

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**MONDAY, FEBRUARY 1, 2021
1:00 P.M.
VIA VIDEO CONFERENCE**

**SENATE BILL NO. 478
RELATING TO FARMS**

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 478 that creates an exclusion from income tax for a to-be-determined percentage of gross annual income or a to-be-determined dollar amount of gross annual income earned by a farmer from agricultural activities. A "farmer" is defined as a person earning more than a to-be-determined percentage of the person's annual gross income from farm products and value-added farm products sold, raised, value-added by the person and sold within the State. "Farm products" is defined as production from agricultural activities as described in Section 205-4.5(a)(1) through (3) and excludes farm products for personal use. The Department supports this measure and defers to the Department of Taxation.

As written, the bill would improve the bottom line for start-up farming operations that meet the percentage gross income threshold. For qualified farmers, according to the 2012 Census of Agriculture (Hawaii, Volume 1, Chapter 1: State Level Data, Table 60, page 44), of Hawaii's 7,000 farmers (includes all business entities), approximately 618 (9 percent) earn more than 75 percent of their total household income from farming. There is no more recent information on the percentage of total household income from



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farming as the USDA_National Agricultural Statistics Service discontinued the gathering of data in the Census.

Thank you for the opportunity to comment on this measure

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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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: February 1, 2021
Time: 1:00 P.M.
Place: Via Videoconference, Hawaii State Capitol

Re: S.B. 478, Relating to Farms

The Department of Taxation (Department) offers the following comments regarding S.B. 478 for your consideration.

S.B. 478 amends section 235-7, Hawaii Revised Statutes (HRS), by excluding from income tax the income earned by a farmer from farming activities, up to an unspecified percentage of the farmer's gross annual income or an unspecified dollar cap, whichever is less. The measure is effective July 1, 2021, and applies to taxable years beginning after December 31, 2020.

The bill defines "farmer" as an individual earning more than an unspecified percentage of their annual gross income from farm products sold within the State, and defines "farm products" as production, not for personal use, from the following agricultural activities:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation; and
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use.

Although the Department appreciates the inclusion of a definition for "farm products," it notes that the exclusion as currently drafted is very broad. The Department recommends amending this measure to include precise percentage and dollar caps on the proposed exclusion, as well as additional definitions, criteria, and restrictions to help better effectuate the Legislature's desired policy goals, eliminate major administrative difficulties, and avoid unintended revenue losses.

Finally, notwithstanding the comments discussed above, the Department is able to administer the measure with its current effective date.

Thank you for the opportunity to provide comments.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 478, RELATING TO FARMS.

BEFORE THE:

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

DATE: Monday, February 1, 2021 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Kristen M.R. Sakamoto,
Deputy Attorney General, at 808-586-1470)

Chair Gabbard and Members of the Committee:

The Department of the Attorney General has concerns regarding this bill and provides the following comments.

This bill creates a Hawaii Income Tax income exclusion for farmers who earn more than a certain percentage (amount to be determined) of gross income from the sale of "farm products and value-added farm products grown, raised, and value-added by the person and sold within the State." The term "farm products" is defined as "agricultural activities as described in section 205-4.5(a)(1), (2), and (3), and excluding farm products for personal use." Section 205-4.5(a), Hawaii Revised Statutes (HRS), identifies various agricultural activities, including cultivation of crops, game and fish propagation, and raising of livestock, which are permitted within the "agricultural district." Pursuant to section 205-2, HRS, the "agricultural district" is a land use district in the State, as determined by the Land Use Commission.

This bill may be subject to a challenge under the Commerce Clause of the United States Constitution. The Commerce Clause provides that "[t]he Congress shall have Power . . . [t]o regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a 'negative' aspect that denies the States the power

unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Oregon Waste Sys., Inc. v. Dep't of Env'tl. Quality*, 511 U.S. 93, 98 (1994). If a tax discriminates against interstate commerce by providing "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter," the tax will be "virtually *per se* invalid." *Id.* at 99.

In *Westinghouse Electric Corp. v. Tully*, 466 U.S. 388, 400, 407 (1984), the United States Supreme Court held that a New York tax law that provided a greater tax credit to a taxpayer that increased the percentage of its business activities in the state, and conversely, decreased the tax credit if the taxpayer increased its business activities in other states, violated the Commerce Clause. The Court explained, "not only does the New York tax scheme provide a positive incentive for increased business activity in New York State . . . but also it penalizes increases in the [business] activities in other States." *Id.* at 400-01 (internal quotations and citations omitted). Accordingly, the Court held that the New York tax law unconstitutionally discriminated against interstate commerce. *Id.* at 407.

This bill may be subject to a constitutional challenge under the Commerce Clause because, similar to the tax law in *Westinghouse*, this bill makes the availability of a tax benefit dependent on the percentage of income earned from activities "within the State." Specifically, under this bill, a taxpayer must have a threshold amount of income from farming activities "within the State" to be eligible for the exclusion of income. Thus, a taxpayer may be penalized, via ineligibility for the exclusion of income, if its income from out-of-state farming activities exceeds the allowable rate.

To avoid a constitutional challenge, we recommend amending the definition of "farmer" and "farm products" on page 6, lines 8–16, of this bill to read as follows:

"Farmer" means a person earning more than ____ per cent of the person's annual gross income from the sale of farm products and value-added farm products grown, raised, and value-added by the person [~~and sold within the State~~].

"Farm products" means [~~production from agricultural activities as described in section 205-4.5(a)(1), (2), and (3), and excluding farm~~

~~products for personal use.]~~ products produced from the cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber; game and fish propagation; and raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic use; provided that farm products shall not include products for personal use.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Exemption for Farms

BILL NUMBER: SB 478

INTRODUCED BY: KEITH-AGARAN, ENGLISH, INOUYE, KANUHA, RIVIERE

EXECUTIVE SUMMARY: Creates an exclusion from income tax for the lesser of a percentage of gross annual income or an amount of gross annual income earned by a farmer from farming activities. Applies to taxable years beginning after 12/31/2020.

SYNOPSIS: Amends HRS section 235-7 to add a new paragraph excluding from gross income the lesser of ____ per cent of gross annual income or \$ ____ of gross annual income earned by a farmer from farming activities.

Defines “farmer” as a person earning more than ____% of the person’s annual gross income from the sale of farm products and value-added farm products grown, raised, and value-added by the person and sold within the State.

Defines “farm products” as production from agricultural activities as described in section 205-4.5(a)(1) through (3), HRS, and excludes personal use.

EFFECTIVE DATE: Applies to taxable years beginning after December 31, 2020.

STAFF COMMENTS: The idea of providing a tax incentive to encourage investments may have been acceptable when the economy was on a roll and advocates could point to incentives to encourage the use of or investment in emerging technologies. But what lawmakers and administrators have learned in these past few years is that unbridled tax incentives, where there is no accountability or limits on how much can be claimed, are irresponsible as the cost of these incentives goes far beyond what was ever intended.

It should also be noted that an income exclusion affects taxpayers differently depending on the amount of net income they otherwise have. For example, a \$50,000 income exclusion would create a maximum \$5,500 tax benefit to an individual making over \$200,000 in adjusted gross income, where the same individual with \$35,000 adjusted gross income and \$15,000 net profit would see a benefit of perhaps \$725.

Instead, lawmakers should consider an appropriation of a specific number of taxpayer dollars. At least lawmakers would have a better idea of what is being funded. A direct appropriation would be preferable to the income exclusion as it would: (1) provide some accountability for the taxpayers’ funds being utilized to support this effort; and (2) not be a blank check.

Digested 1/29/2021



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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 1, 2021
TIME: 1pm
PLACE: Via Videoconference

RE: SB478 Relating to Farms

Position: 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.

HFIA supports efforts to increase local food production. The high cost of labor in our state combined with the high cost of real estate make agricultural activities and food manufacturing commercially very challenging in Hawaii. Tax credits like this can help encourage local agriculture and potentially bring down the cost of local food in our state. We support tax credits for local farmers. Thank you for the opportunity to testify.



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February 1, 2021

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON SB 478
RELATING TO FARMS

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 478, which creates an exclusion from income tax for the lesser of a percentage of gross annual income or an amount of gross annual income earned by a farmer from farming activities.

Farming is a tough business. High production costs are a major driver of narrow profit margins for Hawaii's farmers. Land, water, labor, taxes, transportation, utilities, inputs, invasive species, and food safety regulations are all costs of doing business that often results in our farmers just being able to break even. HFB supports any initiative that reduces the cost of production so that locally produced goods can compete with imported products, strengthening our local economy.

Hawaii Farm Bureau Policy states:

"State tax and monetary policies should be designed to encourage private initiative to help stabilize farm economics in the State of Hawaii, to promote employment and economic growth, and to distribute the tax burden equitably. Further such policy should be used by the state, when appropriate, to encourage agricultural growth and expansion."

This measure falls in the "encourage agricultural growth and expansion." category.

This measure defines "farmer" as a person which means the exemption is limited to individuals This definition will exclude other forms of farm ownership.

Thank you for this opportunity to testify on this important subject.



Email: communications@ulupono.com

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT
Monday, February 1, 2021 — 1:00 p.m.

Ulupono Initiative supports SB 478, Relating to Farms.

Dear Chair Gabbard and Members of the Committee:

My name is Amy Hennessey, and I am the Senior Vice President of Communications & External Affairs at Ulupono Initiative. We are a Hawai'i-based impact investment firm that strives to improve our community's quality of life by creating more locally produced food; increasing affordable, clean, renewable energy and transportation options; and better managing freshwater and waste resources.

Ulupono supports SB 478, which creates an exclusion from income tax for the lesser of a percentage of gross annual income or an amount of gross annual income earned by a farmer from farming activities.

Ulupono supports local food production for local consumption, which we believe will help support our state's food security. A policy such as this may go a long way toward influencing Hawai'i's farmers and ranchers to produce food for our community while also keeping money within the state to support our economy. We recognize that you face many difficult decisions this year to balance the budget in the midst of this economic crisis, but we hope that this support for local farmers can be considered.

Thank you for this opportunity to testify.

Respectfully,

Amy Hennessey, APR
Senior Vice President, Communications & External Affairs

Investing in a Sustainable Hawai'i

SB-478

Submitted on: 1/30/2021 2:47:05 PM

Testimony for AEN on 2/1/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Brinker	Individual	Support	No

Comments:

Support

SB-478

Submitted on: 1/31/2021 12:07:40 PM

Testimony for AEN on 2/1/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Hunter Heavilin	Individual	Support	No

Comments:

Aloha Chair Gabbard, Vice Chair Nishihara, and Members of the Committee on Agriculture and Environment,

Kalo has sustained the Hawaiian islands for generations and the support for its production in SB341 is a long overdue means to unencumber cultural practices, enhance agricultural development, and increase availability of this staple crop.

SB341 is an important means to support statewide goals to increase both local food production and consumption. Having worked lo'i and at a poi mill I support this bill as a means for farmers and value-added operations to retain as much of their hard-earned incomes as possible. As a food system planner with a moderate poi habit **I strongly support SB341** as a means to lower the cost of accessing Hawai'i's staple. Access to culturally appropriate foods is a key facet of food security, and there is no crop better suited for this type of support than kalo.

Mahalo for the opportunity to testify.

-Hunter Heavilin