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Deputy to the Chairperson

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

LATE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

FEBRUARY 8, 2017
8:30 A.M.
CONFERENCE ROOM 312

HOUSE BILL NO. 1502
RELATING TO GENERAL EXCISE TAX EXEMPTIONS

Chairperson Creagan and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1502 that seeks to provide a general excise tax exemption from the gross proceeds of income arising from the manufacture, production, packaging, and sale of select healthy foods in the State, and a general excise tax exemption for locally grown or produced foods. The Department of Agriculture offers comments, otherwise we defer to the Department of Taxation.

The proposed exemption for the manufacture, production, packaging, and sale of select healthy foods from the general excise tax does not appear to be limited to locally-grown fruits, vegetables, water, nuts, seeds, and nut butters (page 1, line 13 to page 2, line 21).

The proposed exemption for the manufacture, production, packaging, and sale of food, and food products grown or cultivated in the State, such as meat, eggs, vegetables, fruit, food and food products labeled "made in Hawaii" or "produced in Hawaii" appears to target some Hawaii grown and value-added agricultural products (page 2, lines 4-12).

Thank you for the opportunity to submit our testimony.



DAVID Y. IGE
GOVERNOR

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MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Richard P. Creagan, Chair
and Members of the Senate Committee on Agriculture

Date: Wednesday, February 8, 2017

Time: 8:30 A.M.

Place: Conference Room 312, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 1502, Relating to General Excise Tax Exemptions

The Department of Taxation (Department) appreciates the intent of H.B. 1502 and provides the following comments for your consideration.

H.B. 1502 creates two new exemptions to the general excise tax (GET). The first is an exemption for proceeds of manufacturing, producing, packaging, and sale of several food items within the State. The second is an exemption for proceeds arising from the manufacture, production, packaging, and sale of food or food products grown or cultivated in the State. The measure is effective July 1, 2017.

First, the language in the exemption contained in Section 2 of this measure applies to gross proceeds of the manufacture, production, packaging, and sale of particular items "within the State." The Department suggests deletion of the language "within the State," as it is unnecessary. The GET applies to income from engaging in business in the State, and as it relates to tangible personal property sales for use or consumption out of state is already exempt under section 237-29.5, Hawaii Revised Statutes.

Second, the exemption contained in Section 3 of this measure creates a constitutional issue. Limiting a tax exemption to food and food products grown or produced in the State is likely to 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.

Additionally, if the Committee wishes to advance this measure, the Department requests that the effective date be amended to so that the measure be made applicable to taxable years beginning after December 31, 2017, to allow the Department sufficient time to amend the relevant forms and instructions.

Thank you for the opportunity to provide comments.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 1:42 PM
To: AGRtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB1502 on Feb 8, 2017 08:30AM*

HB1502

Submitted on: 2/6/2017

Testimony for AGR on Feb 8, 2017 08:30AM in Conference Room 312

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: Tuesday, February 7, 2017 12:53 PM
To: AGRtestimony
Cc: spawaikiki@gmail.com
Subject: Submitted testimony for HB1502 on Feb 8, 2017 08:30AM

HB1502

Submitted on: 2/7/2017

Testimony for AGR on Feb 8, 2017 08:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
dennis boyd miller	Individual	Oppose	No

Comments: Dear Representatives, I'm Dennis Miller, a Waikiki resident. Regarding HB1502, Committee AGR Room 312 Feb 8, 8:30 am, I'm writing to ask you to oppose this bill. I feel that this bill will create confusion about what does or does not qualify. There are other bills which provide income tax breaks to small farmers, and those bills should be passed. The goal of government should be to create a simple market place with useful regulations for public safety and benefit. This bill seems good in its language, but in its application, appears to create complexities in how it will be implemented. Complexities result in time and therefor money being spent on 'sorting things out.' I recommend simple methods of incentivizing small farmers. Thank you, Dennis Miller

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TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exemption for Select Healthy Foods and Locally Grown Food

BILL NUMBER: HB 1502

INTRODUCED BY: MATSUMOTO, BROWER, LOPRESTI, MCDERMOTT, QUINLAN, Kobayashi, Nakashima, Oshiro, San Buenaventura, Todd

EXECUTIVE SUMMARY: Provides a general excise tax exemption for select healthy foods, and for locally grown food. The former provision may be constitutional but may create a revenue drain of an indeterminate amount. The latter provision appears very similar to one struck down some years ago as discriminating against interstate commerce.

BRIEF SUMMARY: Amends HRS chapter 237 by providing an exemption for income from the manufacture, production, packaging, and sale of (1) fresh fruits; (2) fresh vegetables; (3) water; (4) nuts; (5) seeds; and (6) nut butters. Provides definitions.

Amends chapter 237 by providing an exemption for locally grown food and food products. Such products include locally farmed meat, eggs, vegetables, and fruit, as well as food and food products that are labeled "made in Hawaii" or "produced in Hawaii."

EFFECTIVE DATE: July 1, 2017.

STAFF COMMENTS: Under the Hawaii GET law, agricultural or aquacultural products are indeed eligible for the wholesale tax rate, but of course retail sales of such products are still taxable at the retail rate.

The bill would grant a special preference to a select group of taxpayers at the expense of others who are not eligible for the exemption. The general excise tax is a tax that permits someone to operate a business in the state. Thus, businesses providing similar, if not identical, services should be treated equally as the tax is on the business and not on the customer. In this case, this proposal would grant an exemption for the proceeds from selling "healthy food products" while denying it to competitive products such as canned fruits or vegetables.

In addition, discrimination against fishers or other food producers from other states could violate the Commerce Clause of the U.S. Constitution. A tax preference for okolehao and fruit wine produced in Hawaii was held to be unconstitutional for that reason in *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984). Similarly, the Hawaii Supreme Court has declared unconstitutional an exemption for agricultural, meat, or fish products grown, raised, or caught in Hawaii that were sold to cruise ships and other vessels. *In re Hawaiian Flour Mills, Inc.*, 76 Haw. 1, 868 P.2d 419 (1994).

It should be remembered that businesses that qualify for the tax preferences proposed in this measure would utilize services funded by current taxpayers while being tax-exempt. The question that should be asked is why businesses other than those granted the limited exemption

proposed by this measure should foot the bill to run state government. Thus, the limited tax preference granted under this measure would merely shift the burden of paying for public services to those not so favored.

Further, what can be the policy justification for giving a special rate to this type of business while others pay full freight to make up the difference? If this bill is approved, lawmakers should brace themselves for a deluge of requests by other businesses, large and small, who for whatever reason think they merit special treatment under the GET law.

Digested 2/6/2017

Rep. Richard P. Creagan
House Committee on Agriculture

Bill: General Excise Tax Exemption; Healthy Foods; Locally Grown or Produced Food and

HB1502

Wednesday, February 8, 2017

8:30AM

Conference Room 312

State Capitol

415 South Beretania Street

Honolulu, HI

My name is Jean Butel, I have a Master of Public Health, am a university junior researcher, and currently obtaining my doctorate in public health. I have worked on the Children's Healthy Living (CHL) Program for the past four years. This program involved Hawaiian communities to improve children's healthy eating (fruits and vegetables), water intake, exercise, and sleeping times. I am testifying on HB1502 (General Excise Tax Exemption; Healthy Foods; Locally Grown or Produced Food) and am in support of this bill to provide a general excise tax exemption for locally grown fruits and vegetables.

In a study of more than 28,000 low-income children, 2 to 5 year olds in food insecure households had a 22% higher risk of being obese when compared to children from food secure households¹. The CHL program obtained data on children and families in Hilo, Nanakuli, Waikuku, and Waimanalo and among those surveyed, 37.3% of households reported being food insecure².

¹ Metallinos-Katsaras, E., Must, A., & Gorman, K. (2012). A longitudinal study of food insecurity on obesity in preschool children. *Journal of the Academy of Nutrition and Dietetics*, 112(12), 1949-1958.

² Children's Healthy Living Program (2016). Available at: <http://www.chl-pacific.org/>

Given the link between childhood obesity and food security, particularly in low-income households, CHL conducted a food cost survey in these communities. The survey was based on the USDA Thrifty Food Plan (TFP) which is designed to meet the nutritional needs at low-cost for a family of four with school age children³. Across these four communities the average weekly food cost for the Thrifty Food Plan menu for a family of four was \$213.72 which is 50% higher than the mainland comparison community of Portland, Oregon. In addition, over 34% of the weekly costs were associated with purchasing of fruit and vegetables².

Working with families in these communities, over and over again, I heard repeated comments on the price of “healthy food” and in particular fresh, locally grown fruits and vegetables. When fresh fruit was served to children, it always disappeared quickly. Not having affordable fruits and vegetables makes it tough to compete with low-cost, unhealthy alternatives.

Removing the general excise tax on locally grown fruits and vegetables would lower costs and help families to be able to purchase fruits and vegetables. This also sends a message of health and well-being to all residents of Hawaii. I strongly support HB1502 in providing General Excise Tax Exemption for locally grown fruits and vegetables.

Jean Butel, MPH
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³ United States Department of Agriculture, Center for Nutrition Policy and Promotion (1999). *The Thrifty Food Plan, 1999, Administrative Report*, Washington D.C: October, 1999.

From: mailinglist@capitol.hawaii.gov
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LATE

HB1502

Submitted on: 2/7/2017

Testimony for AGR on Feb 8, 2017 08:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Vickery	Individual	Support	No

Comments:

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