

**TAX FOUNDATION OF HAWAII**

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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.

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 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.