

HB 616 HD 1



STATE OF HAWAII
DEPARTMENT OF TAXATION
830 PUNCHBOWL STREET, ROOM 221
HONOLULU, HAWAII 96813
<http://tax.hawaii.gov/>
Phone: (808) 587-1540 / Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

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

Date: Wednesday, March 13, 2019
Time: 1:15 P.M.
Place: Conference Room 224, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 616, H.D. 1, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 616, H.D. 1, but has concerns that the measure may violate the Commerce Clause of the United States Constitution.

H.B. 616, H.D. 1, amends section 237-24.3, Hawaii Revised Statutes (HRS), by adding an exemption to the general excise tax (GET) for amounts received from a consumer by a producer of locally-grown produce and locally-raised livestock food products. The measure defines "locally grown produce" to mean any agricultural, horticultural, or vegetable product of the soil consumed for nutrition by humans that is grown in the State and sold within the State, and defines "locally raised livestock food products" to mean any product consumed for nutrition by humans that consists of or is derived from livestock raised in the State and sold within the State. The House Committee on Agriculture amended a previous version of this measure by defecting the effective date to January 1, 2150.

As previously stated in the Department's testimony for the original version of the measure, the Department believes that this exemption creates a constitutional issue. Limiting a tax exemption for food products solely to those food products that are grown or produced within 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.

Thank you for the opportunity to provide comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 616, H.D. 1, RELATING TO TAXATION.

BEFORE THE:

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

DATE: Wednesday, March 13, 2019 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Clare E. Connors, Attorney General, or
Cynthia M. Johiro, Deputy Attorney General

Chair Gabbard and Members of the Committee

The Department of the Attorney General appreciates the intent of H.B. No. 616, H.D. 1, and provides the following comments.

The purpose of this bill is to provide local farmers a general excise tax exemption for amounts received from the sale of locally grown produce and locally raised livestock food products upon finding, among other things, that "providing tax relief to producers of locally grown produce and locally raised livestock food products will make these local food products more affordable, increase sales, and return more profits to the local farmers and agriculture industry." See H.B. No. 616, H.D. 1, page 2. The bill defines "locally grown produce" as "any agricultural, horticultural, or vegetable product of the soil consumed for nutrition by humans that is grown in the State and sold within the State." The term "locally raised livestock food products" is defined in the bill as meaning "any product consumed for nutrition by humans that consists of or is derived from livestock raised in the State and sold within the State." Id. page 9, lines 4-11.

H.B. No. 616, H.D. 1, could be subject to challenge as violative of the Commerce Clause of the United States Constitution. Article I, section 8, clause 3, of the United States Constitution provides that the Commerce Clause 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, 108

S. Ct. 1803, 1807-08, 100 L. Ed. 2d 302 (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, 114 S. Ct. 1677, 1683, 128 L. Ed. 2d 399 (1994) (citing Maine v. Taylor, 477 U.S. 131, 106 S. Ct. 2440, 91 L. Ed. 2d 110 (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)). In Bacchus, the United States Supreme Court struck down an exemption from the liquor tax for locally produced alcoholic beverages upon finding that the exemption bestowed a commercial advantage on locally produced products. Similar to the bill at hand, the purpose of the exemption in Bacchus was to promote local industry and encourage increased consumption of local products.

In this bill, the tax exemptions for locally grown produce and livestock food products provide a commercial advantage to local producers in the form of lower taxes that would not be available to out-of-state competitors.

Due to the constitutional concerns noted above, the Department of the Attorney General believes this bill should be held.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

**MARCH 13, 2019
1:15 P.M.
CONFERENCE ROOM 224**

**HOUSE BILL NO. 616 HD1
RELATING TO TAXATION**

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on House Bill 616 HD1. This measure exempts from the general excise tax, amounts received by a producer of locally grown produce and locally raised livestock food products from a consumer. The Department of Agriculture supports this measure.

This measure offers a tax exemption limited solely to producers of produce and livestock to be consumed for nutrition within the State. This directly supports the State's goals in food security and self-sufficiency with benefits to local farmers and ranchers who grow agricultural products.

Thank you for the opportunity to testify on this measure.





Email: communications@ulupono.com

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT
Wednesday, March 13, 2019 — 1:15 p.m. — Room 224

Ulupono Initiative Supports HB 616 HD 1, Relating to Taxation

Dear Chair Gabbard, Vice Chair Ruderman, and Members of the Committee:

My name is Murray Clay and I am Managing Partner of Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally produced food; increase affordable, clean, renewable energy; and better manage waste and fresh water resources. Ulupono believes that self-sufficiency is essential to our future prosperity and will help shape a future where economic progress and mission-focused impact can work hand in hand.

Ulupono supports HB 616 HD 1, which exempts locally grown produce and locally raised livestock food products from the general excise tax, because it aligns with our goal to increase local food production.

This bill would support our local food producers by making their products more competitive. It would also help consumers by reducing the cost of locally produced food products consumed in the state. The general excise tax multiplies along the food supply chain, hitting multiple points between the producer and consumer. Therefore, general excise taxes make local food less competitive with imported food products.

As Hawai'i's local food issues become increasingly complex and challenging, organizations need additional resources and support to address and overcome them. We appreciate these committees' efforts to look at policies that support local food production.

We believe that through collaboration, we can help produce more local food and support an economically robust homegrown agriculture industry, which strengthens our community with fresh, healthy food. Thank you for this opportunity to testify.

Respectfully,

Murray Clay
Managing Partner

Investing in a Sustainable Hawai'i

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: HB 616, HD-1

INTRODUCED BY: House Committees on Agriculture and Economic Development & Business

EXECUTIVE SUMMARY: Exempts sales of locally grown food from GET. 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 paragraph to section 237-24.3, HRS, to exempt from the GET amounts received by a producer of locally grown produce and locally raised livestock food products from a consumer.

Defines "locally grown produce" as any agricultural, horticultural, or vegetable product of the soil consumed for nutrition by humans that is grown in the State and sold within the State.

Defines "locally raised livestock food products" as any product consumed for nutrition by humans that consists of or is derived from livestock raised in the State and sold within the State.

EFFECTIVE DATE: January 1, 2150.

STAFF COMMENTS: The measure would grant a tax preference to locally grown produce or livestock food products. *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 like the one invalidated in *Hawaiian Flour Mills*.

Digested 2/16/2019

HB-616-HD-1

Submitted on: 3/11/2019 4:40:51 PM

Testimony for AEN on 3/13/2019 1:15:00 PM

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

Comments:



1050 Bishop St. PMB 235 | Honolulu, HI 96813
P: 808-533-1292 | e: info@hawaiiifood.com

Executive Officers

Toby Taniguchi, KTA Superstores, *Chair*
Joe Carter, Coca-Cola Bottling of Hawaii, *Vice Chair*
Charlie Gustafson, Tamura Super Market, *Secretary/Treas.*
Lauren Zirbel, HFIA, *Executive Director*
Beau Oshiro, C&S Wholesale Grocers, *Past Chair*
Stan Brown, Acosta Sales & Marketing, *Advisor*
Paul Kosasa, ABC Stores, *Advisor*
Barry Taniguchi, KTA Superstores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*

TO:
Committee on Agriculture and Environment
Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: March 13, 2019
TIME: 1:15pm
PLACE: Conference Room 224

RE: HB616 HD1 Relating to Taxation

Position: Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA is in support of this measure. Food taxes are regressive and have the biggest impact on lower income families since these households spend the greatest percentage of their income on food. Ideally the state would not tax any groceries or other essential items, and exempting local produce and meat is a step in the right direction.

Hawaii has the highest cost of living in the nation. Many contributing factors of this are beyond control, such as our remote location and limited land area. But food taxes are within the Legislature's control. A GET exemption on local food helps bring down the cost of living and encourages Hawaii residents and visitors to choose our great locally grown fruits and vegetables and locally raised meat. For these reasons we ask that this measure be passed, and we thank you for the opportunity to testify.

HB-616-HD-1

Submitted on: 3/11/2019 8:53:54 PM

Testimony for AEN on 3/13/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brett Kulbis	Testifying for Honolulu County Republican Party	Support	No

Comments:



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

March 13, 2019

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON HB 616, HD1
RELATING TO TAXATION

Room 224
1:15 PM

Aloha Chair Gabbard, Vice Chair Ruderman, and Members of the Committee:

I am Brian Miyamoto, Executive Director 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 strongly support HB 616, HD1, which exempts locally grown produce and locally raised livestock food products from the general excise tax.

Hawaii's agriculture industry faces numerous challenges. Sustainability, self-sufficiency and growing agriculture are popular concepts seen in many of the measures before the legislature this year. This Legislative Session, there have been many bills introduced that support of Hawaii's agricultural Industry.

Many of Hawaii's farmers and ranchers are struggling with the high cost of their operations. This measure, which seeks to provide a GET exemption to assist Hawaii's farmers and livestock industry, is critical to ensure the sustainability of Hawaii's diverse agriculture industry. This will help to reduce the operating costs and eventually help reduce the cost of purchasing local produce, flowers, livestock and aquaculture products to local consumers.

Thank you for this opportunity to testify in support of this measure.

LATE



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 224
WEDNESDAY, MARCH 13, 2019 AT 1:15 P.M.**

To The Honorable Mike Gabbard, Chair;
The Honorable Russell E. Ruderman, Vice Chair; and
Members of the Committee on Agriculture & Environment,

TESTIMONY IN SUPPORT OF HB 616 RELATING TO TAXATION

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce with approximately 650 members. I am writing share our support of HB 616.

This bill fits with one of our legislative priorities on supporting agriculture. Farming and ranching are very hard work and requires many high, upfront investment costs. There are also a number of unpredictable costs and factors that farmers and ranchers face once established. We need to have broader definitions for tax exemption qualifications to encourage further growth and development of the agriculture industry in Hawaii. Therefore, we support any legislation that provides tax exemptions to support ag, which will spur additional farming and agriculture in our state. Broader farming and agriculture supports a more sustainable Hawaii.

Further, we have long promoted buy local and locally-made products first and appreciate that this bill helps to incentivize buying local produce and locally-raised livestock products and also helps to reduce costs. As Hawaii's cost of living is so high, by exempting the tax on these items, it will be more equal to other states (who exempt food from their sales tax) when it comes to food costs. As the legislature this year has several bills to address the minimum wage as many are concerned about the living wage, one of the ways to address that is to eliminate the GET on necessities, including food and medication. We applaud this bill for seeking to address this, while also doing it in away to support the purchase of locally-grown produce and livestock products, which is a more sustainable solution.

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.

HB-616-HD-1

Submitted on: 3/11/2019 9:28:24 AM

Testimony for AEN on 3/13/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dr Marion Ceruti	Individual	Support	No

Comments:

HB-616-HD-1

Submitted on: 3/11/2019 8:31:41 AM

Testimony for AEN on 3/13/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tracey Clay-Whitehurst	Individual	Support	No

Comments:

HB-616-HD-1

Submitted on: 3/10/2019 11:55:10 AM

Testimony for AEN on 3/13/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jaclyn Lindo	Individual	Support	No

Comments: