

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF TAXATION**

830 PUNCHBOWL STREET, ROOM 221
HONOLULU, HAWAII 96813

<http://tax.hawaii.gov/>

Phone: (808) 587-1577 / Fax: (808) 587-1584

To: The Honorable Mike Gabbard, Chair
and Members of the Senate Committee on Agriculture & Environment

Date: January 31, 2018
Time: 1:30 P.M.
Place: Conference Room 224, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2533, Relating to Taxation.

The Department of Taxation (Department) appreciates the intent of S.B. 2533, but has concerns that it may violate the Commerce Clause of the United States Constitution.

S.B. 2533 amends chapter 237, Hawaii Revised Statutes (HRS) by adding a new section that exempts from the general excise tax (GET) “all of the value or gross income derived from the sale of locally grown food produced and purchased within the State, including but not limited to produce, dairy products, eggs, fish, and meat.” The measure is effective July 1, 2018.

The Department believes that this exemption 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, 2018, to allow the Department sufficient time to make the necessary form and computer system changes.

Thank you for the opportunity to provide comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2533, RELATING TO TAXATION.

BEFORE THE:

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

DATE: Wednesday, January 31, 2018 **TIME:** 1:30 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Russell A. Suzuki, First Deputy 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 exempts the value or gross income derived from the sale of “locally grown food produced and purchased within the State” from the measure of general excise taxes. Page 1, lines 4-10.

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. A similar analysis may apply to this bill.

We recommend the deletion of the preference to “locally grown food produce and purchased within the State.” For example, the bill could provide for an exemption from the measure of general excise taxes “all of the value or gross income derived from the sale of food.” If the local preference is retained, we recommend that the bill be held.

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

**JANUARY 31, 2018
1:30 P.M.
CONFERENCE ROOM 224**

**SENATE BILL NO. 2533
RELATING TO TAXATION**

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2533 that seeks to exempt from the general excise tax, the value or gross income derived from the sale of locally-grown food produced and purchased within Hawaii. The Department of Agriculture supports the intent of the exemption from tax for producers of the covered agricultural products. Otherwise, we defer to the Department of Taxation.

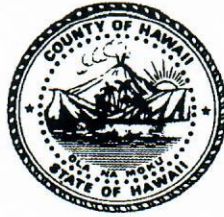
As written, this bill will affect all commercial farming operations producing food. Non-edible agricultural products such as flowers, foliage, trees, turf, seeds and so forth will be excluded from the tax exemption. To reduce misunderstanding, the terms in the bill need to be defined, including "value", "locally grown", "food", "produced", "purchased", and "dairy products".

Thank you for the opportunity to comment on this measure.



Eileen O'Hara
Council Member
Council District 4

Chair: Environmental
Management Committee



Phone: (808) 965-2712
Fax: (808) 961-8912
Email: eileen.ohara@hawaiicounty.gov

Vice Chair: Planning Committee and
Agriculture, Water & Energy
Sustainability Committee

County of Hawaii
Hawaii County Council

25 Aupuni Street, Suite 1402 • Hilo, Hawai'i 96720

Senator Mike Gabbard
Chair, Committee on Agriculture and Environment
Hawai'i State Senate

January 30, 2018

**Re: In Support of Senate Bill 2533, from Hawai'i County Council District 4
To be heard by AEN on 01-31-18 1:30PM in conference room 224**

Aloha Chair Gabbard and Committee Members:

I'm writing to express my support of Senate Bill 2533, which amends Chapter 237 of the Hawai'i Revised Statutes to add a new section which exempts from the general excise tax the value or gross income derived from the sale of locally grown food produced and purchased within the State.

Relieving Hawai'i's farmers and food producers of this tax is a great way to support the local economy and move towards sustainable self-sufficiency. With an overwhelming majority of Hawai'i's food being imported, supporting food production at home is both responsible and intelligent.

Please consider the impact this Bill will have on our economy and citizens, and contact me if you have any questions about my support or knowledge of the subject.

Sincerely,

A handwritten signature in cursive script that reads "Eileen O'Hara".

Eileen O'Hara
Council Member
Council District 4

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exemption for Locally Grown Food

BILL NUMBER: SB 2533

INTRODUCED BY: KIDANI, S. CHANG, GALUTERIA, INOUE, K. Kahele, Shimabukuro

EXECUTIVE SUMMARY: Exempts sales of locally grown food from GET. Unfortunately, such an exemption violates the federal Commerce Clause and cannot be given effect, as held in *In re Hawaiian Flour Mills, Inc.*, 76 Hawai'i 1, 868 P.2d 419 (1994).

SYNOPSIS: Adds a new section to chapter 237, HRS, to exempt from the GET all of the value or gross income derived from the sale of locally grown food produced and purchased within the State, including but not limited to produce, dairy products, eggs, fish, and meat.

EFFECTIVE DATE: July 1, 2018.

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 “locally grown food.” *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 struck down the exemption because it discriminated against other states’ agricultural, meat, or fish products in violation of the Commerce Clause of the U.S. Constitution. The exemption, as proposed, is nearly identical to the one invalidated in *Hawaiian Flour Mills*.

Digested 1/26/2018



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hbf.org; www.hbf.org

January 31, 2018

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON SB 2533
RELATING TO TAXATION

Room 224
1:30 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.

The Hawaii Farm Bureau supports SB 2533, which exempts from the general excise tax the value or gross income derived from the sale of locally grown food produced and purchased within the State.

HFB supports any initiative that reduces the cost of production so that locally produced goods can compete with imported products, strengthening our local economy.

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.

HFB would like to see this concept more broadly applied to include all locally produced agricultural products.

Thank you for this opportunity to provide our opinion on this important matter.



January 30, 2018

Senator Mike Gabbard, Chair
Senator Gil Riviere, Vice Chair
COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Hearing Date: Wednesday, January 31, 2018
Hearing Time: 1:30PM
Place: Conference Room 224
Regarding: SB 2533 RELATING TO TAXATION

COMMENTS SB2533, Relating to Taxation

HFACT is a not-for-profit, IRS 501c(5) organization, that advocates for small boat commercial, non-commercial, and recreational fishermen throughout Hawaii. HFACT board members sit on a number of federal fisheries management and endangered species advisory committees as well as state marine and coastal zone advisory committees; and, HFACT is thoroughly familiar with and participates in ocean and marine resource management in Hawaii and the central Pacific.

HFACT's **COMMENT** seeks clarification of the proposed language in the new section that reads:

“S237- Exemption of locally grown food. In addition to any other applicable exemption provided under this chapter, there shall be exempted from the measure of taxes imposed by this chapter all of the value or gross income derived from the sale of locally grown food produced and purchased within the State, including but not limited to produce, dairy products, eggs, fish, and meat.”

Does this exemption include wild caught fish by commercial fishermen or is it limited to farm raised fish?

HFACT thanks the chair, vice-chair, and committee members for this opportunity to provide comment and to assist small businesses engaged in food production.

Sincerely and Aloha,

Phil Fernandez
President

Hawai'i Fishermen's Alliance for Conservation and Tradition, Inc.
75-796 Hiona Street, Holualoa HI 96725

SB-2533

Submitted on: 1/29/2018 1:24:45 PM

Testimony for AEN on 1/31/2018 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Sandlin	Hawaii Cattlemens Council	Support	No

Comments:

SB-2533

Submitted on: 1/28/2018 3:21:24 PM

Testimony for AEN on 1/31/2018 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
William K. Chang	Citizen	Support	No

Comments:

I support this measure.

Thank you for allowing me to submit testimony

SB-2533

Submitted on: 1/29/2018 2:38:07 PM

Testimony for AEN on 1/31/2018 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carl M Jellings Sr	Fishermen	Support	No

Comments:

Strong Support

SB-2533

Submitted on: 1/29/2018 5:38:23 PM

Testimony for AEN on 1/31/2018 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shyla Moon		Support	No

Comments: