

**SB 554**

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

FEBRUARY 3, 2017  
1:15 P.M.  
CONFERENCE ROOM 224

SENATE BILL NO. 554  
RELATING TO THE GENERAL EXCISE TAX

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 554, which seeks to exempt the gross proceeds of any qualified small farmer who grows produce in the State from the general excise tax for five years. To qualify, the produce grown must be intended for human consumption within the State, the parcel on which the produce is not larger than an acreage to be determined, and the parcel has been fallow for no less than five consecutive years immediately prior to the year for which an exemption is first claimed. This last qualification appears to mean that the crop production land is "new" and not existing or recently cultivated. The Department of Agriculture supports the intent of this measure and offers comments.

The bill does not extend the exemption from the general excise tax to other agricultural uses and activities that are described in Section 205-4.5(a)(1 to 3), including crops for bioenergy, flowers, foliage, forage, and timber; game and fish propagation, raising of livestock, including poultry, bees, fish, or other animal or aquatic life. Some portion of these crops are also consumed locally.



We recommend the following amendment should the measure move forward in its current form:

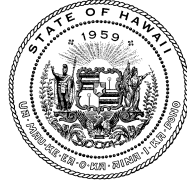
(Page 2, lines 4 to 8)

- “(1) Is no larger than \_\_\_\_ acres; ~~and~~
- (2) Has been fallow for a period of not less than five consecutive years immediately prior to the year for which an exemption is first claimed under this section; and
- (3) Is classified and zoned as agricultural land by the land use commission and the county.”

Thank you for the opportunity to submit our testimony.

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: Friday, February 3, 2017

Time: 1:15 P.M.

Place: Conference Room 224, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: S.B. 554, Relating to the General Excise Tax

The Department of Taxation (Department) appreciates the intent of S.B. 554 and provides the following comments for your consideration.

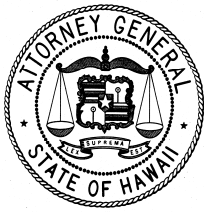
S.B. 554 creates an exemption to the general excise tax (GET) for income received by a qualified small farmer for the sale of produce that is intended for consumption within the State. Taxpayers are able to claim the exemption for a maximum period of five years. The measure is effective on approval and applies to gross income or gross proceeds received after December 31, 2016 and before January 1, 2022. The measure is repealed January 1, 2022.

First, since the measure is only effective for 5 years, the Department suggests the deletion of the second sentence in subsection (a).

Second, the provision stating that the exemption applies only to sales of produce intended to be consumed in the State may create a Constitutional issue. The Department suggests the deletion of this requirement as GET would not apply to the produce shipped out of state under section 237-29.53, Hawaii Revised Statutes. The Department ultimately defers to the Department of the Attorney General on the constitutionality of this provision.

Finally, if the Committee wishes to advance this measure, the Department requests that the measure apply to gross income or gross proceeds received after December 31, 2017 and before January 1, 2023. This will allow the Department to make the necessary changes to the form, instructions and computer system while maintaining the 5 year period of applicability.

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. 554, RELATING TO THE GENERAL EXCISE TAX.

**BEFORE THE:**

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**DATE:** Friday, February 3, 2017

**TIME:** 1:15 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Deborah Day Emerson, Deputy Attorney General

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Chair Gabbard and Members of the Committee:

The Department of the Attorney General has concerns about this bill because it may be challenged as violating the Commerce Clause of the United States Constitution.

The purpose of this bill is to create a general excise tax exemption for payments to any "qualified small farmer" for the sale of produce for human consumption within the State of Hawaii. A "qualified small farmer" is one who cultivates land in this State to grow such produce. The exemption is available only if the land is no larger than a specified acreage (left blank in the bill as introduced) and has been fallow for five years. The effect of this bill is to create a tax exemption for certain produce grown in the State. Produce grown outside the State would not qualify for the tax exemption.

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 exemption 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.

Only produce grown in the State would qualify for the tax exemption in this bill. This exemption appears to have similar purpose and effect as the exemption that violated the Commerce Clause in Bacchus.

This potential constitutional concern could be avoided if the phrase "in the State" was deleted from the definition of "qualified small farmer." With that change, all persons or entities cultivating land to grow produce for human consumption (and who met the other qualifying parameters such as size of the cultivated parcel and requirement that the land be previously fallow) would be treated the same in terms of the tax exemption. The produce traveling in interstate commerce would not be taxed differently than the produce that remained within the State. Thus, the constitutional concern of violation of the commerce clause would be removed.

We recommend that this bill be amended to delete the phrase "in the State" from the definition of qualified small farmer.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exemption for Qualified Small Farmer

BILL NUMBER: SB 554

INTRODUCED BY: ENGLISH, ESPERO, GABBARD, GREEN, NISHIHARA, SHIMABUKURO, Baker, S. Chang, Galuteria, Inouye, Keith-Agaran, Riviere, Ruderman, Wakai

EXECUTIVE SUMMARY: This measure seems to be an attempt to assist small farmers by providing a five-year general excise tax exclusion, but it is much more narrow and may be special interest legislation.

BRIEF SUMMARY: Adds a new section to HRS chapter 237 that would exempt payment received by a qualified small farmer for the sale of produce that is intended for human consumption within the State.

Defines “produce” as fresh fruit or vegetable grown in the soil or hydroponically, regardless of whether organic, that is sold in the same general condition as when it was harvested.

Defines “qualified small farmer” as a person or entity that cultivates the land in the State in order to grow produce for human consumption; provided that the produce for which an exemption is claimed under this section is grown on a parcel of land that: (1) is no larger than \_\_\_\_\_ acres; and (2) has been fallow for a period of not less than five consecutive years immediately prior to the year for which an exemption is first claimed under this section.”

Applies to gross income or gross proceeds received after December 31, 2016, and before January 1, 2022.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: Although the bill on its face appears to give a tax break to small farmers, the exemption is much more narrow and targeted because of the requirement that the land have been fallow for five years immediately prior to the exemption being claimed. This may be special interest legislation.

The bill language states that the exemption shall not apply to sales of produce intended for human consumption outside the State. That language might not be necessary because such produce may already be eligible for the export sales exemption under HRS section 237-29.5.

The bill language benefits only those farmers who are growing fruits and vegetables. If the intent is to benefit farmers raising livestock, bees, or poultry, the language would need to be changed, perhaps by referencing the existing definition of “producer” in HRS section 237-5.

Digested 1/27/2017

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, January 28, 2017 10:23 PM  
**To:** AEN Testimony  
**Cc:** dale@hicattle.org  
**Subject:** \*Submitted testimony for SB554 on Feb 3, 2017 13:15PM\*

**SB554**

Submitted on: 1/28/2017

Testimony for AEN on Feb 3, 2017 13:15PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dale Sandlin	Hawaii Cattlemens Council	Support	No

Comments:

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