition of “agricultural commodity” on page 3, lines 4-7 of the bill is amended to delete the phrase “produced in the State.”

The Department of the Attorney General recommends that if the Committee passes this bill, it does so with this suggested amendment.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 9, 2017 7:31 PM  
**To:** AEN Testimony  
**Cc:** cmanfredi@kaufarmandranch.com  
**Subject:** \*Submitted testimony for SB1194 on Feb 13, 2017 13:15PM\*

**SB1194**

Submitted on: 2/9/2017

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chris Manfredi	Hawaii Coffee Association	Support	No

Comments:

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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](http://www.maliafarms.com)

[me@augustodecastro.com](mailto:me@augustodecastro.com)



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 3:19 PM  
**To:** AEN Testimony  
**Cc:** lfreed@hawaii.rr.com  
**Subject:** \*Submitted testimony for SB1194 on Feb 13, 2017 13:15PM\*

**SB1194**

Submitted on: 2/6/2017

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Laurie Freed	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 SB1194 on Feb 13, 2017 13:15PM\*

**SB1194**

Submitted on: 1/30/2017

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 12, 2017 2:45 AM  
**To:** AEN Testimony  
**Cc:** bmurphy420@mail.com  
**Subject:** \*Submitted testimony for SB1194 on Feb 13, 2017 13:15PM\*

**SB1194**

Submitted on: 2/12/2017

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian Murphy	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 12, 2017 1:46 AM  
**To:** AEN Testimony  
**Cc:** mary@mauivortex.com  
**Subject:** \*Submitted testimony for SB1194 on Feb 13, 2017 13:15PM\*

**SB1194**

Submitted on: 2/12/2017

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Overbay	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 1194 – Relating to Agriculture**

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

SB 1194 establishes an excise tax exemption for agricultural commodities produced in the state of Hawai'i and sold directly to consumers. It is limited to small farmers who earn under \$50,000.

The 2012 USDA 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.

The 2012 USDA Census showed that small farms grow 48% of the agricultural products that are sold directly to individuals for human consumption.

In 2015, the USDA conducted the first-ever national Local Food Marketing Practices Survey and found that direct sales to consumers totalled \$70 million for fresh produce, \$84 million including value-added products.

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

SUBJECT: GENERAL EXCISE, Exemption for Retail Sale of Agricultural Commodities

BILL NUMBER: SB 1194

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

EXECUTIVE SUMMARY: Provides a tax exemption 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 paragraph to HRS chapter 237 to exempt from general excise taxation, the gross proceeds or gross income received from received from the sale of agricultural commodities sold directly to consumers by producers, including direct farm sales and sales at farmers' markets, 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" the same as in HRS section 147-1."

EFFECTIVE DATE: July 1, 2017.

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 "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 SB1194 on Feb 13, 2017 13:15PM

**SB1194**

Submitted on: 2/13/2017

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

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

Comments: This bill will help 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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February 13, 2017

HEARING BEFORE THE  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**TESTIMONY ON SB 1194**  
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 1194**, which exempts agricultural commodities produced in the State and sold directly to consumers from the general excise tax up to a limit of \$50,000 per year in gross income

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.