

ACT 160

S.B. NO. 1193

A Bill for an Act Relating to Section 237-24.3, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The exemption from Hawaii’s general excise tax provided for in section 237-24.3(2)(C), Hawaii Revised Statutes, was originally designed to incentivize the purchase of food from local agricultural sources, but has not resulted in such an incentive. The exemption, in its original form, was held to be unconstitutional in *In the Matter of the Tax Appeal of Hawaiian Flour Mills, Inc.*, 76 Haw. 1, 868 P.2d 419 (1994), and was amended in 2003 to repair the constitutional fault. However, in its present form, the exemption may apply to any person selling any food to common carriers for consumption out of state. Such a broad exemption defeats the exemption’s original purpose and provides an unneeded tax break to common carriers and the catering companies that serve those common carriers.

SECTION 2. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

“§237-24.3 **Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms “agricultural commodity”, “producer”, and “produce dealer” shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- (2) ~~Amounts received from sales of:~~
 - (A) ~~Intoxicating liquor as the term “liquor” is defined in chapter 244D;~~
 - (B) ~~Cigarettes and tobacco products as defined in chapter 245; and~~
 - (C) ~~Agricultural, meat, or fish products;~~

- ~~to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out of state on the shipper's vessels or airplanes;~~
- (3) (2) Amounts received by the manager, submanager, or board of directors of:
- (A) An association of owners of a condominium property regime established in accordance with chapter 514A or 514B; or
- (B) A nonprofit homeowners or community association incorporated in accordance with chapter 414D or any predecessor thereto and existing pursuant to covenants running with the land,
- in reimbursement of sums paid for common expenses;
- ((4)) (3) Amounts received or accrued from:
- (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
- (B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
- (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;
- ((5)) (4) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;
- ((6)) (5) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- ((7)) (6) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph: "Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by

a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; and

“Prosthetic device” means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by the practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that “prosthetic device” shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

~~[(8)]~~ (7) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;

~~[(9)]~~ (8) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;

~~[(10)]~~ (9) Amounts received by a labor organization for real property leased to:

(A) A labor organization; or

(B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.

As used in this paragraph, “labor organization” means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended;

~~[(11)]~~ (10) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes; and

~~[(12)]~~ (11) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of “interstate air transportation” is the same as in 49 U.S.C. section 40102.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval and shall apply to taxable years beginning after December 31, 2013; provided that the amendments made to section 237-24.3, Hawaii Revised Statutes, in section 2 of this Act shall not be repealed when section 237-24.3, Hawaii Revised Statutes, is reenacted on December 31, 2014, in the form in which it read on December 31, 2007, pursuant to section 4 of Act 239, Session Laws of Hawaii 2007, as amended by section 5 of Act 196, Session Laws of Hawaii 2009, and section 1 of Act 91, Session Laws of Hawaii 2010.

(Approved June 21, 2013.)