
A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX.

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

1 SECTION 1. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§237- Amounts not taxable for food. (a) The excise
5 tax assessed under this chapter shall not apply to amounts
6 received for food or food ingredients.

7 (b) The excise tax assessed under this chapter shall apply
8 to food or food ingredients that are furnished, prepared, or
9 served as meals, except:

10 (1) Under a state administered nutrition program for the
11 aged, as provided for in the Older Americans Act (P.L.
12 95-478 Title III); or

13 (2) When provided to senior citizens, disabled persons, or
14 low-income persons by a not-for-profit organization.

15 (c) As used in this section:



1 "Alcoholic beverages" means beverages that are suitable for
2 human consumption and contain one-half of one per cent or more
3 of alcohol by volume.

4 "Dietary supplement" means any product, other than tobacco,
5 intended to supplement the diet that:

6 (1) Contains one or more of the following dietary
7 ingredients:

8 (A) A vitamin;

9 (B) A mineral;

10 (C) An herb or other botanical element;

11 (D) An amino acid; or

12 (E) A dietary substance for use by humans to
13 supplement a person's diet by increasing the
14 total dietary intake; or a concentrate,

15 metabolite, constituent, extract, or combination
16 of any ingredient described in this definition;

17 (2) Is intended for ingestion in tablet, capsule, powder,
18 softgel, gelcap, or liquid form, or if not intended
19 for ingestion in that form, is not represented as
20 conventional food and is not represented for use as a
21 sole item of a meal or of a diet; and



1 (3) Is required to be labeled as a dietary supplement,
2 identifiable by the "supplement facts" box found on
3 the label as required pursuant to 21 C.F.R. section
4 101.36, as amended or renumbered as of January 1,
5 2003.

6 "Food" or "food ingredients" mean substances, whether in
7 liquid, concentrated, solid, frozen, dried, or dehydrated form,
8 that are sold for ingestion or chewing by humans and are
9 consumed for their taste or nutritional value.

10 Food or food ingredients does not include alcoholic
11 beverages, tobacco, prepared food, soft drinks, dietary
12 supplements, or food or food ingredients sold from a vending
13 machine, whether cold or hot; provided that food or food
14 ingredients sold from a vending machine that is subsequently
15 heated shall be subject to this chapter.

16 "Prepared food":

17 (1) Means:

18 (A) Food sold in a heated state or heated by the
19 seller;

20 (B) Food sold with eating utensils provided by the
21 seller, including plates, knives, forks, spoons,
22 glasses, cups, napkins, or straws. A plate does



1 not include a container or packaging used to
2 transport the food; or

3 (C) Two or more food ingredients mixed or combined by
4 the seller for sale as a single item, except:

5 (i) Food that is only cut, repackaged, or
6 pasteurized by the seller; or

7 (ii) Raw eggs, fish, meat, poultry, or foods
8 containing these raw animal foods requiring
9 cooking by the consumer as recommended by
10 the federal Food and Drug Administration in
11 chapter 3, part 401.11 of the Food Code,
12 published by the food and drug
13 administration, as amended or renumbered as
14 of January 1, 2003, to prevent foodborne
15 illness.

16 (2) Does not include:

17 (A) Food sold in an unheated state by weight or
18 volume as a single item; or

19 (B) Bakery items, such as bread, rolls, buns,
20 biscuits, bagels, croissants, pastries, donuts,
21 Danish, cakes, tortes, pies, tarts, muffins,
22 bars, cookies, or tortillas.



1 "Soft drinks":

2 (1) Means nonalcoholic beverages that contain natural or
3 artificial sweeteners.

4 (2) Does not include beverages that contain:

5 (A) Milk or milk products;

6 (B) Soy, rice, or similar milk substitutes; or

7 (C) Greater than fifty per cent vegetable or fruit
8 juice by volume.

9 "Tobacco" means cigarettes, cigars, chewing, or pipe
10 tobacco, or any other item that contains tobacco."

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

13 "**§237-24.3 Additional amounts not taxable.** In addition to
14 the amounts not taxable under section 237-24, this chapter shall
15 not apply to:

16 (1) Amounts received from the loading, transportation, and
17 unloading of agricultural commodities shipped for a
18 producer or produce dealer on one island of this State
19 to a person, firm, or organization on another island
20 of this State. The terms "agricultural commodity",
21 "producer", and "produce dealer" shall be defined in
22 the same manner as they are defined in section 147-1;



1 provided that agricultural commodities need not have
2 been produced in the State;

3 (2) Amounts received from sales of:

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

6 (B) Cigarettes and tobacco products as defined in
7 chapter 245; and

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

9 to any person or common carrier in interstate or
10 foreign commerce, or both, whether ocean-going or air,
11 for consumption out-of-state on the shipper's vessels
12 or airplanes;

13 (3) Amounts received by the manager or board of directors
14 of:

15 (A) An association of apartment owners of a
16 condominium property regime established in
17 accordance with chapter 514A; or

18 (B) A nonprofit homeowners or community association
19 incorporated in accordance with chapter 414D or
20 any predecessor thereto and existing pursuant to
21 covenants running with the land,

22 in reimbursement of sums paid for common expenses;



- 1 (4) Amounts received or accrued from:
- 2 (A) The loading or unloading of cargo from ships,
- 3 barges, vessels, or aircraft, whether or not the
- 4 ships, barges, vessels, or aircraft travel
- 5 between the State and other states or countries
- 6 or between the islands of the State;
- 7 (B) Tugboat services including pilotage fees
- 8 performed within the State, and the towage of
- 9 ships, barges, or vessels in and out of state
- 10 harbors, or from one pier to another; and
- 11 (C) The transportation of pilots or governmental
- 12 officials to ships, barges, or vessels offshore;
- 13 rigging gear; checking freight and similar
- 14 services; standby charges; and use of moorings
- 15 and running mooring lines;
- 16 (5) Amounts received by an employee benefit plan by way of
- 17 contributions, dividends, interest, and other income;
- 18 and amounts received by a nonprofit organization or
- 19 office, as payments for costs and expenses incurred
- 20 for the administration of an employee benefit plan;
- 21 provided that ~~this~~:



1 (A) This exemption shall not apply to any gross
2 rental income or gross rental proceeds received
3 after June 30, 1994, as income from investments
4 in real property in this State; and [~~provided~~
5 ~~further that gross~~]

6 (B) Gross rental income or gross rental proceeds from
7 investments in real property received by an
8 employee benefit plan after June 30, 1994, under
9 written contracts executed prior to July 1, 1994,
10 shall not be taxed until the contracts are
11 renegotiated, renewed, or extended, or until
12 after December 31, 1998, whichever is earlier.
13 For the purposes of this paragraph, "employee
14 benefit plan" means any plan as defined in
15 section 1002(3) of title 29 of the United States
16 Code, as amended;

17 ~~[(6) Amounts received for purchases made with United States~~
18 ~~Department of Agriculture food coupons under the~~
19 ~~federal food stamp program, and amounts received for~~
20 ~~purchases made with United States Department of~~
21 ~~Agriculture food vouchers under the Special~~



1 ~~Supplemental Foods Program for Women, Infants and~~
2 ~~Children;~~

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

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

18 (B) "Prosthetic device" means any artificial device
19 or appliance, instrument, apparatus, or
20 contrivance, including their components, parts,
21 accessories, and replacements thereof, used to
22 replace a missing or surgically removed part of



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

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

13 ~~(+9)~~ (8) Amounts received as dues by an unincorporated
14 merchants association from its membership for
15 advertising media, promotional, and advertising costs
16 for the promotion of the association for the benefit
17 of its members as a whole and not for the benefit of
18 an individual member or group of members less than the
19 entire membership;

20 ~~(+10)~~ (9) Amounts received by a labor organization for real
21 property leased to:

22 (A) A labor organization; or



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

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

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

15 [~~(12)~~] (11) Amounts received as rent for the rental or
16 leasing of aircraft or aircraft engines used by the
17 lessees or renters for interstate air transportation
18 of passengers and goods. For purposes of this
19 paragraph, payments made pursuant to a lease shall be
20 considered rent regardless of whether the lease is an
21 operating lease or a financing lease. The definition



1 of "interstate air transportation" is the same as in
2 49 U.S.C. 40102."

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

5 SECTION 4. This Act shall take effect on January 1, 2008.
6

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Report Title:

General Excise Tax; Exemption; Food

Description:

Exempts food from general excise tax.

