A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

1	PART I
2	SECTION 1. Chapter 235, Hawaii Revised Statutes is amended
3	by adding a new section to be appropriately designated and to
4	read as follows:
5	"§235- Rental income from agricultural leases on
6	important agricultural lands excluded from gross income. (a)
7	In addition to the exclusions in section 235-7, there shall be
8	excluded from gross income, adjusted gross income, and taxable
9	income, rental income, including lease rents, received by a
10	taxpayer subject to the taxes imposed by this chapter that are
11	derived from agricultural leases on lands identified and
12	designated as important agricultural lands pursuant to part III,
13	chapter 205, for the taxable year the rental income was
14	realized; provided that:
15	(1) The minimum length of the initial lease term shall be:
16	(A) Twenty years; or
17	(B) Any other lease term length mutually agreeable to
18	lessor and lessee, if the amount of the lease
	2007-2754 HB1639 SD3 SMA doc

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		<u>(ii)</u>	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	<u>(B)</u>	<u>The</u>	lease is in effect and the lessee is
8		cont	inuously and substantially undertaking
9		agri	cultural activity on the leased land,
10		purs	uant to chapter 205, as verified by the
11		depa	rtment of agriculture on a regular basis
12		<u>usin</u>	g a process determined by the department of
13		<u>agri</u>	culture; provided that the exemption shall
14		not	apply if the lease is terminated or the
15		depa	rtment of agriculture determines that the
16		<u>leas</u>	ed land is not continuously and substantially
17		bein	g used for agricultural activity; and
18	<u>(C)</u>	The	taxpayer shall be eligible for the exemption
19		init	ially for up to twenty years and for every
20		<u>year</u>	the term of the lease is extended; provided
21		furt	her that the assignment of the original lease
22		to a	nother lessee shall be for the time period

1	remaining on the original lease, unless the terms
2	of the lease are renegotiated."
3	SECTION 3. There is appropriated out of the general
4	revenues of the State of Hawaii the sum of \$ or so
5	much thereof as may be necessary for fiscal year 2007-2008 and
6	the sum of \$ or so much thereof as may be necessary
7	for fiscal year 2008-2009 for the department of agriculture to
8	collect and analyze data to make an aggregated quantitative and
9	qualitative assessment of the impact of the exclusion of rental
10	income from important agricultural lands from income and general
11	excise taxation.
12	The sums appropriated shall be expended by the department
13	of agriculture for the purposes of this part.
14	SECTION 4. The department of agriculture shall submit to
15	the legislature an annual report, no later than twenty days
16	prior to the convening of each regular session, beginning with
17	the regular session of 2009, regarding the quantitative and
18	qualitative assessment of the impact of the exclusion of rental
19	income from important agricultural lands from income and general
20	excise taxation.
21	PART II

- 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) There shall be allowed to each taxpayer, subject to the taxes 5 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. (b) The amount of the credit shall be equal to one hundred 10 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 agricultural lands pursuant to part III, chapter 205. 14 15 In the case of a partnership, S corporation, estate, or 16 trust, the amount upon which the credit is computed shall be determined at the entity level. Distribution and share of 17 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 specified in the lease agreement, the lessor shall provide the 22
 - 2007-2754 HB1639 SD3 SMA.doc

- 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 be necessary to claim a credit under this section. The director 2 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, and shall not be available for taxable years beginning after 8 9 December 31, 2027. 10 (i) Taxpayers claiming the credit under this section shall provide prescribed information to the department of agriculture 11 12 on an annual basis, upon request, that will enable a quantitative and qualitative assessment of the impact of the tax 13 credit to be determined. The assessment shall be available to 14 15 the public. 16 The department of agriculture shall determine on an annual 17 basis if the important agricultural land subject to the credit is in productive agricultural use based on a ten year farm plan 18 19 submitted to and approved by the department." 20 SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ 21 or so

much thereof as may be necessary for fiscal year 2007-2008 and

2007-2754 HB1639 SD3 SMA.doc

22

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	<u>(3)</u>	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 or
20		the designated important agricultural land; and

1	(6) The plans for farmers' and employee dwelling units
2	shall be supported by agricultural plans that are
3	approved by the department of agriculture."
4	PART IV
5	SECTION 8. Section 205-5, Hawaii Revised Statutes, is
6	amended to read as follows:
7	"§205-5 Zoning. (a) Except as herein provided, the
8	powers granted to counties under section 46-4 shall govern the
9	zoning within the districts, other than in conservation
10	districts. Conservation districts shall be governed by the
11	department of land and natural resources pursuant to chapter
12	183C.
13	(b) Within agricultural districts, uses compatible to the
14	activities described in section 205-2 as determined by the
15	commission shall be permitted; provided that accessory
16	agricultural uses and services described in sections 205-2 and
17	205-4.5 may be further defined by each county by zoning
18	ordinance. Each county shall adopt ordinances setting forth
19	procedures and requirements, including provisions for
20	enforcement, penalties, and administrative oversight, for the
21	review and permitting of agricultural tourism uses and
22	activities as an accessory use on a working farm, or farming

- 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:
- (1) Requirements for access to a farm, including roadwidth, 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;
- (3) Activities that may be offered by the farmingoperation for visitors;
- 13 (4) Days and hours of operation; and
- (5) Automatic termination of the accessory use upon thecessation 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.



18

19

20

1 [(c)] (d) Unless authorized by special permit issued 2 pursuant to this chapter, only the following uses shall be permitted within rural districts: 3 4 (1)Low density residential uses; 5 (2) Agricultural uses: 6 (3) Golf courses, golf driving ranges, and golf-related 7 facilities; and 8 (4)Public, quasi-public, and public utility facilities. 9 In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but 10 11 one dwelling house per one-half acre, except as provided for in 12 section 205-2." 13 PART V 14 SECTION 9. Statutory material to be repealed is bracketed 15 and stricken. New statutory material is underscored. 16 SECTION 10. This Act shall take effect on July 1, 2020; 17 provided that sections 1 and 5 shall apply to taxable years

beginning after December 31, 2008; and provided further that

gross income or gross proceeds received after June 30, 2009.

section 2 shall take effect on July 1, 2009, and shall apply to

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)