

DAVID Y. IGE
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ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Mike Gabbard, Chair;
The Honorable Clarence K. Nishihara, Vice Chair;
and Members of the Senate Committee on Agriculture and Environment

From: Isaac W. Choy, Director
Department of Taxation

Date: Friday, February 5, 2021
Time: 1:00 P.M.
Place: Via Videoconference, Hawaii State Capitol

Re: S.B. 361, Relating to General Excise Tax

The Department of Taxation (Department) offers the following comments regarding S.B. 361 for your consideration.

S.B. 361 adds a new section to chapter 237, Hawaii Revised Statutes (HRS), which governs the general excise tax (GET). The proposed measure exempts from GET “amounts received for food or food ingredients,” defined as “substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.” The exemption does not apply to alcohol, tobacco, dietary supplements, or “prepared food” as defined by various examples in the bill’s language. The measure would apply to taxable years beginning after December 31, 2020.

The Department notes that the measure’s definitions of “food” and “food ingredients” are quite broad and very vague, whereas the definitions of “prepared food” and other non-exempted items are very complex. To better effectuate the Legislature’s desired goals, the Department suggests simply exempting from GET any amount a taxpayer receives for sale of food items which are covered by the United States Department of Agriculture (USDA)’s federal food stamps program.

Under section 237-24.3(5), HRS, there is already a GET exemption for amounts received for purchases made *with* USDA coupons under the federal food stamps program and the USDA’s Special Supplemental Foods Program for Women, Infants and Children. This simplification would help avoid taxpayer confusion, better streamline tax administration, and avoid unintended losses in revenue.

Finally, the Department respectfully requests that S.B. 361 be made effective on January 1, 2022. Applying this new exemption by the date that gross receipts are received, instead of by taxable year, will level the playing field so that the exemption will apply to all affected taxpayers regardless of the tax year that they follow. The date change will also give the Department time to make the necessary form, instructions, and computer system changes.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Exemption for food or food ingredients

BILL NUMBER: SB 361

INTRODUCED BY: GABBARD, CHANG, FEVELLA, KANUHA, KEITH-AGARAN,
RIVIERE, Ihara, Kidani

EXECUTIVE SUMMARY: Provides a general excise tax exemption for certain food or food ingredients. The devil will be in the details.

SYNOPSIS: Adds a new section to chapter 237, HRS, that exempts amounts received for food or food ingredients, while alcoholic beverages, dietary supplements, prepared food, and tobacco are not exempt.

Defines “alcoholic beverages” as beverages that are suitable for human consumption and contain one-half of one per cent or more alcohol by volume.

Defines “dietary supplement” as any product, other than tobacco, intended to supplement the diet that: (1) Contains one or more of the following dietary ingredients: (A) a vitamin; (B) a mineral; (C) an herb or other botanical element; (D) an amino acid; or (E) a dietary substance for use by humans to supplement a person's diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any ingredient described in this definition; (2) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of a diet; and (3) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label as required pursuant to title 21 Code of Federal Regulations section 101.36, as amended or renumbered.

Defines “food” or “food ingredients” as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The definition excludes food or food ingredients sold from a vending machine, whether cold or hot; alcoholic beverages; dietary supplements; prepared food; or tobacco.

Defines “prepared food” as: (1) Food sold in a heated state or heated by the seller; (2) Food sold with eating utensils provided by the seller, including plates, bowls, chopsticks, knives, forks, spoons, glasses, cups, napkins, or straws, where a plate does not include a container or packaging used exclusively to transport the food; or (3) Two or more food ingredients mixed or combined by the seller for sale as a single item, except: (A) Food that is only cut, repackaged, or pasteurized by the seller; or (B) Raw eggs, fish, meat, poultry, or foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of the Food Code, published by the Food and Drug Administration, as amended or renumbered, to prevent foodborne illness. “Prepared food” does

not include food sold in an unheated state by weight or volume as a single item or bakery items, such as bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

Defines “tobacco” as cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This bill attempts to confront the age-old problem, well understood by most sales tax jurisdictions, about how to distinguish between groceries (intended to be exempt) from prepared food and nutritional supplements (intended to be taxable). As a result, definitions that try to distinguish between the two tend to be exceedingly complex, like this one, with amusing hair-splitting consequences. If a seller sells a scoop of ice cream in a cup, for example, the ice cream would appear to qualify as food, because the cup probably would qualify as a container exclusively used to transport food. Making a sundae by putting some hot chocolate sauce on it, however, would probably convert it into prepared food because the seller is selling a heated item. Furthermore, if the seller made the ice cream instead of buying it, the ice cream would meet the “prepared food” definition (3) and would be taxable. Fine distinctions such as these can lead to noncompliance by people genuinely confused about what the law provides, and the mass consumption of tax audit and compliance resources as a result. Accordingly, we recommend that lawmakers not go down this path unless they are prepared to commit substantial resources toward rulemaking, education, and enforcement.

Digested 1/31/2021



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Beau Oshiro, C&S Wholesale Grocers, *Advisor*
Toby Taniguchi, KTA Superstores, *Advisor*

TO:
Committee on Agriculture and Environment
Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 2, 2021
TIME: 1pm
PLACE: Via Video Conference

RE: SB361 Relating to General Excise Tax

Position: Strong 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.

We would like to thank Chair Gabbard for introducing this measure. We strongly support it.

The economic crisis caused by the COVID-19 pandemic has hit Hawaii harder than any other state. More Hawaii families are struggling than ever before. This measure is a common sense way to immediately bring down the cost of living for all Hawaii residents. This will have the greatest benefit for lower income Hawaii households, who spend a larger proportion of their income on food and other essential items.

Hawaii has the highest cost of living of any state, and we are one of the only states where residents pay taxes on their groceries.

Food is a major expense for Hawaii families. According to 2019 USDA data a Thrifty Food Plan for a family of four in Hawaii is \$1176.00 a month, the national average for the same plan during the same period was \$654.10¹.

¹ USDA Food Plans: Cost of Food Reports (monthly reports)

This means that even thrifty families are likely spending more on taxes when they buy groceries than they are getting back from the food excise tax credit.

Most states recognize that taxing groceries is regressive and disproportionately impacts lower income families. 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.

While the food excise tax credit helps it is not a solution. Many families who are struggling will not get the full amount that they pay in food taxes back. Families also have to wait to access these funds until their taxes are filled each year, which does not have the same benefit as keeping the money in people's pockets or allowing it to circulate in the economy.

Hawaii's high cost of living is a constant topic of conversation and each year we see a lot of bills that try to address one segment of this problem or another. This year more than ever so many Hawaii families are struggling and need immediate relief. Exempting groceries from the GET is a comprehensive solution that would actually make it less expensive to live in Hawaii as soon as the measure is implemented.

Saving 4.712% on their grocery bill would mean that Hawaii families can put that money towards things like buying more fruits and vegetables, saving for retirement, and investing in their communities. Keeping the money in the local economy and in the hands of people that need it benefits everyone, especially lower income families.

For these reasons we encourage you to vote yes on this measure, we thank you for the opportunity to testify.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii
The Senate
Committee on Agriculture

Testimony by
Hawaii Government Employees Association

February 5, 2021

S.B. 361 – RELATING TO GENERAL EXCISE TAX

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO raises serious concerns over the impact of general excise tax exemptions and therefore opposes the intent of S.B. 361 which provides an exemption for certain food and ingredients.

We will not mince words: both the short-term and long-term economic projections show that our state budget is in a severe crisis. While many steps have already been taken to mitigate the impact of the COVID-19 worldwide pandemic, there remains a delicate and precarious balance of our state finances. Hawai'i is not only reliant only upon a quick and smooth local vaccination rollout, but also a healthy and vibrant economy, therefore now is not the time to concede needed tax revenue. Without a comprehensive and thoughtful plan, the state will be forced to significantly increase taxes, or worse, create new taxes.

Now, more than ever, we cannot afford piecemeal legislation without considering the total financial picture. We must shore up our revenue picture so that we can recover together as a community. Therefore, we respectfully request the Committee defer this measure.

Thank you for the opportunity to testify in opposition to S.B. 361.

Respectfully submitted,

Randy Perreira
Executive Director

IRON WORKERS STABILIZATION FUND

February 5, 2021
1 pm

Senate Committee on Agriculture and Environment
Via Videoconference
State Capitol
415 South Beretania Street

Re: SB361 – Relating to the General Excise Tax

Aloha Chair Gabbard, Vice-Chair Nishihara, and Members of the Senate Committee,

We **SUPPORT** the intent of SB361. The bill, if enacted, would provide a general excise tax exemption for certain food or food ingredients. President Joe Biden has clarified for us the cascade of crises that our society faces today: the virus, climate change, growing inequality, racism, America's global standing, and an attack on truth and democracy.

Here at home, the pandemic has resulted in over 580,000 workers filing unemployment claims last year. We in Hawai'i also face the distinct crisis of a looming homelessness tsunami. The moratoriums on evictions promulgated by the President and Governor are only stop-gap emergency measures that address public health and safety. Those measures do not address the underlying growing fiscal debt owed by renters and mortgagees to landlords and lenders. The Federal relief provided through CARES and subsequent legislation is greatly appreciated but does not keep pace with the growing debt. Many of our 'ohana have not been able to work and are now faced with upwards of a ten months' worth of back mortgage or rent payments that could be in the tens of thousands of dollars per family.

Too many of our 'ohana and friends have been laid off or have had hours reduced. Thousands of working families are on the verge of financial collapse, having spent their savings, lost their private health insurance, and having dim prospects of returning to work soon or earning enough to survive. Our local families are faced with difficult to impossible financial choices, deciding between food and rent or mortgage payments, and gas and car payments. Thousands of our 'ohana that were drowning under these cascades of crises have chosen to relocate their family out-of-state.

Exempting food and food ingredients from the General Excise Tax could save a working family upwards of \$500 a year. This worker relief legislation, taken together with others, will be a step in the right direction. We firmly stand in solidarity with our tens of thousands of local families that are currently suffering from layoffs, decreased work hours, and the thousands more that are facing possible government furloughs given the pandemic and budget shortfalls. We encourage you to consider worker relief legislation that will help our neighbors that are suffering during these unprecedented times and try to stem the rising tsunami of homeless on the horizon.

Sincerely,



T. George Paris
Managing Director

TGP: MP



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February 5, 2021

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON SB 361
RELATING TO GENERAL EXCISE TAX

Via Videoconference
1:00 PM

Aloha Chair Gabbard, Vice Chair Nishihara, 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 SB 361, which provides a general excise tax exemption for certain food or food ingredients.

HFB supports any initiative that reduces the cost of production so that locally produced goods can compete with imported products, strengthening our local economy.

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.

We have concerns that the definition of "Food" may exclude ulu which is cut by hand, steamed, and flash-frozen, and other crops that are minimally processed.

(A) Food that is only cut, repackaged, or pasteurized by the seller; or
(B) Raw eggs, fish, meat, poultry, or foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of the Food Code, published by the Food and Drug Administration, as amended or renumbered, to prevent foodborne illness.

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



MAUI

CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON
AGRICULTURE & ENVIRONMENT
HAWAII STATE CAPITOL, VIA VIDEOCONFERENCE
FRIDAY, FEBRUARY 5, 2021 AT 1:00 P.M.**

To The Honorable Mike Gabbard, Chair;
The Honorable Clarence K. Nishihara, Vice Chair; and
Members of the Committee on Agriculture & Environment,

SUPPORT SB361 RELATING TO THE GENERAL EXCISE TAX

My name is Pamela Tumpap. I am the President of the Maui Chamber of Commerce, in the county most impacted by the COVID-19 pandemic in terms of our dependence on the visitor industry and corresponding rate of unemployment. I am writing to share our support of SB361.

We have asked that government to look at ways they can address the high cost of living for many years. Housing, food, transportation, and healthcare are the highest expenses for Hawaii households and exempting food from the General Excise Tax is a step in the right direction. We also support exempting prescription medications from the General Excise Tax.

Other avenues that would help bring down the cost of living include building affordable housing and rentals, reducing the cost of household utilities, addressing the gas tax, and increasing public transportation.

Mahalo for the opportunity to provide testimony and we ask that this bill be passed.

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.



TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 5, 2021

Re: SB 361 Relating to the General Excise Tax

Good afternoon Chair Gabbard and members of the Senate Committee on Agriculture and Environment. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901, RMH is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, local, national, and international retailers, chains and everyone in between.

RMH is in support of SB 361 Relating to General Excise Tax. This measure provides a general excise tax exemption for certain food or food ingredients.

This measure is a positive step in the right direction to help the local people. We are constantly reminded in the media of the high cost of living in Hawaii and that many local families are moving away to other states where it is cheaper to live. Every little bit helps, and this tax exemption will help many local families.

Mahalo again for this opportunity to testify.