

HB 961, HD2

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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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: Wednesday, March 15, 2017

Time: 1:15 P.M.

Place: Conference Room 224, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 961, H.D. 2, Relating to Farmers

The Department of Taxation (Department) appreciates the intent of H.B. 961, H.D. 2, and provides the following comments for your consideration.

H.B. 961, H.D. 2, excludes an unspecified amount of income earned by a farmer from the Hawaii income tax, provided that the farmer's gross income does not exceed an unspecified amount if filing singly and does not exceed another unspecified amount if filing jointly. "Farmer" is defined as an individual earning more than seventy-five percent of the individual's gross income from food or value-added food products grown or raised by the individual and sold within the state. The income tax exclusion for farmers applies to taxable years beginning after December 31, 2016. H.D. 2 has a defective effective date of July 31, 2150.

The original version of H.B. 961 had a provision that amended Act 258, Session Laws of Hawaii 2016, such that the Organic Foods Production Tax Credit would be repealed on July 1, 2017. H.D. 2 does not contain this provision. The H.D. 1 version of the measure excluded the first \$50,000 of income earned, if a farmer's annual gross income does not exceed \$150,000 if filing singly and \$300,000 if filing as married filing jointly.

First, the Department notes that the definition of "farmer" is limited to individuals. The income thresholds for single and joint filers are set forth, but married filing separate and head of household filers seem to have been inadvertently omitted. The Department suggests clarifying the thresholds for all filing statuses.

Also, if the Committee wishes to advance this measure, the Department requests that the income tax exclusion be made effective for taxable years beginning after December 31, 2017. This will allow sufficient time to make the necessary form, instruction and computer system modifications.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
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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

**MARCH 15, 2017
1:15 P.M.
CONFERENCE ROOM 224**

**HOUSE BILL NO. 961 HD2
RELATING TO FARMERS**

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 961 HD2 that seeks to exclude from income tax, the first unspecified amount of income earned by farmers whose annual gross income does not exceed a certain amount (and another certain amount if filing jointly), and earn more than 75 percent of their annual gross income from the sales of food or value-added food products grown or raised by the farmer sold in Hawaii. This bill also re-establishes the organic foods production tax credit (Act 258, SLH 2016). The Department of Agriculture supports the intent, defers to the Department of Taxation, and offers an amendment.

According to the 2012 Census of Agriculture (Hawaii, Volume 1, Chapter 1: State Level Data, Table 60, page 44), the HD1 version of this bill with the income excluded and threshold amounts will benefit less than 1,000 of Hawaii's 7,000 farmers (includes all business entities). More specifically, approximately 618 (9 percent) earned more than 75 percent of their total household income from farming in 2012.

The definition of a "farmer" (Bill, page 7, lines 18-21) is an individual that earns 75 percent of annual gross income "...from food or value-added food products grown or



raised by the individual and sold within the State.” The Department recommends the following amendment that replaces the word “food” with “farm products” and provides a definition of “farm products”:

(New language is underscored, deleted language is stricken over)

” (15) The first \$ _____ of income earned by a farmer; provided that the farmer’s annual gross income does not exceed \$ _____ if filing a tax return singly and does not exceed \$ _____ if filing a tax return as married filing jointly. As used in this paragraph, “farmer” means an individual who earns more than seventy-five percent of the individual’s annual gross income from ~~food~~ farm products or value-added ~~food~~ farm products grown or raised by the individual and sold within the State.”; and “farm products” means production from agricultural activities described in section 205-4.5(a)(1), (2), and (3).”

We also note that by limiting the proposed partial tax exclusion to income earned by individuals, this may exclude small partnerships and other forms of business ownership.

Thank you for the opportunity to submit our testimony.



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

ON THE FOLLOWING MEASURE:

H.B. NO. 961, H.D. 2, RELATING TO FARMERS.

BEFORE THE:

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

DATE: Wednesday, March 15, 2017 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Mary Bahng Yokota, Deputy Attorney General

Chair Gabbard and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and provides the following comments.

This bill creates an exemption from state income tax for unspecified amounts of income earned by individuals who earn more than 75 percent of the individual's annual gross income from food or value-added food products "grown or raised by the individual and sold within the State" (emphasis added). Page 7, lines 13-21. The bill expresses that the State "needs to address the imbalance in agricultural trade and significantly expand local food production" and reflects its intent to "strengthen the local economy and improve the long-term economic well-being of Hawaii as a whole" (emphases added). Page 1, lines 10-12, and page 2, lines 4-5.

We bring to your attention that this bill may be challenged as being unconstitutional under the Commerce Clause of the United States Constitution. Article I, section 8, clause 3, of the United States Constitution grants Congress power to "regulate Commerce . . . among the several States." "It has long been accepted that the Commerce Clause not only grants Congress the authority to regulate commerce among the States, but also directly limits the power of the States to discriminate against interstate commerce. New Energy Co. of In. v. Limbach, 486 U.S. 269, 273-74 (1988). "Discrimination against interstate commerce in favor of local business or investment is

per se invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest.” C & A Carbone, Inc. v. Town of Clarkstown, N.Y., 511 U.S. 383, 392 (1994), *citing* Maine v. Taylor, 477 U.S. 131 (1986). The United States Supreme Court stated in a case arising from a Hawai'i tax law that the 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 Exch. v. State Tax Comm'n, 429 U.S. 318, 329 (1977). 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 U.S. 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. Although factual distinctions may be made, a similar analysis may apply to this bill.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Exclusion for Small Farmers

BILL NUMBER: HB 961, HD-2

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Creates an exclusion from income tax for the first \$_____ of income earned by farmers whose annual gross income does not exceed \$_____.

SYNOPSIS: Adds a new paragraph to HRS section 235-7 to exclude the first \$_____ of income received by a farmer whose annual gross income does not exceed \$_____ (single) or \$_____ (married filing jointly).

Defines “farmer” as an individual who earns more than seventy-five per cent of the individual's annual gross income from food or value-added food products grown or raised by the individual and sold within the State.

EFFECTIVE DATE: July 31, 2150.

STAFF COMMENTS: This measure proposes to grant preferential treatment in the form of an income tax exclusion 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.

To the extent that this select group of taxpayers would enjoy the preferential tax treatment, they 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. Thus, existing businesses that are not so blessed with a similar exclusion must pick up the additional cost either in higher taxes or lower quality of service.

Digested 3/9/2017



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OUR MISSION
HCIA is a Hawaii-based non-profit organization that promotes modern agriculture to help farmers and communities succeed. Through education, collaboration and advocacy, we work to ensure a safe and sustainable food supply, support responsible farming practices and build a healthy economy.

TESTIMONY FROM BENNETTE MISALUCHA, EXECUTIVE DIRECTOR

**In Support of HB 961, HD2
Relating to Farmers**

Excludes for income tax purposes a portion of income earned by farmers who grow or raise food or value-added food products within the state and whose annual gross income does not exceed a certain amount.

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

March 15, 2017, 1:15 p.m.

Conference Room 224

Chair Gabbard and members of the committee:

The Hawaii Crop Improvement Association (HCIA) is a Hawaii-based non-profit organization that promotes modern agriculture to help farmers and communities succeed. Through education, collaboration, and advocacy, we work to ensure a safe and sustainable food supply, support responsible farming practices, and build a healthy economy.

HCIA supports **HB 961, HD2**, which excludes for income tax purposes a portion of income earned by farmers who grow or raise food or value-added food products within the state and whose annual gross income does not exceed a certain amount.

Farming is a tough business and this bill will go a long way in supporting the growth of new small farming businesses by creating an exclusion from income tax for a portion of income earned by such a business. The bill will also support the State's goal to double food production by 2020 by encouraging new farming businesses.

Thank you for the opportunity to testify in support of this bill.

Respectfully submitted,

Bennette Misalucha
Executive Director



MAUI

CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 224
WEDNESDAY, MARCH 15, 2017 AT 1:15 P.M.**

To The Honorable Mike Gabbard, Chair;
The Honorable Gil Riviere, Vice Chair; and
Members of the Committee on Agriculture & Environment

**TESTIMONY IN SUPPORT OF HB961 TO EXCLUDE A PORTION OF INCOME
EARNED BY FARMERS FOR INCOME TAX PURPOSES**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce representing approximately 600 businesses and 16,000 employees on Maui. I am writing share our support of HB961.

This bill fits with three of our legislative priorities for this year on supporting agriculture, local manufacturers, and small businesses. Farming is very hard work and requires many high, upfront investment costs. There are also a number of unpredictable costs and factors that farmers face once established, including the new FDA Food Safety Act regulations. Agriculture is a vital industry for our state that provides a number of jobs and resources for our local community. Therefore, we support any legislation that provides farmers with tax breaks, which will spur additional farming and agriculture in our state.

We appreciate the opportunity to testify on this matter and therefore ask that this bill be passed.

Mahalo for your consideration of our testimony and we hope you will move this bill forward.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
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March 15, 2017

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON HB 961, HD2
RELATING TO FARMERS

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 interest of our diverse agricultural community.

Hawaii Farm Bureau **strongly supports HB 961, HD2**, which creates a mechanism to grow small agricultural enterprises.

Hawaii Farm Bureau Policy states:

"State tax and monetary policies should be designed to encourage private initiative to help stabilize farm economics in the State of Hawaii, to promote employment and economic growth and to distribute the tax burden equitably. Further such policy should be used by the state, when appropriate, to encourage agricultural growth and expansion."

This measure falls in the "encourage agricultural growth and expansion." category. Some farms have utilized the Enterprise Zone program to obtain similar benefits. Others may just be starting and unable to meet the terms of the EZ program and this measure will help them get started.

HFB respectfully requests **the restoration of funds and your strong support** of this measure understanding the challenges for small farmers in Hawaii. Thank you for this opportunity to provide comment on this important subject.



"Grown with Love"

Kakalina Farms
PO Box 534
Waimanalo, Hawai'i 96795

Senate Committee on Agriculture and Environment
Wednesday, March 15, 2017 1:15 pm

Testimony in SUPPORT of HB961, HD2 – Relating to Farmers – with SUGGESTED AMENDMENTS

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

HB 961, HD2 gives an income tax exclusion of an unspecified amount to farmers who produce food. As drafted, this bill would aid those few Hawai'i farmers who earn 75% of their income from farm activities. According to the testimony of Scott Enright, chair of the Board of Agriculture, the "bill will benefit less than 1,000 of Hawaii's 7,000 farmers ... approximately 618 (9 percent) earned more than 75 percent of their total household income from farming in 2012." February 15, 2017 Testimony of Scott Enright, House Committee on Agriculture."

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. Under the USDA definition, "a farm is defined as any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the year."

<https://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/glossary/#farm>

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.

I strongly support this bill with the following suggested amendments to Section 2 to aid Hawai'i small farmers.

(15) The first \$5,000 of income earned by a farmer; provided that the farmer's annual gross income does not exceed \$50,000 if filing a tax return singly and does not exceed \$100,000 if filing a tax return as married filing jointly. As used in this paragraph, "farmer" means an individual who ~~{earns more than seventy-five per cent of the individual's annual gross income}~~ meets the USDA definition of farm from the sale of [food] farm products or value-added [food] farm products grown or raised by the individual and sold within the State."

"Farm products" means production from agricultural activities described in section 205-4.5(a)(1), (2), and (3).

Thank you very much.

Tom Grande