

JAN 21 2011

S.B. NO. 852

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:

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



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

3 (1) Contains one or more of the following dietary
4 ingredients:

5 (A) A vitamin;

6 (B) A mineral;

7 (C) An herb or other botanical element;

8 (D) An amino acid; or

9 (E) A dietary substance for use by humans to

10 supplement a person's diet by increasing the

11 total dietary intake; or a concentrate,

12 metabolite, constituent, extract, or combination

13 of any ingredient described in this definition;

14 (2) Is intended for ingestion in tablet, capsule, powder,

15 softgel, gelcap, or liquid form, or if not intended

16 for ingestion in such form, is not represented as

17 conventional food and is not represented for use as a

18 sole item of a meal or of a diet; and

19 (3) Is required to be labeled as a dietary supplement,

20 identifiable by the "supplement facts" box found on

21 the label as required pursuant to Title 21 Code of



1 Federal Regulations section 101.36, as amended or
2 renumbered.

3 "Food" or "food ingredients" mean substances, whether in
4 liquid, concentrated, solid, frozen, dried, or dehydrated form,
5 that are sold for ingestion or chewing by humans and are
6 consumed for their taste or nutritional value. Food or food
7 ingredients does not include alcoholic beverages, tobacco,
8 prepared food, soft drinks, dietary supplements, or food or food
9 ingredients sold from a vending machine, whether cold or hot;
10 provided that food or food ingredients sold from a vending
11 machine that is subsequently heated shall be subject to this
12 chapter.

13 "Prepared food" means:

- 14 (1) Food sold in a heated state or heated by the seller;
15 (2) Food sold with eating utensils provided by the seller,
16 including plates, knives, forks, spoons, glasses,
17 cups, napkins, or straws. A plate does not include a
18 container or packaging used to transport the food; or
19 (3) Two or more food ingredients mixed or combined by the
20 seller for sale as a single item, except:

21 (A) Food that is only cut, repackaged, or pasteurized
22 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 the following food or food
ingredients:

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

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

"Soft drinks" means nonalcoholic beverages that contain
natural or artificial sweeteners. Soft drinks do not include
beverages that contain:

(1) Milk or milk products;

(2) Soy, rice, or similar milk substitutes; or

(3) Greater than fifty per cent vegetable or fruit juice
by volume.



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

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;



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, submanager, or board
6 of directors of:

7 (A) An association of owners of a condominium
8 property regime established in accordance with
9 chapter 514A or 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 made with United States~~
6 ~~Department of Agriculture food coupons under the~~
7 ~~federal food stamp program, and amounts received for~~
8 ~~purchases made with United States Department of~~
9 ~~Agriculture food vouchers under the Special~~
10 ~~Supplemental Foods Program for Women, Infants and~~
11 ~~Children;~~

12 ~~(7)]~~ (6) Amounts received by a hospital, infirmary, medical
13 clinic, health care facility, pharmacy, or a
14 practitioner licensed to administer the drug to an
15 individual for selling prescription drugs or
16 prosthetic devices to an individual; provided that
17 this paragraph shall not apply to any amounts received
18 for services provided in selling prescription drugs or
19 prosthetic devices. As used in this paragraph:

20 "Prescription drugs" are those drugs defined
21 under section 328-1 and dispensed by filling or
22 refilling a written or oral prescription by a



1 practitioner licensed under law to administer the drug
2 and sold by a licensed pharmacist under section 328-16
3 or practitioners licensed to administer drugs; and

4 "Prosthetic device" means any artificial device
5 or appliance, instrument, apparatus, or contrivance,
6 including their components, parts, accessories, and
7 replacements thereof, used to replace a missing or
8 surgically removed part of the human body, which is
9 prescribed by a licensed practitioner of medicine,
10 osteopathy, or podiatry and which is sold by the
11 practitioner or which is dispensed and sold by a
12 dealer of prosthetic devices; provided that
13 "prosthetic device" shall not mean any auditory,
14 ophthalmic, dental, or ocular device or appliance,
15 instrument, apparatus, or contrivance;

16 ~~[(+9)]~~ (7) Taxes on transient accommodations imposed by
17 chapter 237D and passed on and collected by operators
18 holding certificates of registration under that
19 chapter;

20 ~~[(+9)]~~ (8) Amounts received as dues by an unincorporated
21 merchants association from its membership for
22 advertising media, promotional, and advertising costs



1 for the promotion of the association for the benefit
2 of its members as a whole and not for the benefit of
3 an individual member or group of members less than the
4 entire membership;

5 ~~[(10)]~~ (9) Amounts received by a labor organization for real
6 property leased to:

7 (A) A labor organization; or

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

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

18 ~~[(11)]~~ (10) Amounts received from foreign diplomats and
19 consular officials who are holding cards issued or
20 authorized by the United States Department of State
21 granting them an exemption from state taxes; and

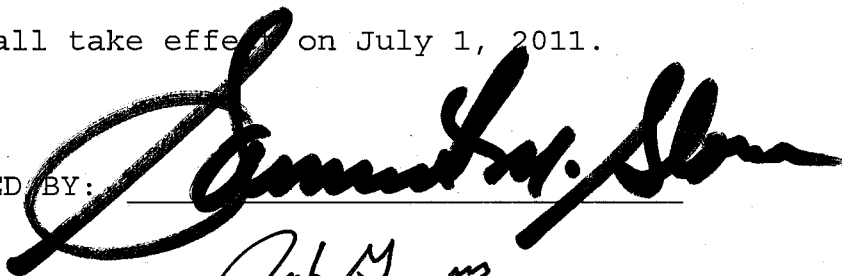


1 ~~[(+12)]~~ (11) Amounts received as rent for the rental or
2 leasing of aircraft or aircraft engines used by the
3 lessees or renters for interstate air transportation
4 of passengers and goods. For purposes of this
5 paragraph, payments made pursuant to a lease shall be
6 considered rent regardless of whether the lease is an
7 operating lease or a financing lease. The definition
8 of "interstate air transportation" is the same as in
9 49 U.S.C. 40102."

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

12 SECTION 4. This Act shall take effect on July 1, 2011.

13 INTRODUCED BY:


John M. Sarno
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[Signature]



Report Title:

General Excise Tax Exemption; Food

Description:

Provides a general excise tax exemption for food.

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