

H.B. NO. 1410

A BILL FOR AN ACT

RELATING TO AN EXEMPTION FROM THE GENERAL EXCISE TAX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to offset the
2 regressive nature of the general excise tax by exempting from
3 the state general excise tax the sale of food qualifying under
4 The Special Supplemental Nutrition Program for Women, Infants,
5 and Children (WIC program) administered by the federal Food and
6 Nutrition Service of the United States Department of
7 Agriculture.

8 The legislature finds that Hawaii is among a minority of
9 states that provide no exemption from the state excise or sales
10 tax for the sale of food. This Act, which exempts the sale of
11 certain types of food from the general excise tax, would allow
12 Hawaii to join the majority of states in recognizing the
13 societal benefit of providing targeted tax relief for food
14 purchases.

15 Food items to be exempted from the general excise tax are
16 those listed in the Hawaii WIC program food list. These food
17 items have been chosen for exemption from the general excise tax

H.B. NO. 1410

1 because they have been recognized by the Hawaii WIC program as
2 being highly nutritious components of a healthy diet.

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

5 "§237-24.3 Additional amounts not taxable. In addition to
6 the amounts not taxable under section 237-24, this chapter shall
7 not apply to:

8 (1) Amounts received from the loading, transportation, and
9 unloading of agricultural commodities shipped for a
10 producer or produce dealer on one island of this State
11 to a person, firm, or organization on another island
12 of this State. The terms "agricultural commodity",
13 "producer", and "produce dealer" shall be defined in
14 the same manner as they are defined in section 147-1;
15 provided that agricultural commodities need not have
16 been produced in the State;

17 (2) Amounts received from sales of:

18 (A) Intoxicating liquor as the term "liquor" is
19 defined in chapter 244D;

20 (B) Cigarettes and tobacco products as defined in
21 chapter 245; and

22 (C) Agricultural, meat, or fish products;

H.B. NO. 1410

1 to any person or common carrier in interstate or
2 foreign commerce, or both, whether ocean-going or air,
3 for consumption out-of-state on the shipper's vessels
4 or airplanes;

5 (3) Amounts received by the manager or board of directors
6 of:

7 (A) An association of apartment owners of a
8 condominium property regime established in
9 accordance with chapter 514B; or

10 (B) A nonprofit homeowners or community association
11 incorporated in accordance with chapter 414D or
12 any predecessor thereto and existing pursuant to
13 covenants running with the land,
14 in reimbursement of sums paid for common expenses;

15 (4) Amounts received or accrued from:

16 (A) The loading or unloading of cargo from ships,
17 barges, vessels, or aircraft, whether or not the
18 ships, barges, vessels, or aircraft travel
19 between the State and other states or countries
20 or between the islands of the State;

21 (B) Tugboat services including pilotage fees
22 performed within the State, and the towage of

1 ships, barges, or vessels in and out of state
2 harbors, or from one pier to another; and

3 (C) The transportation of pilots or governmental
4 officials to ships, barges, or vessels offshore;
5 rigging gear; checking freight and similar
6 services; standby charges; and use of moorings
7 and running mooring lines;

8 (5) Amounts received by an employee benefit plan by way of
9 contributions, dividends, interest, and other income;
10 and amounts received by a nonprofit organization or
11 office, as payments for costs and expenses incurred
12 for the administration of an employee benefit plan;
13 provided that this exemption shall not apply to any
14 gross rental income or gross rental proceeds received
15 after June 30, 1994, as income from investments in
16 real property in this State; and provided further that
17 gross rental income or gross rental proceeds from
18 investments in real property received by an employee
19 benefit plan after June 30, 1994, under written
20 contracts executed prior to July 1, 1994, shall not be
21 taxed until the contracts are renegotiated, renewed,
22 or extended, or until after December 31, 1998,

1 whichever is earlier. For the purposes of this
2 paragraph, "employee benefit plan" means any plan as
3 defined in section 1002(3) of title 29 of the United
4 States Code, as amended;

5 (6) Amounts received for [purchases]:

6 (A) Purchases made with United States Department of
7 Agriculture food coupons under the federal food
8 stamp program~~[, and amounts received for~~
9 purchases];

10 (B) Purchases made with United States Department of
11 Agriculture food vouchers under the Special
12 Supplemental Foods Program for Women, Infants and
13 Children; and

14 (C) Purchases by any purchaser of items that qualify
15 under the Special Supplemental Foods Program for
16 Women, Infants, and Children as of January 1,
17 2008, and as amended thereafter; provided that if
18 the Special Supplemental Foods Program for Women,
19 Infants, and Children ceases, proceeds from
20 purchases of the most recent qualifying items
21 shall remain exempt amounts under this
22 subsection;

H.B. NO. 1410

1 (7) Amounts received by a hospital, infirmary, medical
2 clinic, health care facility, pharmacy, or a
3 practitioner licensed to administer the drug to an
4 individual for selling prescription drugs or
5 prosthetic devices to an individual; provided that
6 this paragraph shall not apply to any amounts received
7 for services provided in selling prescription drugs or
8 prosthetic devices. As used in this paragraph:

9 (A) "Prescription drugs" are those drugs defined
10 under section 328-1 and dispensed by filling or
11 refilling a written or oral prescription by a
12 practitioner licensed under law to administer the
13 drug and sold by a licensed pharmacist under
14 section 328-16 or practitioners licensed to
15 administer drugs; and

16 (B) "Prosthetic device" means any artificial device
17 or appliance, instrument, apparatus, or
18 contrivance, including their components, parts,
19 accessories, and replacements thereof, used to
20 replace a missing or surgically removed part of
21 the human body, which is prescribed by a licensed
22 practitioner of medicine, osteopathy, or podiatry

H.B. NO. 1410

1 and which is sold by the practitioner or which is
2 dispensed and sold by a dealer of prosthetic
3 devices; provided that "prosthetic device" shall
4 not mean any auditory, ophthalmic, dental, or
5 ocular device or appliance, instrument,
6 apparatus, or contrivance;

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

10 (9) Amounts received as dues by an unincorporated
11 merchants association from its membership for
12 advertising media, promotional, and advertising costs
13 for the promotion of the association for the benefit
14 of its members as a whole and not for the benefit of
15 an individual member or group of members less than the
16 entire membership;

17 (10) Amounts received by a labor organization for real
18 property leased to:

19 (A) A labor organization; or

20 (B) A trust fund established by a labor organization
21 for the benefit of its members, families, and
22 dependents for medical or hospital care, pensions

H.B. NO. 1410

1 on retirement or death of employees,
2 apprenticeship and training, and other membership
3 service programs.

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

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

12 (12) Amounts received as rent for the rental or leasing of
13 aircraft or aircraft engines used by the lessees or
14 renters for interstate air transportation of
15 passengers and goods. For purposes of this paragraph,
16 payments made pursuant to a lease shall be considered
17 rent regardless of whether the lease is an operating
18 lease or a financing lease. The definition of
19 "interstate air transportation" is the same as in 49
20 U.S.C. section 40102."

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

H.B. NO. 1410

1 SECTION 4. This Act shall take effect upon its approval
2 and shall apply to proceeds received on or after January 1,
3 2008.

4
5
6

INTRODUCED BY: Calvin H. Ay
BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO AN EXEMPTION FROM THE GENERAL EXCISE TAX.

PURPOSE: To offset the regressive nature of the state General Excise Tax (GET) by exempting from the GET the sale of food qualifying under The Special Supplemental Nutrition Program for Women, Infants, & Children (WIC program) administered by the federal Food and Nutrition Service of the United States Department of Agriculture.

MEANS: Amend section 237-24.3, Hawaii Revised Statutes.

JUSTIFICATION: Hawaii is among a minority of states that tax the sale of food. This measure, which exempts the sale of certain types of food from the GET, would allow Hawaii to join the majority of states in recognizing the societal benefit of providing targeted tax relief for food purchases. Food items to be exempted from the GET are those listed in the Hawaii WIC Program Food List published by the WIC Services Branch of the Hawaii State Department of Health. The list includes iron-fortified infant formula and infant cereal, iron-fortified adult cereal, vitamin C-rich fruit or vegetable juice, eggs, milk, cheese, peanut butter, dried beans/peas/lentils, tuna fish, salmon and carrots.

The aforementioned foods have been chosen for exemption from the GET because these foods have been recognized by the Hawaii WIC program as being highly nutritious components of a healthy diet. Furthermore, as many food retailers already participate

in the Hawaii WIC program and are exempt from collecting excise taxes on the sale of these food items to customers participating in the program, the cost to the retailers of modifying their current accounting, inventory, and check-out systems to comply with the proposed GET exemption provisions of this measure should be minimal.

Impact on the public: Most consumers will benefit by not having the GET passed on to them by food retailers for WIC program-approved foods.

Impact on the department and other agencies: The department will be responsible for administering the tax exemption.

GENERAL FUND: \$15 million in year one; \$40 million per year thereafter.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: TAX 100.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval, and shall apply to proceeds received on or after January 1, 2008.