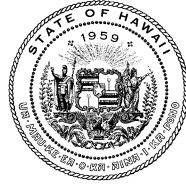


**DAVID Y. IGE**  
GOVERNOR

**JOSH GREEN M.D.**  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
Phone: (808) 587-1540 / Fax: (808) 587-1560  
Email: Tax.Directors.Office@hawaii.gov

**RONA M. SUZUKI**  
DIRECTOR OF TAXATION

**DAMIEN A. ELEFANTE**  
DEPUTY DIRECTOR

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

From: Rona M. Suzuki, Director  
Department of Taxation

**Re: S.B. 3081, Relating to Taxation of Locally Produced, Organic Food**

Date: Monday, February 10, 2020

Time: 2:20 P.M.

Place: Conference Room 224, State Capitol

The Department of Taxation (Department) appreciates the intent of S.B. 3081, but has concerns about the measure.

S.B. 3081 creates a new refundable income tax credit for agricultural products or livestock produced by a certified organic farm in the State, and amends section 237-24.3, Hawaii Revised Statutes, to exempt from the general excise tax (GET) amounts received by a certified organic farm that produces agricultural products or livestock in the State. The income tax credit would be equal to 25 per cent of the certified organic farm's taxable income, up to an unspecified cap, and the credit would be available for five consecutive years, beginning from the first taxable year in which a qualified taxpayer begins producing agricultural products or livestock in the State. It is effective July 1, 2020, with changes to income tax applying to taxable years beginning after December 31, 2020.

The Department believes the measure is likely to violate the Commerce Clause of the United States Constitution because it provides a tax benefit only to locally produced products. An opinion from the Attorney General should be requested.

Notwithstanding the potential commerce clause violation, the Department suggests specifying the income that would qualify for the credit. As currently written, the taxpayer would qualify for being a certified organic farm and all income would qualify for the credit even if it did not relate to farming.

The Department is able to administer the bill as written, but respectfully requests that any changes to the GET be made effective for gross receipts received on or after January 1, 2021. This will level the playing field so the exemption will apply to all affected taxpayers regardless of the tax year followed. The date change will also give the Department time to update forms and our computer system.

Thank you for the opportunity to provide comments.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 3081, RELATING TO TAXATION OF LOCALLY PRODUCED, ORGANIC FOOD.

**BEFORE THE:**

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**DATE:** Monday, February 10, 2020 **TIME:** 2:20 p.m.

**LOCATION:** State Capitol, Room 224

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

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Chair Gabbard and Members of the Committee:

The Department of the Attorney General has concerns regarding this bill and provides the following comments.

The stated purpose of S.B. No. 3081 “is to help Hawaii achieve its local food production goals by: (1) Providing a tax credit for locally produced, organic food; and (2) Exempting locally produced, organic food from the general excise tax.” See S.B. No. 3081, page 1, line 13, to page 2, line 2. A qualified taxpayer under the Act is defined as “a certified organic farm . . . that produces agricultural products or livestock in the State. See id. at page 2, lines 18-20.

This bill could be subject to challenge as a violation of the Commerce Clause of the United States Constitution.

The Commerce Clause provides that Congress shall have the power to “regulate Commerce . . . among the several States.” U.S. Const. art I, § 8, ct. 3. “Though phrased as a grant of regulatory power to Congress, the clause has long been understood to have a ‘negative’ aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles in commerce.” *Oregon Waste Systems, Inc. v. Dep’t of Env’tl. Quality*, 511 U.S. 93, 98, 114 S. Ct. 1345, 1349 (1994). This implicit constitutional restriction upon the States has become known as the “negative” or “dormant” Commerce Clause doctrine. See *Rocky Mountain Farmers*

*Union v. Corey*, 730 F.3d 1070, 1087 (9th Cir. 2013). The doctrine prohibits States from “advancing their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state,” *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep’t of Natural Resources*, 504 U.S. 353, 112 S. Ct. 2019 (1992) (internal brackets omitted), upon concern about “economic protectionism,” *i.e.*, “regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *Department of Revenue of Ky. v. Davis*, 553 U.S. 328, 337, 128 S. Ct. 1801, 1808 (2008). For example, in *Bacchus Imports Ltd. v. Dias*, 468 U.S. 263 (1984), 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.

Here, an income tax credit and exemption from the general excise tax would be given to local certified organic farms that produce agricultural products or livestock in the State, but it would not be available to out-of-state producers of agricultural products or livestock. Similar to the situation in *Bacchus*, the proposed tax credit and exemption may be challenged as unconstitutional because it bestows a commercial advantage on locally produced products in the form of lower taxes, while burdening out-of-state competitors who would not be eligible for the same tax credit and exemption. The bill may further be challenged under the Commerce Clause because it has “both the purpose and effect of discriminating in favor of local products.” *Bacchus*, 468 U.S. 263, 273.

Based on the foregoing, we respectfully ask that these concerns be addressed. One way to do so is to remove the requirement that agricultural products or livestock be produced “in the State” to qualify for the tax credit and exemption. This amendment would address the possible Commerce Clause challenge by allowing the tax credit and exemption for both locally and out-of-state produced farm products.

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
Deputy to the Chairperson

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 AND THE ENVIRONMENT

MONDAY, FEBRUARY 10, 2020  
2:20PM  
CONFERENCE ROOM 224

SENATE BILL NO. 3081  
RELATING TO TAXATION OF LOCALLY PRODUCED, ORGANIC FOOD

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 3081 that establishes an income tax credit for locally produced, organic food and exempts locally produced, organic food from the general excise tax.

SB3081 offers certified organic farms a 25% exemption from the General Excise Tax (GET) for their sales of agricultural products or livestock in the State for five years. This is on top of the tax credit for organic farmers and others, established in 2016 by Act 258/SLH2016), who may claim a tax credit of up to \$50K to produce organically certified agricultural products and/or costs to associated with organic certification per tax year. The Department notes that the GET exemption contemplated in this measure and the tax credit established by Act 258 SLH 2016 will overlap in tax year FY2021.

According to the 2017 USDA Census of Agriculture, USDA National Certified Organic farms are 2.07% of Hawaii's total number of farms. Doubling local food production and improving local food self-sufficiency through increased local food production are overarching priorities of the Legislature and the Administration. The Department would encourage that actions taken to reduce costs and increase incomes to agricultural operators be applied broadly. The Department supports the intent of this measure, and would additionally encourage that this exemption be applied to all agricultural producers in the State.

Thank you for the opportunity to testify on this measure.



**SB-3081**

Submitted on: 1/31/2020 9:53:58 AM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Regina Gregory	Testifying for EcoTipping Points Project	Support	No

Comments:

**SB-3081**

Submitted on: 2/3/2020 8:39:35 PM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Mulinix	Testifying for Our Revolution Hawaii	Support	No

Comments:



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

#### Executive Officers

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

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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: February 10, 2020  
TIME: 2:20pm  
PLACE: Conference Room 224

RE: SB3081 Relating to Taxation of Locally Produced Organic Food

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.

Exempting locally produced organic food from the GET is a step in the right direction. Food is a major expense for Hawaii families. In 2014, the average spent on food annually for a two-person household was \$9,978 in Maui county; \$9,901 in Kauai county; \$9,467 in Honolulu county; and \$7,676 in Hawaii county. Thirty-two states plus the District of Columbia exempt groceries from their sales taxes, and another six states tax groceries at lower rates than other goods. It is time for Hawaii to join this majority. This bill is a good start and we encourage the legislature to look at ending our state's regressive tax on all groceries.

We also support of efforts to increase local food production. The high cost of labor in our state combined with the high cost of real estate make agricultural activities and food manufacturing commercially very challenging in Hawaii. Tax credits like this can help encourage local agriculture and potentially bring down the cost of local food in our state. We support tax credits for local growers of organic food and would support similar tax credits for all local food producers. Thank you for the opportunity to testify.



Pono Hawai'i Initiative

Josh Frost - President • Patrick Shea - Treasurer • Kristin Hamada  
Nelson Ho • Summer Starr

Monday, February 10, 2020

Relating to Taxation of Locally Produced Organic Food  
Testifying in Support

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports SB3081 Relating to Taxation of Locally Produced Organic Food**, which establishes an income tax credit for locally produced, organic food and exempts it from the general excise tax.

For Hawai'i to reach its goals of doubling local food production by 2030 we will need to create ways to encourage local farmers. By establishing tax incentives for organic farmers, we can not only advocate for more local food production but we can help remove the additional hardships that organic farmers face.

For all these reasons, we urge you to move this bill forward.

Mahalo for the opportunity,  
Gary Hooser  
Executive Director  
Pono Hawai'i Initiative



**SB-3081**

Submitted on: 2/9/2020 12:12:05 PM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kawika Burgess	Testifying for Kalona Brand Company LLC	Support	No

Comments:



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

February 10, 2020

HEARING BEFORE THE  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**TESTIMONY ON SB 3081**  
RELATING TO TAXATION OF LOCALLY PRODUCED, ORGANIC FOOD

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 1,800 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 the intent of SB 3081**, which establishes an income tax credit for locally produced, organic food and exempts locally produced, organic food from the general excise tax.

We agree that the organic sector of our agricultural industry has great potential and an opportunity to expand in Hawaii. Having a stronger organic industry will not only help the overall agricultural industry, but it will also lead to reducing imported organic products and invasive species that are commonly found on the importation of organic fruits and produce.

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. However, we believe that the tax credit and GET exemption should include all locally-produced foods, not just organic.

Thank you for this opportunity to testify on this important subject.

**SB-3081**

Submitted on: 1/30/2020 3:35:53 PM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Megan Blazak	Individual	Support	No

Comments:

**SB-3081**

Submitted on: 1/30/2020 9:23:11 PM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

**SB-3081**

Submitted on: 2/5/2020 5:01:42 PM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB3081. Tax credits will incentivize organic food production, which will help make Hawaii more self-sustaining.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei

**SB-3081**

Submitted on: 2/6/2020 5:56:21 PM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
George Burnette	Individual	Support	No

Comments:

I support Hawaii becoming self-sufficient in the production of food. To not strive for that makes no sense. Please support this bill.

**SB-3081**

Submitted on: 2/8/2020 11:08:05 AM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rynette Keen	Individual	Support	No

Comments:

As a resident of Maui and the FAKE STATE OF HAWAII, I fully support this measure to support the organic agriculture tax credit. We are an isolated population that needs to become agriculturally sustainable and reduce the need for imported food supplies. I ask that you vote to support this measure.



**SB-3081**

Submitted on: 2/6/2020 8:30:23 PM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Azuma Chrupalyk	Individual	Support	No

Comments:

As an aspiring farmer, I am going to need all the resources that I can get for the beginning of my farm. Without further ado, of course I intend to utilize my farm to serve the community. The cash crops are only there to pay the bills, once they are in full growth and ready for me to cycle an economy from. Farmers just need your help getting there. Organic food is not a waste of your time because our babies and grandbabies eat these foods.

**SB-3081**

Submitted on: 2/8/2020 5:00:40 PM

Testimony for AEN on 2/10/2020 2:20:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sherry Pollack	Individual	Support	No

Comments:

**From:** [Sean Nagamatsu](#)  
**To:** [AEN Testimony](#)  
**Subject:** Pass SB3038!  
**Date:** Sunday, February 9, 2020 2:53:46 PM

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Aloha,

I strongly support SB 3038, that will create economic incentives for kalo producers by exempting kalo production from state income taxes up to the first \$100,000 in annual revenue. Helping Hawai'i's original staple and those who grow it can help us become more sustainable!

This measure is based on recommendations from the Taro Task force, established by the State Legislature over a decade ago. Kalo is the most culturally significant food crop in Hawai'i and is recognized as the State Plant, and deserves a high level of protection to ensure it continues. Kalo farm land taxes are being assessed based on adjacent million dollar homes encroaching on traditional kalo growing communities resulting in higher rates of taxation for agricultural and culturally important lands. Most kalo farmers earn far less than the low income or poverty line rates established by the state and have to manage increases in costs to farming such as equipment and fuel charges. Thus, this measure will allow some breathing room and incentive for expansion of taro farming. Thank you for the opportunity to testify on this measure.

Mahalo nui,  
Sean Nagamatsu