

1 rent is set by an independent appraisal using the
2 lower of the comparable value or agricultural
3 capitalization appraisal methodologies; and

4 (2) The lease is in effect and the lessee is continuously
5 and substantially undertaking agribusiness on the
6 leased land, pursuant to chapter 205, as verified by
7 the department of agriculture on a regular basis using
8 a process determined by the department of agriculture;
9 provided that the exclusion shall not apply if the
10 lease is terminated or the department of agriculture
11 determines that the leased land is not continuously
12 and substantially being used for agribusiness.

13 The taxpayer shall be eligible for the exclusion initially for
14 up to twenty years; provided that the time period may be
15 extended for every year the term of the lease is extended;
16 provided further that the assignment of the original lease to
17 another lessee shall be for the time period remaining on the
18 original lease, unless the terms of the lease are renegotiated.

19 (b) Each taxpayer who claims the exclusion under this
20 section shall annually provide any necessary information
21 determined by and to the department of agriculture in the manner
22 prescribed by the department of agriculture to enable an



1 aggregated quantitative and qualitative assessment of the impact
2 of the exclusion.

3 (c) For the purposes of this section:

4 "Agribusiness" means a business licensed for the
5 production, processing, and sale of products from the
6 cultivation of crops, propagation of fish or game, or raising of
7 livestock."

8 SECTION 2. Section 237-24.75, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"[+]§237-24.75[+] Additional exemptions.** In addition to
11 the amounts exempt under section 237-24, this chapter shall not
12 apply to [~~amounts~~]:

13 (1) Amounts received as a beverage container deposit
14 collected under chapter 342G, part VIII[-]; and

15 (2) Rental income, including lease rents, derived from
16 agricultural leases on lands identified and designated
17 as important agricultural lands pursuant to part III,
18 chapter 205, for the taxable year the rental income
19 was realized; provided that:

20 (A) The minimum length of the initial lease term
21 shall be:

22 (i) Twenty years; or



1 (ii) Any other lease term length mutually
2 agreeable to lessor and lessee, if the
3 amount of the lease rent is set by an
4 independent appraisal using the lower of the
5 comparable value or agricultural
6 capitalization appraisal methodologies;

7 (B) The lease is in effect and the lessee is
8 continuously and substantially undertaking
9 agricultural activity on the leased land,
10 pursuant to chapter 205, as verified by the
11 department of agriculture on a regular basis
12 using a process determined by the department of
13 agriculture; provided that the exemption shall
14 not apply if the lease is terminated or the
15 department of agriculture determines that the
16 leased land is not continuously and substantially
17 being used for agricultural activity; and

18 (C) The taxpayer shall be eligible for the exemption
19 initially for up to twenty years and for every
20 year the term of the lease is extended; provided
21 further that the assignment of the original lease
22 to another lessee shall be for the time period



1 SECTION 5. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§235- Important agricultural lands tax credit. (a)**

5 There shall be allowed to each taxpayer, subject to the taxes
6 imposed by this chapter, an important agricultural lands real
7 property tax credit that shall be deductible from the taxpayer's
8 net income tax liability, if any, imposed by this chapter for
9 the taxable year in which the credit is properly claimed.

10 (b) The amount of the credit shall be equal to one hundred
11 per cent of the actual amount of county real property taxes paid
12 by the taxpayer during the taxable year in which real property
13 tax was assessed on lands identified and designated as important
14 agricultural lands pursuant to part III, chapter 205.

15 In the case of a partnership, S corporation, estate, or
16 trust, the amount upon which the credit is computed shall be
17 determined at the entity level. Distribution and share of
18 credit shall be determined by rule.

19 (c) The tax credit shall be allowed only for the entity
20 incurring the actual cost of the real property tax. If the real
21 property tax is part of the lease rent and not otherwise
22 specified in the lease agreement, the lessor shall provide the



1 lessee with the amount of the real property tax included as part
2 of the lease rent upon request.

3 (d) The total aggregate tax credits claimed by all
4 taxpayers pursuant to this section for each taxable year shall
5 not exceed \$10,000,000.

6 (e) If the classification of the important agricultural
7 lands subject to the credit is redesignated, the credit shall no
8 longer be available.

9 (f) If the credit under this section exceeds the
10 taxpayer's tax payments due for the taxable year, the excess of
11 the credits over tax payments due shall be refunded to the
12 taxpayer; provided that the credit properly claimed by the
13 taxpayer who has no income tax liability shall be paid to the
14 taxpayer; and provided further that no refunds or payments on
15 account of the credits allowed by this section shall be made for
16 amounts less than \$1.

17 All claims for a credit under this section shall be filed
18 on or before the end of the twelfth month following the close of
19 the taxable year for which the credit may be claimed. Failure
20 to comply with the foregoing provision shall constitute a waiver
21 of the right to claim the credit.



1 (g) The director of taxation shall prepare forms that may
2 be necessary to claim a credit under this section. The director
3 may also require the taxpayer to furnish information to
4 ascertain the validity of the claim for credit made under this
5 section by rule pursuant to chapter 91.

6 (h) The tax credit allowed under this section shall be
7 available for taxable years beginning after December 31, 2007,
8 and shall not be available for taxable years beginning after
9 December 31, 2027.

10 (i) Taxpayers claiming the credit under this section shall
11 provide prescribed information to the department of agriculture
12 on an annual basis, upon request, that will enable a
13 quantitative and qualitative assessment of the impact of the tax
14 credit to be determined. The assessment shall be available to
15 the public.

16 The department of agriculture shall determine on an annual
17 basis if the important agricultural land subject to the credit
18 is in productive agricultural use based on a ten year farm plan
19 submitted to and approved by the department."

20 SECTION 6. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ or so
22 much thereof as may be necessary for fiscal year 2007-2008 and



1 the same sum or so much thereof as may be necessary for fiscal
2 year 2008-2009 for the department of agriculture to collect and
3 analyze data to make an aggregated quantitative and qualitative
4 assessment of the full impact of the important agricultural
5 lands tax credit.

6 The sums appropriated shall be expended by the department
7 of agriculture for the purposes of this part.

8 **PART III**

9 SECTION 7. Chapter 205, part III, Hawaii Revised Statutes,
10 is amended by adding a new section to be appropriately
11 designated and to read as follows:

12 **"§205- Important agricultural land; residential housing.**

13 A landowner of lands qualifying under section 205-44 may
14 develop, construct, and maintain residential dwelling units for
15 farmers, employees, and their families; provided that:

16 (1) The farmers' dwelling units shall be used exclusively
17 by farmers and their immediate family members who
18 actively and currently farm on the designated
19 important agricultural land upon which the dwelling is
20 situated; provided that the immediate family members
21 of a farmer may live in separate dwelling units



1 situated on the same designated land as the farmer's
2 family's dwelling unit;

3 (2) The employee dwelling units shall be used exclusively
4 by employees and their immediate family members who
5 actively and currently work on the designated
6 important agricultural land upon which the dwelling is
7 situated; provided that the immediate family members
8 of the employee shall not live in separate dwelling
9 units and shall live with the employee;

10 (3) The total land area upon which the combined total of
11 farmer and employee dwelling units and all
12 appurtenances are situated shall not occupy more than
13 twenty per cent of the total important agricultural
14 land area controlled by the farmer or the employee's
15 employer;

16 (4) The farmers' and employee dwelling units meet all
17 applicable building code requirements;

18 (5) Notwithstanding section 205-4.5(a)(12), the landowner
19 shall not plan or develop a residential subdivision on
20 the designated important agricultural land; and



1 operation as defined in section 165-2; provided that
2 agricultural tourism activities shall not be permissible in the
3 absence of a bona fide farming operation. Ordinances shall
4 include but not be limited to:

- 5 (1) Requirements for access to a farm, including road
6 width, road surface, and parking;
- 7 (2) Requirements and restrictions for accessory facilities
8 connected with the farming operation, including gift
9 shops and restaurants; provided that overnight
10 accommodations shall not be permitted;
- 11 (3) Activities that may be offered by the farming
12 operation for visitors;
- 13 (4) Days and hours of operation; and
- 14 (5) Automatic termination of the accessory use upon the
15 cessation of the farming operation.

16 Each county may require an environmental assessment under
17 chapter 343 as a condition to any agricultural tourism use and
18 activity. Other uses may be allowed by special permits issued
19 pursuant to this chapter. The minimum lot size in agricultural
20 districts shall be determined by each county by zoning
21 ordinance, subdivision ordinance, or other lawful means;
22 provided that the minimum lot size for any agricultural use



1 shall not be less than one acre, except as provided herein. If
2 the county finds that unreasonable economic hardship to the
3 owner or lessee of land cannot otherwise be prevented or where
4 land utilization is improved, the county may allow lot sizes of
5 less than the minimum lot size as specified by law for lots
6 created by a consolidation of existing lots within an
7 agricultural district and the resubdivision thereof; provided
8 that the consolidation and resubdivision do not result in an
9 increase in the number of lots over the number existing prior to
10 consolidation; and provided further that in no event shall a lot
11 which is equal to or exceeds the minimum lot size of one acre be
12 less than that minimum after the consolidation and resubdivision
13 action. The county may also allow lot sizes of less than the
14 minimum lot size as specified by law for lots created or used
15 for plantation community subdivisions as defined in section
16 205-4.5(a)(12), for public, private, and quasi-public utility
17 purposes, and for lots resulting from the subdivision of
18 abandoned roadways and railroad easements.

19 (c) The minimum lot size on designated important
20 agricultural lands shall be _____ acres; provided that if a lot
21 on designated important agricultural lands is less than _____
22 acres, one farm dwelling shall be permitted on that lot.



Report Title:

Important Agricultural Lands; Tax Incentives

Description:

Excludes rental income derived from agricultural leases on important agricultural lands from gross and adjusted gross income, and taxable income, under certain conditions, and exempts rental income derived from agricultural leases on important agricultural lands from the general excise tax law, under certain conditions; establishes a reimbursable real property tax credit for one hundred per cent of the actual amount of real property tax paid by taxpayers real property tax assessed on lands designated as important agricultural lands; provides farmer and employee housing on lands designated as important agricultural lands. Establishes minimum lot sizes on important agricultural lands. Makes appropriations. (SD3)

