

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

DEXTER KISHIDA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
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**TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**MONDAY, FEBRUARY 12, 2024
1:31 PM
CONFERENCE ROOM 224**

**SENATE BILL NO. 2399
RELATING TO TAXATION**

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

Thank you for the opportunity to testify on Senate Bill 2399 that exempts the first \$200,000 of the gross proceeds received by a farmer for the sale of produce from the general excise tax. This exemption does not have a sunset date.

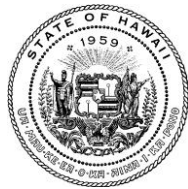
The Department offers a comment and a suggestion. This bill represents a substantial public investment in Hawaii's vegetable and fruit producers and will move the State towards local food self-sufficiency. However, the bill targets fruit and vegetable producing farmers. We recommend the Committee consider including protein producing operations such as livestock and aquaculture. Otherwise, we defer to the Department of Taxation.

Thank you for the opportunity to present our testimony.



JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 2399, Relating to Taxation.

BEFORE THE:

Senate Committee on Agriculture and Environment

DATE: Monday, February 12, 2024

TIME: 1:31 p.m.

LOCATION: State Capitol, Room 224

Chair Gabbard, Vice-Chair Richards, and Members of the Committee:

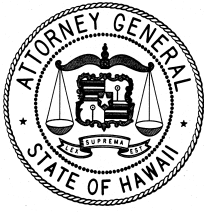
The Department of Taxation ("Department") offers the following comments regarding S.B. 2399 for your consideration.

S.B. 2399 would add a new section in chapter 237, Hawaii Revised Statutes (HRS), to create a new exemption from general excise tax (GET) law for the first \$200,000 of gross proceeds or income received by a farmer for the sale of produce that is intended for human consumption within the State. "Farmer" means a person or entity that cultivates the land in the State to grow produce for human consumption; "produce" means any 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. The exemption would apply to gross income or gross proceeds received after December 31, 2023.

The Department notes that it may be difficult for the Department to determine whether a particular item of produce sold was intended for human consumption, or where it was intended to be consumed. The Department recommends adding additional information and criteria to this provision.

Additionally, the Department requests that the effective date of the measure be amended to take effect on January 1, 2025. This additional time will also allow the Department to make the form, instruction, and computer system changes necessary to implement the proposed exemption.

Thank you for the opportunity to provide comments on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:
S.B. NO. 2399, RELATING TO TAXATION.

BEFORE THE:
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

DATE: Monday, February 12, 2024 **TIME:** 1:31 p.m.

LOCATION: State Capitol, Room 224 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Tammy Kaneshiro, Deputy Attorney General

Chair Gabbard and Members of the Committee:

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

This bill proposes to exempt the first \$200,000 of the gross proceeds or income received by a farmer for the sale of produce from the general excise tax.

In the new section proposed to be added to chapter 237, Hawaii Revised Statutes, by section 2 of the bill, a "farmer" eligible to claim the exemption is defined, in part, as a person or entity that cultivates land "in the State" to grow produce. See page 2, lines 15-16. The exemption will be available to farmers who cultivate land in the State to grow produce, but not to similarly situated farmers who cultivate land in another State to grow produce.

This bill could be subject to challenge as violating the Commerce Clause of the United States Constitution, which provides that Congress shall have the power to "regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 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." *Or. Waste Sys., Inc. v. Dep't of Env'tl. Quality*, 511 U.S. 93, 98 (1994). This negative aspect of the Commerce Clause is known as the Dormant Commerce Clause; this 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. Mich. Dep't of Nat. Res.*, 504 U.S. 353, 359 (1992) (internal brackets omitted), to address "economic protectionism," i.e., "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337 (2008).

A tax exemption may violate the Dormant Commerce Clause if it is "facially discriminatory, discriminatory in effect, or discriminatory in purpose." See *DIRECTV v. Utah State Tax Comm'n*, 364 P.3d 1036, 1040 (Utah 2015). 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 sales of okolehau and fruit wine brewed in Hawaii from locally grown products upon finding that the exemption bestowed a commercial advantage on locally produced products; see also *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269 (1988) (holding that ethanol tax credit for each gallon of ethanol sold, but only if ethanol produced in Ohio, violated Dormant Commerce Clause).

Similar to the situation in *Bacchus Imports*, the proposed tax exemption may be challenged under the Commerce Clause because it could be construed by a court as bestowing a commercial advantage on produce cultivated by farmers on land in the State versus produce cultivated by farmers on land in another State.

Based on the foregoing, we recommend amending the definition of "farmer" on page 2, line 16, by removing "in the State."

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE; Produce; Exemption

BILL NUMBER: SB 2399

INTRODUCED BY: DECOITE, CHANG, HASHIMOTO, KIDANI, MCKELVEY,
RICHARDS

EXECUTIVE SUMMARY: Exempts the gross proceeds received by a farmer from the sale of produce from the general excise tax.

SYNOPSIS: Amends section 237, HRS to add a GET exemption on the first \$200,000 of gross proceeds received by a farmer for the sale of produce intended for human consumption within the State. The exemption would not apply to sales of produce intended for human consumption outside of the State.

A farmer is defined as a person or entity that cultivates the land in the State to grow produce for human consumption.

Produce means any 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.

EFFECTIVE DATE: Upon approval; applicable to gross income or gross proceeds received after December 31, 2023.

STAFF COMMENTS: Under the Hawaii GET law, agricultural or aquacultural products are indeed eligible for the wholesale tax rate, but of course retail sales of such products are still taxable at the retail rate.

The bill would grant a special preference to a select group of taxpayers at the expense of others who are not eligible for the exemption. The general excise tax is a tax that permits someone to operate a business in the state. Thus, businesses providing similar, if not identical, services should be treated equally as the tax is on the business and not on the customer. In this case, this proposal would grant an exemption for farmers selling locally produced fruit and vegetables while denying it to competitive producers such as fisherman or ranchers.

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 question that should be asked is why businesses other than those granted the limited exemption proposed by this measure should foot the bill to run state government. If this bill is approved, lawmakers should brace themselves for a deluge of requests by other businesses, large and small, who for whatever reason think they merit special treatment under the GET law.

Re: SB 2399

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Although the measure grants an exemption for sales of produce intended for consumption within the State and does not exempt sales of produce intended for consumption outside the State, there might not be discrimination against interstate commerce because exports of tangible goods, such as produce, are already exempt under HRS section 237-29.5.

Digested: 2/10/2024



Food+ Policy Internship 2024

food@purplemaia.org

February 11, 2024

Subject: *SB 2399, Relating to Taxation*

Aloha Chair Gabbard, Vice Chair Richards and Members of the Agriculture and Environment Committee,

The Hawaii Food+ Policy is writing to express our strong support for Senate Bill 2399, which seeks to exempt amounts received by farmers for the sale of produce from the general excise tax. This bill is a critical step towards achieving Hawaii's local food production goals, reducing reliance on imports, and fostering the sustainability of our agricultural industry.

The current dependence on imports for over eighty-five percent of our food not only poses a significant economic burden but also exposes us to the risk of famine in the face of natural disasters, economic disruptions, or other external factors beyond the State's control. The legislature's commitment to doubling local food production for local consumption by 2030, as outlined in the Sustainable Hawaii Initiative and Aloha+ Challenge, is commendable. SB 2399 aligns with this commitment by providing tax relief to producers of produce. Lowering food costs, increasing sales of produce, and returning more profits to farmers and the agricultural industry are vital steps towards achieving the ambitious local food production goals.

Exempting amounts received by farmers for the sale of produce from the general excise tax will not only alleviate financial burdens on our local farmers but will also stimulate growth in the agricultural sector. This tax relief is a strategic measure to encourage and support those at the forefront of food production, ensuring the long-term sustainability of our local food supply. It also ensures that the people of Hawaii are the ones intended to consume the produce and that this money is not going out of the State, while we continue to have access to fresh produce.

In conclusion, we urge you to support and pass SB 2399. This bill plays a crucial role in advancing Hawaii's commitment to local food production and reducing dependency on imports. The positive impact on our farmers, the agricultural industry, and ultimately, the resilience of our food supply, cannot be overstated.

The Food+ Policy internship develops student advocates who learn work skills while increasing civic engagement to become emerging leaders. We focus on good food systems policy because we see the importance and potential of the food system in combating climate change and increasing the health, equity, and resiliency of Hawai'i communities.

In 2024, the cohort of interns are undergrads and graduate students from throughout the UH System. They are a mix of traditional and nontraditional students, including parents and veterans, who have backgrounds in education, farming, public health, nutrition, and Hawaiian culture.



Food+ Policy Internship 2024

food@purplemaia.org

Thank you for your time and consideration.

Mahalo,

The Hawaii Food+ Policy Team

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SB2399
RELATING TO TAXATION
Senate Committee on Agriculture and Environment

February 12, 2024

1:31 pm

Conference Room 224

The Office of Hawaiian Affairs (OHA) offers **SUPPORT** for **SB2399**, which provides an exemption for the first \$200,000 of gross proceeds or income received by farmers for the sale of produce intended for human consumption within the State. This exemption is not only crucial for supporting our local agricultural industry but also holds significant importance for traditional farmers who utilize Indigenous Ecological Traditional Knowledge (ITEK) methods.

Traditional farmers who employ ITEK methods play a vital role in preserving Hawai'i's cultural heritage, promoting environmental sustainability and fostering community resilience. These methods, deeply rooted in Indigenous wisdom and practices, prioritize symbiotic relationships between land, water, plants and people, resulting in agricultural systems that are inherently resilient, biodiverse and culturally rich.

By exempting the first \$200,000 of gross proceeds or income for the sale of produce, Hawai'i can provide much-needed relief and support to traditional farmers who often face financial challenges due to the high cost of land and access to water. This exemption would not only help alleviate economic burdens but also incentivize the continuation and expansion of ITEK farming practices, ensuring the preservation and transmission of invaluable cultural knowledge to future generations.

Furthermore, OHA would like to highlight the recommendations put forth by the Office of Hawaiian Affairs' report to the Legislature from the Taro Security and Purity Task Force,¹ which recommended tax breaks specifically for taro farmers. Taro, known as the "staple of life" in Hawaiian culture, holds profound cultural, spiritual and nutritional significance for Native Hawaiian communities. Supporting taro farmers through financial

¹ Taro Security and Purity Task Force Report p.4,12 and 100 (2010)

incentives such as exemptions aligns with the recommendations of the Taro Purity Task Force and demonstrates our commitment to upholding Indigenous rights, cultural preservation, and food sovereignty.

In addition to benefiting traditional farmers, this exemption would also contribute to the overall health and well-being of our communities by increasing access to fresh, locally grown produce, promoting food security, and reducing our reliance on imported goods. This net good will encourage even small-scale farmers to sell their products to consumers.

In conclusion, OHA urges this committee to prioritize the passage of this exemption, recognizing its importance not only for the economic viability of our agricultural sector but also for the preservation and promotion of Indigenous knowledge and cultural practices. By supporting traditional farmers and incentivizing ITEK methods, we can create a more sustainable, resilient, and culturally vibrant future for Hawai‘i.

OHA asks that this committee **PASS SB2399**. Mahalo nui for the opportunity to testify on this important issue.