

Report Title:

Streamlined Sales Tax; Implementation

Description:

Adopts amendments to Hawaii's tax law that will allow Hawaii to participate in the Streamlined Sales and Use Tax Agreement. (SB 2222 HD1)



A BILL FOR AN ACT

RELATING TO STREAMLINED SALES AND USE TAX.

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

1 SECTION 1. The purpose of this Act is to adopt changes to
2 Hawaii's tax law that will allow Hawaii to participate in the
3 streamlined sales and use tax agreement. By enacting the Hawaii
4 Simplified Sales and Use Tax Administration Act, Act 173,
5 Session Laws of Hawaii 2003, the State of Hawaii became a
6 participating member of the National Streamlined Sales Tax
7 Project.

8 In furtherance of the State's efforts to comply with the
9 terms and conditions of the conforming legislation reflected in
10 the Streamlined Sales Tax Project's model agreement and act, the
11 Hawaii state legislature enacted Act 3, Special Session Laws of
12 Hawaii 2005. Act 3, in part, establishes a technical advisory
13 group to assist the state department of taxation in identifying
14 and resolving issues necessary for Streamlined Sales Tax Project
15 compliance. In addition, a joint house-senate legislative
16 oversight committee has been formed to provide additional tax
17 policy support and guidance. This Act is a culmination of these
18 efforts.



1 To participate in the streamlined sales and use tax
2 agreement, Hawaii must amend its tax law in conformity with the
3 streamlined sales and use tax agreement. To conform, Hawaii
4 must adopt a single rate of general excise tax, Hawaii's
5 substitute for a sales tax. In accordance with advice received
6 from the Streamlined Sales Tax Governing Board and COST, a
7 national organization representing businesses, this was
8 accomplished by:

- 9 (1) Moving the tax rate for wholesale transactions to a
10 new chapter;
- 11 (2) Adding a new chapter on the taxation of imports of
12 property, services, and contracting;
- 13 (3) Moving the 0.15 per cent tax on insurance producers to
14 a new chapter; and
- 15 (4) Eliminating the tax on businesses owned by disabled
16 persons.

17 This Act also provides for destination-based sourcing and
18 amnesty.

19 SECTION 2. The Hawaii Revised Statutes is amended by
20 adding a new chapter to be appropriately designated and to read
21 as follows:



- 1 (3) Sales to a licensed producer or cooperative
2 association of materials or commodities that are to be
3 incorporated by the producer or by the cooperative
4 association into a finished or saleable product that
5 is to be sold and not otherwise used by the producer
6 or cooperative association, including specifically
7 materials or commodities expended as essential to the
8 planting, growth, nurturing, and production of
9 commodities that are sold by the producer or by the
10 cooperative association;
- 11 (4) Sales to a licensed contractor of materials or
12 commodities that are to be incorporated by the
13 contractor into the finished work or project required
14 by the contract and that will remain in a finished
15 work or project in a form as to be perceptible to the
16 senses;
- 17 (5) Sales to a licensed producer, or to a cooperative
18 association described in section 237-23(a)(7) for sale
19 to a licensed producer, or to a licensed person
20 operating a feed lot, of poultry or animal feed,
21 hatching eggs, semen, replacement stock, breeding
22 services for the purpose of raising or producing



1 animal or poultry products for disposition as
2 described in section A-3 or for incorporation into a
3 manufactured product as described in paragraph (2) or
4 for the purpose of breeding, hatching, milking, or egg
5 laying other than for the customer's own consumption
6 of the meat, poultry, eggs, or milk so produced;
7 provided that in the case of a feed lot operator, only
8 the segregated cost of the feed furnished by the feed
9 lot operator as part of the feed lot operator's
10 service to a licensed producer of poultry or animals
11 to be butchered or to a cooperative association
12 described in section 237-23(a)(7) of these licensed
13 producers shall be deemed to be a sale at wholesale;
14 and provided further that any amount derived from the
15 furnishing of feed lot services, other than the
16 segregated cost of feed, shall be deemed taxable at
17 the service business rate specified in section A-
18 6(a)(5). This paragraph shall not apply to the sale
19 of feed for poultry or animals to be used for hauling,
20 transportation, or sports purposes;

21 (6) Sales to a licensed producer, or to a cooperative
22 association described in section 237-23(a)(7) for sale



1 to the producer, of seed or seedstock for producing
2 agricultural and aquacultural products, or bait for
3 catching fish (including the catching of bait for
4 catching fish), which agricultural and aquacultural
5 products or fish are to be disposed of as described in
6 section A-3 or to be incorporated in a manufactured
7 product as described in paragraph (2);

8 (7) Sales to a licensed producer, or to a cooperative
9 association described in section 237-23(a)(7) for sale
10 to a licensed producer; of polypropylene shade cloth;
11 of polyfilm; of polyethylene film; of cartons and
12 other containers, wrappers, and sacks, and binders to
13 be used for packaging eggs, vegetables, fruits, and
14 other agricultural and aquacultural products; of
15 seedlings and cuttings for producing nursery plants or
16 aquacultural products; or of chick containers; which
17 cartons and other containers, wrappers, and sacks,
18 binders, seedlings, cuttings, and containers are to be
19 used as described in section A-3, or to be
20 incorporated in a manufactured product as described in
21 paragraph (2);

22 (8) Sales of tangible personal property where:



1 (A) Tangible personal property is sold upon the order
2 or request of a licensed seller for the purpose
3 of rendering a service in the course of the
4 person's service business or calling, or upon the
5 order or request of a person subject to tax under
6 section 237D-2 for the purpose of furnishing
7 transient accommodations;

8 (B) The tangible personal property becomes or is used
9 as an identifiable element of the service
10 rendered; and

11 (C) The cost of the tangible personal property does
12 not constitute overhead to the licensed seller;

13 (9) Sales to a licensed leasing company of capital goods
14 that have a depreciable life, are purchased by the
15 leasing company for lease to its customers, and are
16 thereafter leased as a service to others;

17 (10) Sales of services to a licensed seller engaging in a
18 business or calling whenever:

19 (A) Either:

20 (i) In the context of a service-to-service
21 transaction, a service is rendered upon the
22 order or request of a licensed seller for



1 the purpose of rendering another service in
2 the course of the seller's service business
3 or calling;

4 (ii) In the context of a service-to-tangible
5 personal property transaction, a service is
6 rendered upon the order or request of a
7 licensed seller for the purpose of
8 manufacturing, producing, or preparing
9 tangible personal property to be sold;

10 (iii) In the context of a services-to-contracting
11 transaction, a service is rendered upon the
12 order or request of a licensed contractor as
13 defined in section 237-6 for the purpose of
14 assisting that licensed contractor; or

15 (iv) In the context of a services-to-transient
16 accommodations rental transaction, a service
17 is rendered upon the order or request of a
18 person subject to tax under section 237D-2
19 for the purpose of furnishing transient
20 accommodations;

21 (B) The benefit of the service passes to the customer
22 of the licensed seller, licensed contractor, or



1 person furnishing transient accommodations as an
2 identifiable element of the other service or
3 property to be sold, the contracting, or the
4 furnishing of transient accommodations;

5 (C) The cost of the service does not constitute
6 overhead to the licensed seller, licensed
7 contractor, or person furnishing transient
8 accommodations;

9 (D) The gross income of the licensed seller is not
10 divided between the licensed seller and another
11 licensed seller, contractor, or person furnishing
12 transient accommodations for imposition of the
13 tax under this chapter or chapter 237;

14 (E) The gross income of the licensed seller is not
15 subject to a deduction under this chapter,
16 chapter 237, or chapter 237D; and

17 (F) The resale of the service, tangible personal
18 property, contracting, or transient
19 accommodations is subject to the tax imposed
20 under this chapter or chapter 237;

21 (11) Sales to a licensed retail merchant, jobber, or other
22 licensed seller of bulk condiments or prepackaged



1 single-serving packets of condiments that are provided
2 to customers by the licensed retail merchant, jobber,
3 or other licensed seller;

4 (12) Sales to a licensed retail merchant, jobber, or other
5 licensed seller of tangible personal property that
6 will be incorporated or processed by the licensed
7 retail merchant, jobber, or other licensed seller into
8 a finished or saleable product during the course of
9 its preparation for market (including disposable,
10 nonreturnable containers, packages, or wrappers, in
11 which the product is contained and that are generally
12 known and most commonly used to contain food or
13 beverage for transfer or delivery), and which finished
14 or saleable product is to be sold and not otherwise
15 used by the licensed retail merchant, jobber, or other
16 licensed seller;

17 (13) Sales of amusements subject to taxation under section
18 A-6(a)(3) to a licensed seller engaging in a business
19 or calling whenever:

20 (A) Either:

21 (i) In the context of an amusement-to-service
22 transaction, an amusement is rendered upon



1 the order or request of a licensed seller
2 for the purpose of rendering another service
3 in the course of the seller's service
4 business or calling;

5 (ii) In the context of an amusement-to-tangible
6 personal property transaction, an amusement
7 is rendered upon the order or request of a
8 licensed seller for the purpose of selling
9 tangible personal property; or

10 (iii) In the context of an amusement-to-amusement
11 transaction, an amusement is rendered upon
12 the order or request of a licensed seller
13 for the purpose of rendering another
14 amusement in the course of the person's
15 amusement business;

16 (B) The benefit of the amusement passes to the
17 customer of the licensed seller as an
18 identifiable element of the other service,
19 tangible personal property to be sold, or
20 amusement;

21 (C) The cost of the amusement does not constitute
22 overhead to the licensed seller;



1 (D) The gross income of the licensed seller is not
2 divided between the licensed seller and another
3 licensed seller, person furnishing transient
4 accommodations, or person rendering an amusement
5 for imposition of the tax under chapter 237;

6 (E) The gross income of the licensed seller is not
7 subject to a deduction under this chapter or
8 chapter 237; and

9 (F) The resale of the service, tangible personal
10 property, or amusement is subject to the tax
11 imposed under this chapter or chapter 237. As
12 used in this paragraph, "amusement" means
13 entertainment provided as part of a show for
14 which there is an admission charge; and

15 (14) Sales by a printer to a publisher of magazines or
16 similar printed materials containing advertisements,
17 when the publisher is under contract with the
18 advertisers to distribute a minimum number of
19 magazines or similar printed materials to the public
20 or defined segment of the public, whether or not there
21 is a charge to the persons who actually receive the
22 magazines or similar printed materials.



1 (b) If the use tax law under chapter B is finally held by
2 a court of competent jurisdiction to be unconstitutional or
3 invalid insofar as it purports to tax the use or consumption of
4 tangible personal property imported into the State in interstate
5 or foreign commerce, or both, wholesalers and jobbers shall be
6 taxed thereafter under this chapter in accordance with the
7 following definition (which shall supersede the preceding
8 subsection otherwise defining "wholesaler" or "jobber"):
9 "Wholesaler" or "jobber" means a person, or a definitely
10 organized division thereof, definitely organized to render and
11 rendering a general distribution service that buys and maintains
12 at the person's place of business a stock or lines of
13 merchandise that the person distributes; and that the person,
14 through salespersons, advertising, or sales promotion devices,
15 sells to licensed retailers, to institutional, or licensed
16 commercial or industrial users, in wholesale quantities and at
17 wholesale rates. A corporation deemed not to be carrying on a
18 trade or business in this State under section 235-6 shall
19 nevertheless be deemed to be a wholesaler and shall be subject
20 to the tax imposed by this chapter.

21 **SA-3 "Producer" defined.** (a) "Producer" means any person
22 engaged in the business of raising and producing agricultural



1 products in their natural state, or in producing natural
2 resource products, or engaged in the business of fishing or
3 aquaculture, for sale, or for shipment or transportation out of
4 the State, of the agricultural or aquaculture products in their
5 natural or processed state, or butchered and dressed, or the
6 natural resource products, or fish.

7 (b) As used in this section, "agricultural products"
8 include floricultural, horticultural, viticultural, forestry,
9 nut, coffee, dairy, livestock, poultry, bee, animal, and any
10 other farm, agronomic, or plantation products.

11 **§A-4 Definitions; "contractor", "service business or**
12 **calling".** The definitions contained in sections 237-6 and 237-7
13 shall be applicable for this chapter.

14 **§A-5 Administrative provisions.** Sections 237-8, 237-9,
15 237-9.5, 237-11, and 237-12 shall be applicable for this
16 chapter.

17 **§A-6 Imposition of tax.** (a) There is hereby levied and
18 shall be assessed and collected annually privilege taxes against
19 persons on account of their business and other activities in the
20 State measured by the application of rates against values of
21 products, gross proceeds of sales, or gross income, whichever is
22 specified, as follows:



- 1 (1) Tax on manufacturers:
- 2 (A) Upon every person engaging or continuing within
- 3 the State in the business of manufacturing,
- 4 including compounding, canning, preserving,
- 5 packing, printing, publishing, milling,
- 6 processing, refining, or preparing for sale,
- 7 profit, or commercial use, either directly or
- 8 through the activity of others, in whole or in
- 9 part, any article or articles, substance or
- 10 substances, commodity or commodities, the amount
- 11 of the tax to be equal to the value of the
- 12 articles, substances, or commodities,
- 13 manufactured, compounded, canned, preserved,
- 14 packed, printed, milled, processed, refined, or
- 15 prepared for sale, as shown by the gross proceeds
- 16 derived from the sale thereof by the manufacturer
- 17 or person compounding, preparing, or printing
- 18 them, multiplied by one-half of one per cent;
- 19 (B) The measure of the tax on manufacturers is the
- 20 value of the entire product for sale, regardless
- 21 of the place of sale or the fact that deliveries
- 22 may be made to points outside the State;



1 (C) If any person liable for the tax on manufacturers
2 ships or transports the person's product, or any
3 part thereof, out of the State, whether in a
4 finished or unfinished condition, or sells the
5 same for delivery to points outside the State
6 (for example, consigned to a mainland purchaser
7 via common carrier f.o.b. Honolulu), the value of
8 the products in the condition or form in which
9 they exist immediately before entering interstate
10 or foreign commerce, determined as hereinafter
11 provided, shall be the basis for the assessment
12 of the tax imposed by this paragraph. This tax
13 shall be due and payable as of the date of entry
14 of the products into interstate or foreign
15 commerce, whether the products are then sold or
16 not. The department shall determine the basis
17 for assessment, as provided by this paragraph, as
18 follows:

19 (i) If the products at the time of their entry
20 into interstate or foreign commerce already
21 have been sold, the gross proceeds of sale,
22 less the transportation expenses, if any,



1 incurred in realizing the gross proceeds for
2 transportation from the time of entry of the
3 products into interstate or foreign
4 commerce, including insurance and storage in
5 transit, shall be the measure of the value
6 of the products;

7 (ii) If the products have not been sold at the
8 time of their entry into interstate or
9 foreign commerce, and in cases governed by
10 clause (i) in which the products are sold
11 under circumstances such that the gross
12 proceeds of sale are not indicative of the
13 true value of the products, the value of the
14 products constituting the basis for
15 assessment shall correspond as nearly as
16 possible to the gross proceeds of sales for
17 delivery outside the State, adjusted as
18 provided in clause (i), or if sufficient
19 data are not available, sales in the State,
20 of similar products of like quality and
21 character and in similar quantities, made by
22 the taxpayer (unless not indicative of the



1 true value) or by others. Sales outside the
2 State, adjusted as provided in clause (i),
3 may be considered when they constitute the
4 best available data. The department of
5 taxation shall prescribe uniform and
6 equitable rules for ascertaining the values;

7 (iii) At the election of the taxpayer and with the
8 approval of the department of taxation, the
9 taxpayer may make the taxpayer's returns
10 under clause (i) even though the products
11 have not been sold at the time of their
12 entry into interstate or foreign commerce;
13 and

14 (iv) In all cases in which products leave the
15 State in an unfinished condition, the basis
16 for assessment shall be adjusted so as to
17 deduct the portion of the value as is
18 attributable to the finishing of the goods
19 outside the State;

20 (2) Tax on producers: Upon every person engaging or
21 continuing within this State in the business of a
22 producer, the tax shall be equal to one-half of one



1 per cent of the gross proceeds of sales of the
2 business, or the value of the products, for sale, if
3 sold for delivery outside the State or shipped or
4 transported out of the State, and the value of the
5 products shall be determined in the same manner as the
6 value of manufactured products covered in the cases
7 under paragraph (1)(C). No manufacturer or producer,
8 engaged in the business of manufacturing or producing
9 in the State and selling the manufacturer's or
10 producer's products for delivery outside of the State
11 (for example, consigned to a mainland purchaser via
12 common carrier f.o.b. Honolulu), shall be required to
13 pay the tax imposed in this chapter for the privilege
14 of so selling the products, and the value or gross
15 proceeds of sales of the products shall be included
16 only in determining the measure of the tax imposed
17 upon the manufacturer or producer;

- 18 (3) Tax upon theaters, amusements, radio broadcasting
19 stations, etc. Upon every person engaging or
20 continuing within the State in the business of
21 operating a theater, opera house, moving picture show,
22 vaudeville, amusement park, dance hall, skating rink,



1 radio broadcasting station, or any other place at
2 which amusements are offered to the public, at
3 wholesale, the tax shall be one-half of one per cent
4 of the gross proceeds of the business;

5 (4) Tax on service business upon every person engaging or
6 continuing within the State in any service business or
7 calling including professional services not otherwise
8 specifically taxed under this chapter, as a wholesaler
9 described in section A-2, the tax shall be equal to
10 one-half of one per cent of the gross proceeds of the
11 business;

12 (5) Tax on sales by wholesalers:

13 (A) Upon every person who is engaged in the business
14 of a wholesaler or jobber as described in section
15 A-2 of selling any tangible personal property
16 whatsoever (not including, however, bonds or
17 other evidences of indebtedness, or stocks),
18 there is hereby levied, and shall be assessed and
19 collected, a tax equivalent to one-half of one
20 per cent of the gross proceeds of sales of the
21 business as a wholesaler or jobber as defined in
22 section A-2;



1 (B) Gross proceeds of sales of tangible property in
2 interstate and foreign commerce shall constitute
3 a part of the measure of the tax imposed on
4 persons in the business of selling tangible
5 personal property as a wholesaler, to the extent,
6 under the conditions, and in accordance with the
7 provisions of the Constitution of the United
8 States and the Acts of Congress of the United
9 States that may be now in force or may be
10 hereafter adopted, and whenever there occurs in
11 the State an activity to which, under the
12 Constitution and Acts of Congress, there may be
13 attributed gross proceeds of sales, the gross
14 proceeds shall be so attributed.

15 (b) When a manufacturer or producer, engaged in business
16 in the State, also is engaged in selling the manufacturer's or
17 producer's products in the State at wholesale taxed under this
18 chapter, retail, or in any other manner, the tax for the
19 privilege of engaging in the business of selling the products in
20 the State shall apply to the manufacturer or producer as well as
21 the tax for the privilege of manufacturing or producing in the
22 State, and the manufacturer or producer shall make the returns



1 of the gross proceeds of the wholesale, retail, or other sales
2 required for the privilege of selling in the State, as well as
3 making the returns of the value or gross proceeds of sales of
4 the products required for the privilege of manufacturing or
5 producing in the State. The manufacturer or producer shall pay
6 the tax imposed in this chapter for the privilege of selling its
7 products in the State, and the value or gross proceeds of sales
8 of the products, thus subjected to tax, may be deducted insofar
9 as duplicated as to the same products by the measure of the tax
10 upon the manufacturer or producer for the privilege of
11 manufacturing or producing in the State under this chapter;
12 provided that no producer of agricultural products who sells the
13 products to a purchaser who will process the products outside
14 the State shall be required to pay the tax imposed in this
15 chapter for the privilege of producing or selling those
16 products.

17 **§A-7 Resale certificates.** (a) The department of
18 taxation, by rule, may require that a seller take from the
19 purchaser of tangible personal property a certificate, in a form
20 prescribed by the department, certifying that the sale is a sale
21 at wholesale; provided that:



1 (1) Any purchaser who furnishes a certificate shall be
2 obligated to pay to the seller, upon demand, the
3 amount of the additional tax that is imposed upon the
4 seller whenever the sale in fact is not at wholesale;
5 and

6 (2) The absence of a certificate in itself shall give rise
7 to the presumption that the sale is not at wholesale
8 unless the sales of the business are exclusively at
9 wholesale.

10 (b) The department of taxation may require that the person
11 rendering an amusement at wholesale take from the licensed
12 seller a certificate, in a form prescribed by the department,
13 certifying that the sale is a sale at wholesale; provided that:

14 (1) Any licensed seller who furnishes a certificate shall
15 be obligated to pay to the person rendering the
16 amusement, upon demand, the amount of additional tax
17 that is imposed upon the seller whenever the sale is
18 not at wholesale; and

19 (2) The absence of a certificate in itself shall give rise
20 to the presumption that the sale is not at wholesale
21 unless the person rendering the sale is exclusively
22 rendering the amusement at wholesale.



1 (c) The department of taxation may require that the person
2 rendering a service at wholesale take from the licensed seller a
3 certificate, in a form prescribed by the department, certifying
4 that the sale is a sale at wholesale; provided that:

5 (1) Any licensed seller who furnishes a certificate shall
6 be obligated to pay to the person rendering the
7 service, upon demand, the amount of additional tax
8 that is imposed upon the seller whenever the sale is
9 not at wholesale; and

10 (2) The absence of a certificate in itself shall give rise
11 to the presumption that the sale is not at wholesale
12 unless the person rendering the sale is exclusively
13 rendering services at wholesale.

14 **SA-8 Tax on receipts of sugar benefit payments.** Upon the
15 amounts received from the United States government by any
16 producer of sugar (or the producer's legal representative or
17 heirs), as defined under and by virtue of the Sugar Act of 1948,
18 as amended, or other Acts of the Congress of the United States
19 relating thereto, there is hereby levied a tax of one-half of
20 one per cent of the gross amount received; provided that the tax
21 levied hereunder on any amount so received and actually
22 disbursed to another by a producer in the form of a benefit



1 payment shall be paid by the person or persons to whom the
2 amount is actually disbursed, and the producer actually making a
3 benefit payment to another shall be entitled to claim on the
4 producer's return a deduction from the gross amount taxable
5 hereunder in the sum of the amount so disbursed. The amounts
6 taxed under this section shall not be taxable under any other
7 paragraph, subsection, or section of this chapter.

8 **§A-9 Segregation of gross income, etc., on records and in**
9 **returns.** The imposition of taxes and the application of tax
10 rates do not depend upon the business in which the taxpayer is
11 primarily engaged. One business may be subject to two or more
12 tax rates under this chapter and chapter 237. If a business is
13 within the purview of two or more of the paragraphs of section
14 237-13 or other provisions of this chapter or chapter 237, all
15 of them apply, each provision being applicable to the
16 appropriate item of gross income, gross proceeds of sales, or
17 value of products. However, any person engaging or continuing
18 in a business having gross income, gross proceeds of sales, and
19 value of products, or any of these as the case may be, taxable
20 at different rates, shall be subject to taxation upon the
21 aggregate amount of the gross income, gross proceeds of sales,
22 and value of products of the business at the highest rate



1 applicable to any part of the aggregate, unless the person shall
2 segregate the parts taxable at different rates upon the person's
3 records and in the person's returns, and shall sustain the
4 burden of proving that the segregation was correctly made.

5 **§A-10 Assessment on generated electricity.** Any other
6 provision of law to the contrary notwithstanding, the levy and
7 assessment of tax on the gross proceeds from the sale of
8 electric power to a public utility company for resale to the
9 public, shall be made only as a tax on business of a producer,
10 at the rate assessed producers, under section A-6(a)(2).

11 **§A-11 Technicians.** When technicians supply dentists or
12 physicians with dentures, orthodontic devices, braces, and
13 similar items which have been prepared by the technician in
14 accordance with specifications furnished by the dentist or
15 physician, and these items are to be used by the dentist or
16 physician in the dentist's or physician's professional practice
17 for a particular patient who is to pay the dentist or physician
18 for the same as a part of the dentist's or physician's
19 professional services, the technician shall be taxed as though
20 the technician were a manufacturer selling a product to a
21 licensed retailer, rather than pursuant to chapter 237 at the



1 rate of four per cent that is generally applied to professions
2 and services.

3 **§A-12 Activity ordered by others.** (a) Where, through the
4 activity of a person taxable under section 237-13(5), a product
5 has been milled, processed, or otherwise manufactured upon the
6 order of another taxpayer who is a manufacturer taxable upon the
7 value of the entire manufactured products, which consists in
8 part of the value of the services taxable under section 237-
9 13(5), so much gross income as is derived from the rendering of
10 the services shall be subjected to tax on the person rendering
11 the services at the rate of one-half of one per cent, and the
12 value of the entire product shall be included in the measure of
13 the tax imposed on the other taxpayer as elsewhere provided.

14 (b) Where, through the activity of a person taxable under
15 section 237-13(5), there have been rendered to a cane planter
16 services consisting in the harvesting or hauling of the cane, or
17 consisting in road maintenance, under a contract between the
18 person rendering the services and the cane planter, covering the
19 services and also the milling of the sugar, the services of
20 harvesting and hauling the cane and road maintenance shall be
21 treated the same as the service of milling the cane, as provided
22 by subsection (a), and the value of the entire product,



1 manufactured or sold for the cane planter under the contract,
2 shall be included in the measure of the tax imposed on the
3 persons elsewhere provided.

4 **§A-13 Apportionment.** In the case of a tax upon the
5 production of property in the State, the apportionment shall be
6 determined as in the case of the tax on manufacturers provided
7 in section A-6(a)(1).

8 **§A-14 Conformity to constitution.** Section 237-22 shall
9 apply to this chapter.

10 **§A-15 Exemptions.** The exemptions provided in section 237-
11 23, 237-26, 237-27.5, 237-29, 237-29.5, and 237-29.53 shall
12 apply to this chapter.

13 **§A-16 Amounts not taxable.** This chapter shall not apply
14 to the following amounts:

15 (1) The amounts of taxes on cigarettes and tobacco
16 products imposed by chapter 245 on wholesalers or
17 dealers holding licenses under that chapter and
18 selling the products at wholesale;

19 (2) The amounts of federal taxes under chapter 37 of the
20 Internal Revenue Code of 1986, as amended, or similar
21 federal taxes, imposed on sugar manufactured in the



- 1 State, paid by the manufacturer to the federal
2 government;
- 3 (3) Gross income received by any blind, deaf, or totally
4 disabled person engaging, or continuing, in any
5 business, trade, activity, occupation, or calling
6 within the State; a corporation all of whose
7 outstanding shares are owned by an individual or
8 individuals who are blind, deaf, or totally disabled;
9 a general, limited or limited liability partnership,
10 all of whose partners are blind, deaf, or totally
11 disabled; or a limited liability company, all of whose
12 members are blind, deaf, or totally disabled;
- 13 (4) Amounts received by a producer of sugarcane from the
14 manufacturer to whom the producer sells the sugarcane,
15 where:
- 16 (A) The producer is an independent cane farmer, so
17 classed by the Secretary of Agriculture under the
18 Sugar Act of 1948 (61 Stat. 922, Chapter 519) as
19 the Act may be amended or supplemented;
- 20 (B) The value or gross proceeds of sale of the sugar,
21 and other products manufactured from the
22 sugarcane, is included in the measure of the tax



1 levied on the manufacturer under section A-
2 6(a)(1);

3 (C) The producer's gross proceeds of sales are
4 dependent upon the actual value of the products
5 manufactured therefrom or the average value of
6 all similar products manufactured by the
7 manufacturer; and

8 (D) The producer's gross proceeds of sales are
9 reduced by reason of the tax on the value or sale
10 of the manufactured products.

11 **§A-17 Exemption for sale of tangible personal property for**
12 **resale at wholesale.** (a) There shall be exempted from, and
13 excluded from the measure of, the taxes imposed by this chapter
14 all of the gross proceeds or gross income arising from the sale
15 of tangible personal property imported to Hawaii from a foreign
16 or domestic source to a licensed taxpayer for subsequent resale
17 for the purpose of wholesale as defined under section A-2(a)(8).

18 (b) The department of taxation, by rule, may provide that
19 a seller may take from the purchaser of imported tangible
20 personal property, a certificate in a form that the department
21 shall prescribe, certifying that the purchaser of the imported
22 tangible personal property shall resell the imported tangible



1 personal property at wholesale as defined under section A-
2 2(a)(8). Any purchaser who furnishes a certificate shall be
3 obligated to pay to the seller, upon demand, if the sale in fact
4 is not a sale for the purpose of resale at wholesale, the amount
5 of the additional tax which by reason thereof is imposed upon
6 the seller. The absence of a certificate, unless the sales of
7 the business are exclusively a sale for the purpose of resale at
8 wholesale, in itself, shall give rise to the presumption that
9 the sale is not a sale for the purpose of resale at wholesale.

10 **§A-18 Administrative provisions.** Sections 237-20, 237-21,
11 237-27, 237-30, 237-31, 237-32, 237-33, 237-33.5, 237-34, 237-
12 35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-42, 237-
13 43, 237-46, 237-47, 237-49, and 237-A through 237-F shall apply
14 to this chapter."

15 SECTION 3. The Hawaii Revised Statutes is amended by
16 adding a new chapter to be appropriately designated and to read
17 as follows:

18 "CHAPTER
19 TAX ON IMPORT OF GOODS, SERVICES AND CONTRACTING FOR RESALE

20 **§B-1 Definitions.** Definitions contained in section 238-1
21 shall apply to this chapter.



1 **§B-2 Imposition of tax on tangible personal property;**
2 **exemptions.** There is hereby levied an excise tax on the use in
3 this State of tangible personal property which is imported by a
4 taxpayer in this State whether owned, purchased from an
5 unlicensed seller, or however acquired for use in this State.
6 The tax imposed by this chapter shall accrue when the property
7 is acquired by the importer or purchaser and becomes subject to
8 the taxing jurisdiction of the State. The rates of the tax
9 hereby imposed and the exemptions thereof are as follows:

- 10 (1) If the importer or purchaser is licensed under chapter
11 A and is:
- 12 (A) A wholesaler or jobber importing or purchasing
13 for purposes of sale or resale; or
- 14 (B) A manufacturer importing or purchasing material
15 or commodities that are to be incorporated by the
16 manufacturer into a finished or saleable product
17 (including the container or package in which the
18 product is contained) wherein it will remain in a
19 form as to be perceptible to the senses, and the
20 finished or saleable product is to be sold in a
21 manner as to result in a further tax on the



1 activity of the manufacturer as the manufacturer
2 or as a wholesaler, and not as a retailer;
3 there shall be no tax; provided that if the
4 wholesaler, jobber, or manufacturer is also engaged in
5 business as a retailer (so classed under chapter 237),
6 paragraph (2) shall apply to the wholesaler, jobber,
7 or manufacturer, but the director of taxation shall
8 refund to the wholesaler, jobber, or manufacturer, in
9 the manner provided under section 231-23(c) the amount
10 of tax as the wholesaler, jobber, or manufacturer
11 shall establish, to the satisfaction of the director,
12 to have been paid by the wholesaler, jobber, or
13 manufacturer to the director with respect to property
14 that has been used by the wholesaler, jobber, or
15 manufacturer for the purposes stated in this
16 paragraph;

17 (2) If the importer or purchaser is licensed under chapter
18 237 and is:

19 (A) A retailer or other person importing or
20 purchasing for purposes of sale or resale, not
21 exempted by paragraph (1);



1 (B) A manufacturer importing or purchasing material
2 or commodities that are to be incorporated by the
3 manufacturer into a finished or saleable product
4 (including the container or package in which the
5 product is contained) wherein it will remain in a
6 form as to be perceptible to the senses, and the
7 finished or saleable product is to be sold at
8 retail in this State, in a manner as to result in
9 a further tax on the activity of the manufacturer
10 in selling the products at retail;

11 (C) A contractor importing or purchasing material or
12 commodities that are to be incorporated by the
13 contractor into the finished work or project
14 required by the contract and that will remain in
15 the finished work or project in a form as to be
16 perceptible to the senses;

17 (D) A person engaged in a service business or calling
18 as defined in section 237-7, or a person
19 furnishing transient accommodations subject to
20 the tax imposed by section 237D-2, in which the
21 import or purchase of tangible personal property
22 would have qualified as a sale at wholesale as



1 defined in section A-2(a)(8) had the seller of
2 the property been subject to the tax in chapter
3 237; or

4 (E) A publisher of magazines or similar printed
5 materials containing advertisements, when the
6 publisher is under contract with the advertisers
7 to distribute a minimum number of magazines or
8 similar printed materials to the public or
9 defined segment of the public, whether or not
10 there is a charge to the persons who actually
11 receive the magazines or similar printed
12 materials,

13 the tax shall be one-half of one per cent of the
14 purchase price of the property, if the purchase and
15 sale are consummated in Hawaii; or, if there is no
16 purchase price applicable thereto, or if the purchase
17 or sale is consummated outside of Hawaii, then one-
18 half of one per cent of the value of the property.

19 **§B-3 Imposition of tax on imported services or**
20 **contracting; exemptions.** There is hereby levied an excise tax
21 on the value of services or contracting as defined in section
22 237-6 that are performed by an unlicensed seller at a point



1 outside the State and imported or purchased for use in this
2 State. The tax imposed by this chapter shall accrue when the
3 service or contracting as defined in section 237-6 is received
4 by the importer or purchaser and becomes subject to the taxing
5 jurisdiction of the State. The rates of the tax hereby imposed
6 and the exemptions from the tax are as follows:

7 (1) If the importer or purchaser is licensed under chapter
8 A and is:

9 (A) Engaged in a service business or calling in which
10 the imported or purchased services or contracting
11 become identifiable elements, excluding overhead,
12 of the services rendered by the importer or
13 purchaser, and the gross income of the importer
14 or purchaser is subject to the tax imposed under
15 chapter A on services at the rate of one-half of
16 one per cent; or

17 (B) A manufacturer importing or purchasing services
18 or contracting that become identifiable elements,
19 excluding overhead, of a finished or saleable
20 product (including the container or package in
21 which the product is contained) and the finished
22 or saleable product is to be sold in a manner



1 that results in a further tax under chapter A on
2 the manufacturer as a wholesaler, and not a
3 retailer;

4 there shall be no tax imposed on the value of the
5 imported or purchased services or contracting;
6 provided that if the manufacturer is also engaged in
7 business as a retailer as classified under chapter
8 237, paragraph (2) shall apply to the manufacturer,
9 but the director of taxation shall refund to the
10 manufacturer, in the manner provided under section
11 231-23(c), that amount of tax that the manufacturer,
12 to the satisfaction of the director, shall establish
13 to have been paid by the manufacturer to the director
14 with respect to services that have been used by the
15 manufacturer for the purposes stated in this
16 paragraph;

17 (2) If the importer or purchaser is a person licensed
18 under chapter 237 and is:

19 (A) Engaged in a service business or calling in which
20 the imported or purchased services or contracting
21 become identifiable elements, excluding overhead,
22 of the services rendered by the importer or



1 purchaser, and the gross income from those
2 services when sold by the importer or purchaser
3 is subject to the tax imposed under chapter 237;

4 (B) A manufacturer importing or purchasing services
5 or contracting that become identifiable elements,
6 excluding overhead, of the finished or saleable
7 manufactured product (including the container or
8 package in which the product is contained) and
9 the finished or saleable product is to be sold in
10 a manner that results in a further tax under
11 chapter 237 on the activity of the manufacturer
12 as a retailer; or

13 (C) A contractor importing or purchasing services or
14 contracting that become identifiable elements,
15 excluding overhead, of the finished work or
16 project required under the contract, and where
17 the gross proceeds derived by the contractor are
18 subject to the tax under section 237-13(2) as a
19 contractor;

20 the tax shall be one-half of one per cent of the value
21 of the imported or purchased services or contracting.



1 **§B-4 Application of tax, etc.** Section 238-3 shall apply
2 to this chapter.

3 **§B-5 Certain property used by producers.** If a licensed
4 producer, or a cooperative association acting under the
5 authority of chapter 421, in order to sell to the producer, or a
6 licensed person, imports into the State or acquires in the State
7 commodities, materials, items, services, or living things
8 enumerated in section A-2(a)(3) and (a)(5) to (a)(7), then
9 section A-2 shall apply. If section A-2 applies and the
10 producer is engaged in the sale of the producer's products at
11 retail or in any manner other than at wholesale, then the tax
12 upon use of property in the State imposed by section 238-2 shall
13 apply the same as in the case of a purchaser who is a licensed
14 retailer. In other cases no tax shall be imposed under this
15 chapter.

16 **§B-6 Administration.** Sections 238-5, 238-6, 238-7, 238-8,
17 238-9, 238-9.5, 238-10, 238-11, 238-13, 238-14 and 238-16 shall
18 apply to this chapter."

19 SECTION 4. The Hawaii Revised Statutes is amended by
20 adding a new chapter to be appropriately designated and to read
21 as follows:



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"CHAPTER

INSURANCE PRODUCER'S TAX

§C-1 Definitions. The definitions contained in sections 237-1, 237-2, and 237-3 shall apply to this chapter.

§C-2 Tax on insurance producers. Upon every person engaged as a licensed producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to 0.15 per cent of the commissions due to that activity.

§C-3 Apportionment. Where insurance producers, who are not employees and are licensed pursuant to chapter 431, produce commissions that are divided between the insurance producers, the tax levied under section C-2 as to insurance producers shall apply to each producer with respect to the producer's portion of the commissions, and no more.

§C-4 Administrative provisions. Sections 237-8, 237-9, 237-9.5, 237-11, 237-12, 237-30, 237-31, 237-33, 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-42, 237-43, 237-46, and 237-A through 237-G shall apply to this chapter."

SECTION 5. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:



1 "§46- County compliance with the streamlined sales and
2 use tax agreement. The counties shall not adopt any ordinance
3 or interpret any ordinance in such a manner that violates the
4 provisions of the streamlined sales and use tax agreement
5 established by the Streamlined Sales Tax Governing Board,
6 Incorporated, and adopted pursuant to chapter 255D."

7 SECTION 6. Chapter 237, Hawaii Revised Statutes, is
8 amended by adding seven new sections to be appropriately
9 designated and to read as follows:

10 "§237-A General sourcing rules.

11 (1) The retail sale, excluding lease or rental, of a
12 product shall be sourced as follows:

13 (A) When the product is received by the purchaser at
14 a business location of the seller, the sale is
15 sourced to that business location;

16 (B) When the product is not received by the purchaser
17 at a business location of the seller, the sale is
18 sourced to the location where receipt by the
19 purchaser (or the purchaser's donee, designated
20 as such by the purchaser) occurs, including the
21 location indicated by instructions for delivery
22 to the purchaser (or donee), known to the seller;



- 1 (C) When subparagraphs (A) and (B) do not apply, the
2 sale is sourced to the location indicated by an
3 address for the purchaser that is available from
4 the business records of the seller that are
5 maintained in the ordinary course of the seller's
6 business when use of this address does not
7 constitute bad faith;
- 8 (D) When subparagraphs (A), (B), and (C) do not
9 apply, the sale is sourced to the location
10 indicated by an address for the purchaser
11 obtained during the consummation of the sale,
12 including the address of a purchaser's payment
13 instrument, if no other address is available,
14 when use of this address does not constitute bad
15 faith; or
- 16 (E) When none of the previous rules of subparagraphs
17 (A), (B), (C), and (D) apply, including the
18 circumstance in which the seller is without
19 sufficient information to apply the previous
20 rules, then the location shall be determined by
21 the address from which tangible personal property
22 was shipped, from which the digital good or the



1 computer software delivered electronically was
2 first available for transmission by the seller,
3 or from which the service was provided
4 (disregarding for these purposes any location
5 that merely provided the digital transfer of the
6 product sold);

7 (2) The lease or rental of tangible personal property,
8 other than property identified in paragraph (3) or
9 (4), shall be sourced as follows:

10 (A) For a lease or rental that requires recurring
11 periodic payments, the first periodic payment is
12 sourced the same as a retail sale in accordance
13 with paragraph (1). Periodic payments made
14 subsequent to the first payment are sourced to
15 the primary property location for each period
16 covered by the payment. The primary property
17 location shall be as indicated by an address for
18 the property provided by the lessee that is
19 available to the lessor from its records
20 maintained in the ordinary course of business,
21 when use of this address does not constitute bad
22 faith. The property location shall not be



1 altered by intermittent use at different
2 locations, such as use of business property that
3 accompanies employees on business trips and
4 service calls; or

5 (B) For a lease or rental that does not require
6 recurring periodic payments, the payment is
7 sourced the same as a retail sale in accordance
8 with paragraph (1);

9 This paragraph does not affect the imposition or
10 computation of general excise or use tax on leases or
11 rentals based on a lump sum or accelerated basis, or
12 on the acquisition of property for lease;

13 (3) The lease or rental of motor vehicles, trailers, semi-
14 trailers, or aircraft that do not qualify as
15 transportation equipment, as defined in paragraph (4),
16 shall be sourced as follows:

17 (A) For a lease or rental that requires recurring
18 periodic payments, each periodic payment is
19 sourced to the primary property location. The
20 primary property location shall be as indicated
21 by an address for the property provided by the
22 lessee that is available to the lessor from its



1 records maintained in the ordinary course of
2 business, when use of this address does not
3 constitute bad faith. This location shall not be
4 altered by intermittent use at different
5 locations; or

6 (B) For a lease or rental that does not require
7 recurring periodic payments, the payment is
8 sourced the same as a retail sale in accordance
9 with paragraph (1);

10 This paragraph does not affect the imposition or
11 computation of general excise or use tax on leases or
12 rentals based on a lump sum or accelerated basis, or
13 on the acquisition of property for lease;

14 (4) The retail sale, including lease or rental, of
15 transportation equipment shall be sourced the same as
16 a retail sale in accordance with paragraph (1),
17 notwithstanding the exclusion of lease or rental in
18 paragraph (1). "Transportation equipment" means any
19 of the following:

20 (A) Locomotives and railcars that are utilized for
21 the carriage of persons or property in interstate
22 commerce;



- 1 (B) Trucks and truck-tractors with a gross vehicle
2 weight rating of 10,001 pounds or greater,
3 trailers, semi-trailers, or passenger buses that
4 are:
- 5 (i) Registered through the international
6 registration plan; and
- 7 (ii) Operated under authority of a carrier
8 authorized and certificated by the United
9 States Department of Transportation or
10 another federal authority to engage in the
11 carriage of persons or property in
12 interstate commerce;
- 13 (C) Aircraft that are operated by air carriers
14 authorized and certificated by the United States
15 Department of Transportation or another federal
16 or a foreign authority to engage in the carriage
17 of persons or property in interstate or foreign
18 commerce; and
- 19 (D) Containers designed for use on and component
20 parts attached or secured on the items set forth
21 in subparagraphs (A) to (C).



1 **§237-B General sourcing definitions.** For the purposes of
2 section 237-A(1), the terms "receive" and "receipt" mean:

- 3 (1) Taking possession of tangible personal property;
4 (2) Making first use of services; or
5 (3) Taking possession or making first use of digital
6 goods, whichever comes first.

7 The terms "receive" and "receipt" do not include possession
8 by a shipping company on behalf of the purchaser.

9 **§237-C Telecommunications sourcing rule.** (a) Except for
10 the defined telecommunications services in subsection (c), the
11 sale of telecommunications service sold on a call-by-call basis
12 shall be sourced to:

- 13 (1) Each level of taxing jurisdiction where the call
14 originates and terminates in that jurisdiction; or
15 (2) Each level of taxing jurisdiction where the call
16 either originates or terminates and in which the
17 service address is also located.

18 (b) Except for the defined telecommunications services in
19 subsection (c), a sale of telecommunications service sold on a
20 basis other than a call-by-call basis, is sourced to the
21 customer's place of primary use.



1 (c) The sale of the following telecommunications services
2 shall be sourced to each level of taxing jurisdiction as
3 follows:

4 (1) A sale of mobile telecommunications service other than
5 air-to-ground radiotelephone service and prepaid
6 calling service, is sourced to the customer's place of
7 primary use as required by the Mobile
8 Telecommunications Sourcing Act;

9 (2) A sale of post-paid calling service is sourced to the
10 origination point of the telecommunications signal as
11 first identified by either:

12 (A) The seller's telecommunications system; or

13 (B) Information received by the seller from its
14 service provider, where the system used to
15 transport such signals is not that of the seller;

16 (3) Until December 31, 2007, a sale of prepaid calling
17 service is sourced in accordance with section 237-A;
18 provided that in the case of a sale of mobile
19 telecommunications service that is prepaid
20 telecommunications service, the rule provided in
21 section 237-A(1)(E) shall include as an option the
22 location associated with the mobile telephone number;



- 1 (4) Effective January 1, 2008, a sale of prepaid calling
2 service or a sale of a prepaid wireless calling
3 service is sourced in accordance with section 237-A;
4 provided that in the case of a sale of prepaid
5 wireless calling service, the rule provided in section
6 237-A(1)(E) shall include as an option the location
7 associated with the mobile telephone number; or
- 8 (5) A sale of a private communication service is sourced
9 as follows:
- 10 (A) Service for a separate charge related to a
11 customer channel termination point is sourced to
12 each level of jurisdiction in which the customer
13 channel termination point is located;
- 14 (B) Service where all customer termination points are
15 located entirely within one jurisdiction or
16 levels of jurisdiction is sourced in the
17 jurisdiction in which the customer channel
18 termination points are located; or
- 19 (C) Service for segments of a channel between two
20 customer channel termination points located in
21 different jurisdictions and which segment of
22 channel are separately charged is sourced fifty



1 per cent in each level of jurisdiction in which
2 the customer channel termination points are
3 located.

4 Service for segments of a channel located in more than
5 one jurisdiction or levels of jurisdiction and which
6 segments are not separately billed is sourced in each
7 jurisdiction based on the percentage determined by
8 dividing the number of customer channel termination
9 points in the jurisdiction by the total number of
10 customer channel termination points.

11 §237-D Telecommunications sourcing definitions. Until
12 December 31, 2007, for the purposes of section 237-C, the
13 following definitions shall apply:

14 "Air-to-ground radiotelephone service" means a radio
15 service, as that term is defined in 47 C.F.R. 22.99, in which
16 common carriers are authorized to offer and provide radio
17 telecommunications service for hire to subscribers in aircraft.

18 "Call-by-call basis" means any method of charging for
19 telecommunications services where the price is measured by
20 individual calls.



1 "Communications channel" means a physical or virtual path
2 of communications over which signals are transmitted between or
3 among customer channel termination points.

4 "Customer":

5 (1) Means the person or entity that contracts with the
6 seller of telecommunications services. If the end
7 user of telecommunications services is not the
8 contracting party, the end user of the
9 telecommunications service is the customer of the
10 telecommunications service, but this sentence only
11 applies for the purpose of sourcing sales of
12 telecommunications services under section 237-C;
13 (2) Does not include a reseller of telecommunications
14 service or for mobile telecommunications service of a
15 serving carrier under an agreement to serve the
16 customer outside the home service provider's licensed
17 service area.

18 "Customer channel termination point" means the location
19 where the customer either inputs or receives the communications.

20 "End user" means the person who utilizes the
21 telecommunications service. In the case of an entity, "end



1 user" means the individual who utilizes the service on behalf of
2 the entity.

3 "Home service provider" has the same meaning as that term
4 is defined in section 124(5) of Public Law 106-252 (Mobile
5 Telecommunications Sourcing Act).

6 "Mobile telecommunications service" has the same meaning as
7 that term is defined in section 124(7) of Public Law 106-252
8 (Mobile Telecommunications Sourcing Act).

9 "Place of primary use" means the street address
10 representative of where the customer's use of the
11 telecommunications service primarily occurs, which shall be the
12 residential street address or the primary business street
13 address of the customer. In the case of mobile
14 telecommunications services, "place of primary use" shall be
15 within the licensed service area of the home service provider.

16 "Post-paid calling service" means the telecommunications
17 service obtained by making a payment on a call-by-call basis
18 either through the use of a credit card or payment mechanism
19 such as a bank card, travel card, credit card, or debit card, or
20 by charge made to a telephone number that is not associated with
21 the origination or termination of the telecommunications
22 service. A post-paid calling service includes a



1 telecommunications service that would be a prepaid calling
2 service except it is not exclusively a telecommunications
3 service.

4 "Prepaid calling service" means the right to access
5 exclusively telecommunications service, which must be paid for
6 in advance and that enables the origination of calls using an
7 access number or authorization code, whether manually or
8 electronically dialed, and that is sold in predetermined units
9 or dollars of which the number declines with use in a known
10 amount.

11 "Private communication service" means a telecommunications
12 service that entitles the customer to exclusive or priority use
13 of a communications channel or group of channels between or
14 among termination points, regardless of the manner in which the
15 channel or channels are connected, and includes switching
16 capacity, extension lines, stations, and any other associated
17 services that are provided in connection with the use of the
18 channel or channels.

19 "Service address" means:

20 (1) The location of the telecommunications equipment to
21 which a customer's call is charged and from which the



1 call originates or terminates, regardless of where the
2 call is billed or paid;

3 (2) If the location in paragraph (1) is not known, service
4 address means the origination point of the signal of
5 the telecommunications service first identified by
6 either the seller's telecommunications system or in
7 information received by the seller from its service
8 provider, where the system used to transport the
9 signals is not that of the seller; or

10 (3) If the location in paragraphs (1) and (2) are not
11 known, service address means the location of the
12 customer's place of primary use.

13 **§237-E Telecommunications sourcing definitions.** Effective
14 January 1, 2008, for the purpose of section 237-C, the following
15 definitions shall apply:

16 "Air-to-ground radiotelephone service" means a radio
17 service, as that term is defined in 47 C.F.R. 22.99, in which
18 common carriers are authorized to offer and provide radio
19 telecommunications service for hire to subscribers in aircraft.

20 "Call-by-call basis" means any method of charging for
21 telecommunications services where the price is measured by
22 individual calls.



1 "Communications channel" means a physical or virtual path
2 of communications over which signals are transmitted between or
3 among customer channel termination points.

4 "Customer":

5 (1) Means the person or entity that contracts with the
6 seller of telecommunications services. If the end
7 user of telecommunications services is not the
8 contracting party, the end user of the
9 telecommunications service is the customer of the
10 telecommunications service, but this sentence only
11 applies for the purpose of sourcing sales of
12 telecommunications services under section 237-C;
13 (2) Does not include a reseller of telecommunications
14 service or for mobile telecommunications service of a
15 serving carrier under an agreement to serve the
16 customer outside the home service provider's licensed
17 service area.

18 "Customer channel termination point" means the location
19 where the customer either inputs or receives the communications.

20 "End user" means the person who utilizes the
21 telecommunications service. In the case of an entity, "end



1 user" means the individual who utilizes the service on behalf of
2 the entity.

3 "Home service provider" has the same meaning as that term
4 is defined in section 124(5) of Public Law 106-252 (Mobile
5 Telecommunications Sourcing Act).

6 "Mobile telecommunications service" has the same meaning as
7 that term is defined in section 124(7) of Public Law 106-252
8 (Mobile Telecommunications Sourcing Act).

9 "Place of primary use" means the street address
10 representative of where the customer's use of the
11 telecommunications service primarily occurs, which shall be the
12 residential street address or the primary business street
13 address of the customer. In the case of mobile
14 telecommunications services, "place of primary use" shall be
15 within the licensed service area of the home service provider.

16 "Post-paid calling service" means the telecommunications
17 service obtained by making a payment on a call-by-call basis
18 either through the use of a credit card or payment mechanism
19 such as a bank card, travel card, credit card, or debit card, or
20 by charge made to a telephone number that is not associated with
21 the origination or termination of the telecommunications
22 service. A post-paid calling service includes a



1 telecommunications service, except a prepaid wireless calling
2 service, that would be a prepaid calling service except it is
3 not exclusively a telecommunications service.

4 "Prepaid calling service" means the right to access
5 exclusively telecommunications services, which must be paid for
6 in advance and that enables the origination of calls using an
7 access number or authorization code, whether manually or
8 electronically dialed, and that is sold in predetermined units
9 or dollars of which the number declines with use in a known
10 amount.

11 "Prepaid wireless calling service" means a
12 telecommunications service that provides the right to utilize
13 mobile wireless service as well as other non-telecommunications
14 services, including the download of digital products delivered
15 electronically, content and ancillary services, which must be
16 paid for in advance that is sold in predetermined units or
17 dollars of which the number declines with use in a known amount.

18 "Private communication service" means a telecommunications
19 service that entitles the customer to exclusive or priority use
20 of a communications channel or group of channels between or
21 among termination points, regardless of the manner in which the
22 channel or channels are connected, and includes switching



1 capacity, extension lines, stations, and any other associated
2 services that are provided in connection with the use of the
3 channel or channels.

4 "Service address" means:

5 (1) The location of the telecommunications equipment to
6 which a customer's call is charged and from which the
7 call originates or terminates, regardless of where the
8 call is billed or paid;

9 (2) If the location in paragraph (1) is not known, service
10 address means the origination point of the signal of
11 the telecommunications service first identified by
12 either the seller's telecommunications system or in
13 information received by the seller from its service
14 provider, where the system used to transport the
15 signals is not that of the seller; or

16 (3) If the location in paragraphs (1) and (2) are not
17 known, service address means the location of the
18 customer's place of primary use.

19 **§237-F Deduction for bad debts.** (a) A seller shall be
20 allowed a deduction from taxable sales for bad debts. A seller
21 may deduct the amount of bad debts from the seller's gross
22 sales, rentals, or services used for the computation of the tax.



1 The amount of gross sales, rentals, or services deducted shall
2 be charged off as uncollectible on the books and records of the
3 seller at the time the debt becomes worthless and deducted on
4 the return for the period during which the bad debt is written
5 off as uncollectible in the claimant's books and records and
6 shall be eligible to be deducted for federal income tax
7 purposes.

8 For the purposes of this section, a claimant who is not
9 required to file a federal income tax return may deduct a bad
10 debt on a return filed for the period in which the bad debt
11 becomes worthless and is written off as uncollectible in the
12 claimant's books and records and would be eligible for a bad
13 debt deduction for federal income tax purposes if the claimant
14 was required to file a federal income tax return.

15 If a consumer or other person pays all or part of a bad
16 debt with respect to which a seller claimed a deduction under
17 this section, the seller is liable for the amount of taxes
18 deducted in connection with that portion of the debt for which
19 payment is received and shall remit these taxes in the seller's
20 next payment to the department. Any payments made on a bad debt
21 shall be applied proportionally first to the taxable price of



1 the property and the tax on the property and second to any
2 interest, service, or other charge.

3 (b) Any claim for a bad debt deduction under this section
4 shall be supported by evidence required by the department. The
5 department shall review any change in the rate of taxation
6 applicable to any taxable sales, rentals, or services by a
7 seller claiming a deduction pursuant to this section and shall
8 ensure that the deduction on any bad debt does not result in the
9 seller claiming the deduction recovering any more or less than
10 the taxes imposed on the sale, rental, or service that
11 constitutes the bad debt.

12 (c) If a certified service provider assumed filing
13 responsibility under the streamlined sales and use tax
14 administration act, the certified service provider may claim, on
15 behalf of the seller, any bad debt allowable to the seller and
16 shall credit or refund that amount of bad debt allowed or
17 refunded to the seller.

18 (d) If the books and records of a seller who, under the
19 streamlined sales and use tax administration act claims a bad
20 debt allowance, support an allocation of the bad debts among
21 member states of that agreement, the seller may allocate the bad
22 debt.



1 (e) As used in this section, "bad debt" means any portion
2 of a debt resulting from a seller's collection of the use tax
3 under the streamlined sales and use tax administration act on
4 the purchase of tangible personal property or services that is
5 not otherwise deductible or excludable and that is eligible to
6 be claimed, or could be eligible to be claimed if the seller
7 kept accounts on an accrual basis, as a deduction pursuant to
8 section 166 of the Internal Revenue Code, 26 U.S.C. section 166.

9 A bad debt does not include any of the following:

- 10 (1) Interest, finance charge, or use tax on the purchase
11 price;
- 12 (2) Uncollectible amounts on property that remains in the
13 possession of the seller until the full purchase price
14 is paid;
- 15 (3) Expenses incurred in attempting to collect any account
16 receivable or any portion of the debt recovered;
- 17 (4) Any accounts receivable that have been sold to and
18 remain in the possession of a third party for
19 collection; or
- 20 (5) Repossessed property.

21 **§237-G Direct mail sourcing.** (a) Notwithstanding the
22 general sourcing provisions of section 237-A, a purchaser of



1 direct mail who is not a holder of a direct pay permit shall
2 provide to the seller, in conjunction with the purchase, either
3 a direct mail form or information to show the jurisdictions to
4 which the direct mail is delivered to recipients.

5 Upon receipt of the direct mail form, the seller shall be
6 relieved of all obligations to collect, pay, or remit the
7 applicable tax and the purchaser shall be obligated to pay or
8 remit the applicable tax on a direct pay basis. A direct mail
9 form shall remain in effect for all future sales of direct mail
10 by the seller to the purchaser until it is revoked in writing.

11 Upon receipt of information from the purchaser showing the
12 jurisdictions to which the direct mail is delivered to
13 recipients, the seller shall collect the tax according to the
14 delivery information provided by the purchaser. In the absence
15 of bad faith, the seller shall be relieved of any further
16 obligation to collect tax on any transaction for which the
17 seller has collected tax pursuant to the delivery information
18 provided by the purchaser.

19 (b) If the purchaser of direct mail does not have a direct
20 pay permit and does not provide the seller with either a direct
21 mail form or delivery information as required under subsection
22 (a), the seller shall collect the tax. Nothing in this



1 subsection shall limit a purchaser's obligation for sales or use
2 tax to any state to which the direct mail is delivered.

3 (c) If a purchaser of direct mail provides the seller with
4 documentation of direct pay authority, the purchaser shall not
5 be required to provide a direct mail form or delivery
6 information to the seller.

7 Receipts from sales of direct mail for distribution to out-
8 of-state recipients and receipts from sales of direct-mail
9 processing services in connection with distribution of direct
10 mail to out-of-state recipients shall be exempt from taxation
11 under this chapter. The exemption provided by this section
12 shall apply to receipts from charges for the printing or
13 production of direct mail, whether prepared in or shipped into
14 Hawaii, after preparation, and stored for subsequent shipment to
15 out-of-state customers. The direct mail processing services
16 exemption provided under this section shall apply to receipts
17 from charges for all direct mail processing services for
18 distribution to out-of-state recipients, including but not
19 limited to preparing and maintaining mailing lists, addressing,
20 separating, folding, inserting, sorting, and packaging direct
21 mail materials, and transporting the direct mail to the point of
22 shipment by the mail service or other carrier."



1 SECTION 7. Section 237-1, Hawaii Revised Statutes, is
2 amended by adding five new definitions to be appropriately
3 inserted and to read as follows:

4 "Delivery charges" means charges by the seller for
5 preparation and delivery to a location designated by the
6 purchaser of personal property or services, including but not
7 limited to transportation, shipping, postage, handling, crating,
8 and packing. If a shipment includes both exempt and taxable
9 property, the seller shall allocate the delivery charge by
10 using:

11 (1) A percentage based on the total sales price of the
12 taxable property compared to the total sales price of
13 all property in the shipment; or

14 (2) A percentage based on the total weight of the taxable
15 property compared to the total weight of all property
16 in the shipment.

17 "Direct mail":

18 (1) Means printed material delivered or distributed by
19 United States mail or other delivery service to a mass
20 audience or to addresses on a mailing list provided by
21 the purchaser, or at the direction of the purchaser,



1 in cases in which the cost of the items are not billed
2 directly to the recipients;

3 (2) Includes tangible personal property supplied directly
4 or indirectly by the purchaser to the direct mail
5 seller for inclusion in the package containing the
6 printed material;

7 (3) Does not include multiple items of printed material.

8 "Lease or rental":

9 (1) After _____, means any transfer of possession or
10 control of tangible personal property for a fixed or
11 indeterminate term for consideration;

12 (2) May include future options to purchase or extend;

13 (3) Does not include:

14 (A) A transfer of possession or control of property
15 under a security agreement or deferred payment
16 plan that requires the transfer of title upon
17 completion of the required payments;

18 (B) A transfer of possession or control of property
19 under an agreement that requires the transfer of
20 title upon completion of required payments and
21 payment of an option price that does not exceed



1 the greater of \$100 or one per cent of the total
2 required payments;

3 (C) Providing tangible personal property along with
4 an operator for a fixed or indeterminate period
5 of time. A condition of this exclusion is that
6 the operator is necessary for the equipment to
7 perform as designed. For the purpose of this
8 subparagraph, an operator shall do more than
9 maintain, inspect, or set-up the tangible
10 personal property; or

11 (D) Agreements covering motor vehicles and trailers
12 where the amount of consideration may be
13 increased or decreased by reference to the amount
14 realized upon sale or disposition of the property
15 as defined in 26 U.S.C. section 7701(h)(1).

16 For the purposes of this chapter, the definition of "lease
17 or rental" shall be used regardless of whether a transaction is
18 characterized as a lease or rental under generally accepted
19 accounting principles, the federal Internal Revenue Code, or
20 other provisions of federal, state, or local law.

21 "Sales price" applies to the measure subject to tax and
22 means the total amount of consideration, including cash, credit,



1 property, and services for which personal property or services
2 are sold, leased, rented, or valued in money, whether money is
3 received or otherwise, without any deduction for the following:

- 4 (1) The seller's cost of the property sold;
5 (2) The cost of the materials used, labor or service cost,
6 losses, all costs of transportation to the seller, all
7 taxes imposed on the seller, and any other expense of
8 the seller;
9 (3) Charges by the seller for any services necessary to
10 complete the sale, other than delivery and
11 installation charges;
12 (4) Delivery and installation charges; or
13 (5) Installation charges.

14 "Tangible personal property" means personal property that
15 can be seen, weighed, measured, felt, or touched, or that is in
16 any manner perceptible to the senses. Tangible personal
17 property includes gas, steam, and prewritten computer software."

18 SECTION 8. Chapter 255D, Hawaii Revised Statutes, is
19 amended by adding nine new sections to be appropriately
20 designated and to read as follows:

21 "§255D-A Relief from certain liability. All sellers and
22 certified service providers as defined in section 255D-2 using



1 databases pursuant to section 255D-D(f) and (g) shall be
2 relieved from liability to the state and local jurisdictions for
3 having charged and collected the incorrect amount of general
4 excise or use tax resulting from the seller or certified service
5 provider relying on erroneous data provided by the state on tax
6 rates, boundaries, or taxing jurisdiction assignments.

7 **§255D-B Rounding rule.** For the purpose of calculating the
8 amount of the general excise or use tax:

9 (1) The tax computation shall be carried to the third
10 decimal place; and

11 (2) The tax shall be rounded to a whole cent using a
12 method that rounds up to the next cent whenever the
13 third decimal place is greater than four.

14 Sellers may elect to compute the tax due on a transaction
15 on an item or an invoice basis, and shall allow the rounding
16 rule to be applied to the aggregated state and local taxes.

17 **§255D-C Amnesty for registration under this chapter.** (a)
18 The department shall provide amnesty for uncollected or unpaid
19 general excise tax under chapter 237 or use tax under chapter
20 238, including any county surcharge, to a seller who registers
21 to pay or to collect and remit applicable general excise or use
22 tax on sales made to purchasers in the State in accordance with



1 the terms of the streamlined sales and use tax agreement,
2 provided that the seller was not so registered in the State in
3 the twelve-month period preceding the effective date of the
4 State's participation in the streamlined sales and use tax
5 agreement.

6 (b) The amnesty shall preclude assessment for uncollected
7 or unpaid general excise tax under chapter 237 or use tax under
8 chapter 238 together with penalty or interest for sales made
9 during the period the seller was not registered in the State,
10 provided registration occurs within twelve months of the
11 effective date of the State's participation in the streamlined
12 sales and use tax agreement.

13 (c) The amnesty shall not be available to a seller with
14 respect to any matter or matters for which the seller received
15 notice of the commencement of an audit and the audit is not yet
16 finally resolved including any related administrative and
17 judicial processes.

18 (d) The amnesty shall not be available for general excise
19 or use taxes already paid or remitted to the State or to taxes
20 collected by the seller.

21 (e) The amnesty shall be fully effective, absent the
22 seller's fraud or intentional misrepresentation of a material



1 fact, as long as the seller continues registration and continues
2 payment or collection and remittance of applicable general
3 excise or use taxes for a period of at least thirty-six months.
4 The statute of limitations is tolled with respect to asserting a
5 tax liability during this thirty-six month period.

6 (f) The amnesty shall only apply to general excise or use
7 taxes due from a seller in its capacity as a seller and not to
8 sales or use taxes due from a seller in its capacity as a buyer.

9 **§255D-D Local rate and boundary changes.** (a) Any rate
10 changes by a county shall be effective only on the first day of
11 a calendar quarter after a minimum of sixty days notice to
12 sellers.

13 (b) Any county tax rate changes to purchases from printed
14 catalogs wherein the purchaser computed the tax based upon
15 county tax rates published in the catalog shall be effective
16 only on the first day of a calendar quarter after a minimum of
17 one hundred twenty days notice to sellers.

18 (c) For general excise and use tax purposes only, local
19 jurisdiction boundary changes apply only on the first day of a
20 calendar quarter after a minimum of sixty days notice to
21 sellers.



1 (d) The department of taxation shall provide and maintain
2 a database that describes boundary changes for all taxing
3 jurisdictions. The database shall include a description of the
4 change and the effective date of the change for general excise
5 tax under chapter 237 and use tax under chapter 238 purposes.

6 (e) The department of taxation shall provide and maintain
7 a database of all general excise tax rates under chapter 237 and
8 use tax rates under chapter 238 for all of the jurisdictions
9 levying taxes within the State. For the identification of
10 states, counties, and cities, codes corresponding to the rates
11 shall be provided according to Federal Information Processing
12 Standards as developed by the National Institute of Standards
13 and Technology. For the identification of all other
14 jurisdictions, codes corresponding to the rates shall be in the
15 format determined by the Streamlined Sales Tax Governing Board,
16 Incorporated.

17 (f) The department of taxation shall provide and maintain
18 a database that assigns each five digit and nine digit zip code
19 within the State to the proper tax rates and jurisdictions. The
20 department of taxation shall apply the lowest combined tax rate
21 imposed in the zip code area if the area includes more than one
22 tax rate in any level of taxing jurisdictions. If a nine digit



1 zip code designation is not available for a street address or if
2 a seller or certified service provider is unable to determine
3 the nine digit zip code designation of a purchaser after
4 exercising due diligence to determine the designation, the
5 seller or certified service provider may apply the rate for the
6 five digit zip code area. For the purposes of this section,
7 there is a rebuttable presumption that a seller or certified
8 service provider has exercised due diligence if the seller has
9 attempted to determine the nine digit zip code designation by
10 utilizing software approved by the Streamlined Sales Tax
11 Governing Board, Incorporated, that makes this designation from
12 the street address and the five digit zip code of the purchaser.

13 (g) The State shall participate with other states in the
14 development of an address-based system for assigning taxing
15 jurisdictions. The system shall meet the requirements developed
16 pursuant to the federal Mobile Telecommunications Sourcing Act
17 (4 U.S.C. Sec. 119(a)). If any state develops an address-based
18 assignment system pursuant to the Mobile Telecommunications
19 Sourcing Act, a seller may use that system in place of the
20 system provided for in subsection (e) of this section.

21 **§255D-E Certified service provider; agent of the seller.**

22 (a) A certified service provider is the agent of a seller, with



1 whom the certified service provider has contracted for the
2 collection and remittance of general excise and use taxes. As
3 the seller's agent, the certified service provider is liable for
4 general excise and use tax due to the State on all sales
5 transactions it processes for the seller unless the seller made
6 a material misrepresentation or committed fraud.

7 (b) A seller that uses a certified automated system is
8 responsible and is liable to the State for reporting and
9 remitting tax.

10 **§255D-F Confidentiality of records.** (a) Except as
11 provided in subsection (c), a certified service provider shall
12 not retain or disclose the personally identifiable information
13 of consumers. A certified service provider's system shall be
14 designed and tested to ensure the privacy of consumers by
15 protecting their anonymity.

16 (b) A certified service provider shall provide clear and
17 conspicuous notice of its information practices to consumers,
18 including but not limited to what information it collects, how
19 it collects the information, how it uses the information, how
20 long it retains the information, and whether it discloses the
21 information to member states.



1 (c) A certified service provider's retention or disclosure
2 to member states of personally identifiable information is
3 limited to that required to ensure the validity of exemptions
4 claimed because of a consumer's status or intended use of the
5 goods or services purchased.

6 (d) A certified service provider shall provide the
7 necessary technical, physical, and administrative safeguards to
8 protect personally identifiable information from unauthorized
9 access and disclosure.

10 (e) The privacy policy required under this section shall
11 be subject to enforcement by the attorney general.

12 (f) If personally identifiable information is retained by
13 the State for the purpose of subsection (c), in the absence of
14 exigent circumstances, a person shall be afforded reasonable
15 access to their own data, with a right to correct inaccurately
16 recorded data.

17 (g) The agreement does not enlarge or limit the State's
18 authority to do any of the following:

19 (1) Conduct audits or other reviews as provided under the
20 agreement or the State's law;



1 (2) Provide records pursuant to the State's freedom of
2 information act, disclosure laws with governmental
3 agencies, or other regulations;

4 (3) Prevent, consistent with the State's law, disclosures
5 of confidential taxpayer information;

6 (4) Prevent, consistent with federal law, disclosures or
7 misuse of federal return information obtained under a
8 disclosure agreement with the Internal Revenue
9 Service; or

10 (5) Collect, disclose, disseminate, or otherwise use
11 anonymous data for governmental purposes.

12 (h) The department shall publish on the department's
13 website the State's policy relating to the collection, use, and
14 retention of personally identifiable information obtained from a
15 certified service provider under subsection (c).

16 (i) The department shall destroy personally identifiable
17 information obtained from a certified service provider when the
18 information is no longer required for purposes under subsection
19 (c).

20 (j) If a person other than a member state or person
21 authorized by a member state's law or the agreement seeks to
22 discover personally identifiable information about an individual



1 from the State, the department shall make a reasonable and
2 timely effort to notify that individual of the request.

3 (k) As used in this section, "personally identifiable
4 information" means information that identifies a specific
5 person.

6 **§255D-G Liability for uncollected tax.** (a) A seller
7 registered under the agreement is not liable for any uncollected
8 or nonremitted tax on transactions with purchasers in the State
9 before the date of registration if the seller was not licensed
10 or registered under chapter 237 in the twelve-month period
11 preceding the effective date of the State's participation in the
12 agreement. The seller is also not responsible for any penalty
13 or interest that may be due on those transactions. This
14 subsection applies only if the seller is registered in this
15 State within twelve months of the effective date of this State's
16 participation in the agreement.

17 (b) Subsection (a) does not apply to:

18 (1) Any tax liability of the registered seller for
19 transactions that are subject to general excise or use
20 tax in the state in which the registered seller is the
21 purchaser;



1 (2) Any general excise or use taxes already paid or
2 remitted to the State or to taxes collected by the
3 seller; and

4 (3) Any transactions for which the seller received notice
5 of the commencement of an audit and the audit is not
6 finally resolved, including related administrative or
7 judicial processes.

8 (c) Subsection (a) applies to the seller absent the
9 seller's fraud or intentional misrepresentation of a material
10 fact only if the seller continues to be registered under the
11 agreement and continues collection and remittance of applicable
12 general excise and use taxes in the State for at least thirty-
13 six months. The statute of limitations applicable to assessing
14 a tax liability is tolled during this thirty-six-month period.

15 **§255D-H Rate changes.** (a) The department shall publish
16 on its website a notification to sellers registered under the
17 agreement of a change in rate or tax base within five business
18 days of receiving notice of the changes to the tax rate or base
19 or of an amendment to general excise and use tax rules.

20 Whenever possible, a rate or tax base change should occur on the
21 first day of a calendar quarter.



1 (b) The failure of a seller to receive notice under
2 subsection (a) does not relieve the seller of its obligation to
3 collect the general excise or use tax.

4 (c) The department shall complete a taxability matrix as
5 provided for under section 328 of the agreement, maintain it in
6 a database in a downloadable format approved by the Streamlined
7 Sales Tax Governing Board, Incorporated, and provide notice of
8 changes in the matrix.

9 §255D-I Customer refund procedures. A cause of action
10 against a seller for overcollected general excise or use taxes
11 does not accrue until sixty days after a purchaser has provided
12 written notice to a seller. The purchaser shall provide in the
13 notice sufficient information to determine the validity of the
14 request. In matters relating to the request, a seller is
15 presumed to have a reasonable business practice if in the
16 collection of general excise or use tax, the seller has a
17 certified service provider or a system, including a proprietary
18 system, certified by the department, and has remitted to this
19 State all taxes collected, less any deductions, credits, or
20 collection allowances."

21 SECTION 9. Section 237-3, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) "Gross income" means the gross receipts, cash or
2 accrued, of the taxpayer received as compensation for personal
3 services and the gross receipts of the taxpayer derived from
4 trade, business, commerce, or sales and the value proceeding or
5 accruing from the sale of tangible personal property, or
6 service, or both, and all receipts, actual or accrued as
7 hereinafter provided, by reason of the investment of the capital
8 of the business engaged in, including interest, discount,
9 rentals, royalties, fees, or other emoluments however designated
10 and without any deductions on account of the cost of property
11 sold, the cost of materials used, labor cost, taxes, royalties,
12 interest, or discount paid or any other expenses whatsoever.
13 Every taxpayer shall be presumed to be dealing on a cash basis
14 unless the taxpayer proves to the satisfaction of the department
15 of taxation that the taxpayer is dealing on an accrual basis and
16 the taxpayer's books are so kept, or unless the taxpayer employs
17 or is required to employ the accrual basis for the purposes of
18 the tax imposed by chapter 235 for any taxable year in which
19 event the taxpayer shall report the taxpayer's gross income for
20 the purposes of this chapter on the accrual basis for the same
21 period.



1 "Gross proceeds of sale" means the [~~value actually~~
2 ~~proceeding from the sale of tangible personal property without~~
3 ~~any deduction on account of the cost of property sold or~~
4 ~~expenses of any kind.~~] sales price."

5 SECTION 10. Section 237-8.6, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) The county surcharge on state tax, upon the adoption
8 of county ordinances and in accordance with the requirements of
9 section 46-16.8, shall be levied, assessed, and collected as
10 provided in this section on all gross proceeds and gross income
11 taxable under this chapter. No county shall set the surcharge
12 on state tax at a rate greater than one-half of one per cent of
13 all gross proceeds and gross income taxable under this chapter.
14 All provisions of this chapter shall apply to the county
15 surcharge on state tax. With respect to the surcharge, the
16 director of taxation shall have all the rights and powers
17 provided under this chapter. No county shall conduct an
18 independent tax audit of sellers registered under the
19 streamlined sales tax agreement. In addition, the director of
20 taxation shall have the exclusive rights and power to determine
21 the county or counties in which a person is engaged in business
22 and, in the case of a person engaged in business in more than



1 one county, the director shall determine, through apportionment
2 or other means, that portion of the surcharge on state tax
3 attributable to business conducted in each county."

4 SECTION 11. Section 237-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§237-9 Licenses; penalty.** (a) Except as provided in
7 this section, any person who has a gross income or gross
8 proceeds of sales or value of products upon which a privilege
9 tax is imposed by this chapter, as a condition precedent to
10 engaging or continuing in [~~such~~] the business, shall in writing
11 apply for and obtain from the department of taxation, upon a
12 one-time payment of the sum of \$20, a license to engage in and
13 to conduct such business, upon condition that the person shall
14 pay the taxes accruing to the State under this chapter, and the
15 person shall thereby be duly licensed to engage in and conduct
16 the business. Any person licensed or holding a license under
17 this chapter before January 1, 1990, shall pay a one-time
18 license renewal fee of \$20 on or before January 31, 1990, as a
19 condition precedent to engaging or continuing in business. The
20 license shall not be transferable and shall be valid only for
21 the person in whose name it is issued and for the transaction of
22 business at the place designated therein. The license may be



1 inspected and examined, and shall at all times be conspicuously
2 displayed at the place for which it is issued.

3 A seller registered under the streamlined sales and use tax
4 agreement who is not otherwise obligated to obtain a license in
5 the State is not required to obtain a license because of that
6 registration.

7 (b) Licenses and applications therefor shall be in such
8 form as the department shall prescribe, except that where the
9 licensee is engaged in two or more forms of business of
10 different classification, the license shall so state on its
11 face. The license provided for by this section shall be
12 effective until canceled in writing. Any application for the
13 reissuance of a previously canceled license identification
14 number after December 31, 1989, shall be regarded as a new
15 license application and subject to the payment of the one-time
16 license fee of \$20. The director may revoke or cancel any
17 license issued under this chapter for cause as provided by rules
18 adopted pursuant to chapter 91.

19 (c) If the license fee is paid, the department shall not
20 refuse to issue a license or revoke or cancel a license for the
21 exercise of a privilege protected by the First Amendment of the
22 Constitution of the United States, or for the carrying on of



1 interstate or foreign commerce, or for any privilege the
2 exercise of which, under the Constitution and laws of the United
3 States, cannot be restrained on account of nonpayment of taxes,
4 nor shall section 237-46 be invoked to restrain the exercise of
5 such a privilege, or the carrying on of [~~such~~] interstate or
6 foreign commerce.

7 (d) The director may permit a person engaged in network
8 marketing, multi-level marketing, or other similar business to
9 obtain the license required under this section for purposes of
10 becoming a tax collection agent on behalf of its direct sellers.
11 The tax collection agent shall report, collect, and pay over the
12 taxes due under this chapter and chapter 238 on behalf of its
13 direct sellers who are covered by the tax collection agreement.
14 The tax collection agent's direct sellers shall be deemed to be
15 licensed under this chapter; provided that the licensure shall
16 apply solely to the business activity conducted directly through
17 the marketing arrangement. Under this section, a tax collection
18 agent shall:

19 (1) Notify all of its direct sellers making sales in the
20 State that it has been designated to collect, report,
21 and pay over the tax imposed by this chapter and



1 chapter 238 on their behalf on the business activity
2 conducted through the marketing arrangement;

3 (2) If required by the director as a condition of
4 obtaining the license, furnish with the annual return,
5 a list (including identification numbers) of all
6 direct sellers for the taxable year who have been
7 provided (by the tax collection agent) information
8 returns required under section 6041A of the Internal
9 Revenue Code of 1986, as amended, and any other
10 information that is relevant to ensure proper payment
11 of taxes due under this section; and

12 (3) Be personally liable for the taxes due and collected
13 under the tax collection agreement if taxes are
14 collected, but not reported or paid, together with
15 penalties and interest as provided by law.

16 (e) The director may authorize a person to assume the
17 obligation of self-accruing and remitting tax due on purchases
18 or leases directly to the department under a direct payment
19 authorization, if the following conditions are met:

20 (1) The authorization is to be used for the purchase or
21 lease of tangible personal property or services;



1 (2) The authorization is necessary because it is either
2 impractical at the time of acquisition to determine
3 the manner in which the tangible personal property or
4 services will be used or it will facilitate improved
5 compliance with the tax laws of the State; and

6 (3) The person requesting authorization for direct payment
7 maintains accurate and complete records of all
8 purchases or leases and uses of tangible personal
9 property or services purchased pursuant to the direct
10 payment authorization in a form acceptable to the
11 department.

12 The department may identify items that are not eligible for a
13 direct payment authorization.

14 [~~(e)~~] (f) For the purposes of this section:

15 "Consumer product" shall include tangible consumer products
16 and intangible consumer services.

17 "Direct seller" means any person who is engaged in the
18 trade or business of selling (or soliciting the sale of)
19 consumer products:

20 (1) To any buyer on a buy-sell basis, a deposit-commission
21 basis, or any similar basis, that the director



1 prescribes by rule adopted pursuant to chapter 91, for
2 resale other than in a permanent retail establishment;

3 (2) Other than in a permanent retail establishment;
4 provided that:

5 (A) Substantially all the remuneration (whether or
6 not paid in cash) for the sale of consumer
7 products is directly related to sales or other
8 output rather than to the number of hours worked;
9 and

10 (B) The sales of consumer products by the person are
11 performed pursuant to a written contract that
12 provides that the person will not be treated as
13 an employee with respect to those sales for
14 federal or state tax purposes.

15 "Direct seller" includes individuals who realize
16 remuneration dependent on the productivity of other individuals
17 in the marketing arrangement.

18 "Network marketing" or "multi-level marketing" means a
19 marketing arrangement in which consumer products are distributed
20 and sold to or through direct sellers."

21 SECTION 12. Section 237-13, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "**§237-13 Imposition of tax.** There is hereby levied and
2 shall be assessed and collected annually privilege taxes against
3 persons on account of their business and other activities in the
4 State measured by the application of rates against values of
5 products, gross proceeds of sales, or gross income, whichever is
6 specified, as follows:

7 ~~[-1) Tax on manufacturers.~~

8 ~~(A) Upon every person engaging or continuing within~~
9 ~~the State in the business of manufacturing,~~
10 ~~including compounding, canning, preserving,~~
11 ~~packing, printing, publishing, milling,~~
12 ~~processing, refining, or preparing for sale,~~
13 ~~profit, or commercial use, either directly or~~
14 ~~through the activity of others, in whole or in~~
15 ~~part, any article or articles, substance or~~
16 ~~substances, commodity or commodities, the amount~~
17 ~~of the tax to be equal to the value of the~~
18 ~~articles, substances, or commodities,~~
19 ~~manufactured, compounded, canned, preserved,~~
20 ~~packed, printed, milled, processed, refined, or~~
21 ~~prepared for sale, as shown by the gross proceeds~~
22 ~~derived from the sale thereof by the manufacturer~~



1 ~~or person compounding, preparing, or printing~~
2 ~~them, multiplied by one half of one per cent.~~

3 ~~(B) The measure of the tax on manufacturers is the~~
4 ~~value of the entire product for sale, regardless~~
5 ~~of the place of sale or the fact that deliveries~~
6 ~~may be made to points outside the State.~~

7 ~~(C) If any person liable for the tax on manufacturers~~
8 ~~ships or transports the person's product, or any~~
9 ~~part thereof, out of the State, whether in a~~
10 ~~finished or unfinished condition, or sells the~~
11 ~~same for delivery to points outside the State~~
12 ~~(for example, consigned to a mainland purchaser~~
13 ~~via common carrier f.o.b. Honolulu), the value of~~
14 ~~the products in the condition or form in which~~
15 ~~they exist immediately before entering interstate~~
16 ~~or foreign commerce, determined as hereinafter~~
17 ~~provided, shall be the basis for the assessment~~
18 ~~of the tax imposed by this paragraph. This tax~~
19 ~~shall be due and payable as of the date of entry~~
20 ~~of the products into interstate or foreign~~
21 ~~commerce, whether the products are then sold or~~
22 ~~not. The department shall determine the basis~~



1 ~~for assessment, as provided by this paragraph, as~~
2 ~~follows:~~

3 ~~(i) If the products at the time of their entry~~
4 ~~into interstate or foreign commerce already~~
5 ~~have been sold, the gross proceeds of sale,~~
6 ~~less the transportation expenses, if any,~~
7 ~~incurred in realizing the gross proceeds for~~
8 ~~transportation from the time of entry of the~~
9 ~~products into interstate or foreign~~
10 ~~commerce, including insurance and storage in~~
11 ~~transit, shall be the measure of the value~~
12 ~~of the products:~~

13 ~~(ii) If the products have not been sold at the~~
14 ~~time of their entry into interstate or~~
15 ~~foreign commerce, and in cases governed by~~
16 ~~clause (i) in which the products are sold~~
17 ~~under circumstances such that the gross~~
18 ~~proceeds of sale are not indicative of the~~
19 ~~true value of the products, the value of the~~
20 ~~products constituting the basis for~~
21 ~~assessment shall correspond as nearly as~~
22 ~~possible to the gross proceeds of sales for~~



1 ~~delivery outside the State, adjusted as~~
2 ~~provided in clause (i), or if sufficient~~
3 ~~data are not available, sales in the State,~~
4 ~~of similar products of like quality and~~
5 ~~character and in similar quantities, made by~~
6 ~~the taxpayer (unless not indicative of the~~
7 ~~true value) or by others. Sales outside the~~
8 ~~State, adjusted as provided in clause (i),~~
9 ~~may be considered when they constitute the~~
10 ~~best available data. The department shall~~
11 ~~prescribe uniform and equitable rules for~~
12 ~~ascertaining the values;~~

13 ~~(iii) At the election of the taxpayer and with the~~
14 ~~approval of the department, the taxpayer may~~
15 ~~make the taxpayer's returns under clause (i)~~
16 ~~even though the products have not been sold~~
17 ~~at the time of their entry into interstate~~
18 ~~or foreign commerce; and~~

19 ~~(iv) In all cases in which products leave the~~
20 ~~State in an unfinished condition, the basis~~
21 ~~for assessment shall be adjusted so as to~~
22 ~~deduct the portion of the value as is~~



1 ~~attributable to the finishing of the goods~~
2 ~~outside the State.~~

3 ~~(2)]~~ (1) Tax on business of selling tangible personal
4 property[~~;- producing.~~]:

5 (A) Upon every person engaging or continuing in the
6 business of selling any tangible personal
7 property [~~whatsoever~~] (not including, however,
8 bonds or other evidence of indebtedness, or
9 stocks), unless subject to chapter A, there is
10 [~~likewise~~] hereby levied, and shall be assessed
11 and collected, a tax equivalent to four per cent
12 of the gross proceeds of sales of the business;
13 [~~provided that insofar as the sale of tangible~~
14 ~~personal property is a wholesale sale under~~
15 ~~section 237-4(a)(8)(B), the sale shall be subject~~
16 ~~to section 237-13.3. Upon every person engaging~~
17 ~~or continuing within this State in the business~~
18 ~~of a producer, the tax shall be equal to one half~~
19 ~~of one per cent of the gross proceeds of sales of~~
20 ~~the business, or the value of the products, for~~
21 ~~sale, if sold for delivery outside the State or~~
22 ~~shipped or transported out of the State, and the~~



1 ~~value of the products shall be determined in the~~
2 ~~same manner as the value of manufactured products~~
3 ~~covered in the cases under paragraph (1)(C).]~~

4 (B) Gross proceeds of sales of tangible property,
5 unless subject to chapter A, in interstate and
6 foreign commerce shall constitute a part of the
7 measure of the tax imposed on persons in the
8 business of selling tangible personal property,
9 to the extent, under the conditions, and in
10 accordance with the provisions of the
11 Constitution of the United States and the Acts of
12 the Congress of the United States [~~which~~] that
13 may be now in force or may be hereafter adopted,
14 and whenever there occurs in the State an
15 activity to which, under the Constitution and
16 Acts of Congress, there may be attributed gross
17 proceeds of sales, the gross proceeds shall be so
18 attributed[-];

19 [~~(C) No manufacturer or producer, engaged in such~~
20 ~~business in the State and selling the~~
21 ~~manufacturer's or producer's products for~~
22 ~~delivery outside of the State (for example,~~



1 ~~consigned to a mainland purchaser via common~~
2 ~~carrier f.o.b. Honolulu), shall be required to~~
3 ~~pay the tax imposed in this chapter for the~~
4 ~~privilege of so selling the products, and the~~
5 ~~value or gross proceeds of sales of the products~~
6 ~~shall be included only in determining the measure~~
7 ~~of the tax imposed upon the manufacturer or~~
8 ~~producer.~~

9 (+) (C) When a manufacturer, or a producer[7] as
10 defined under section A-3, engaged in [~~such~~] the
11 business of manufacturing or producing in the
12 State, also is engaged in selling the
13 manufacturer's or producer's products in the
14 State at wholesale[7] and taxed under chapter A,
15 retail, or in any other manner, the tax for the
16 privilege of engaging in the business of selling
17 the products in the State shall apply to the
18 manufacturer or producer as well as the tax for
19 the privilege of manufacturing or producing in
20 the State, and the manufacturer or producer shall
21 make the returns of the gross proceeds of the
22 wholesale, retail, or other sales required for



1 the privilege of selling in the State, as well as
2 making the returns of the value or gross proceeds
3 of sales of the products required for the
4 privilege of manufacturing or producing in the
5 State. The manufacturer or producer shall pay
6 the tax imposed in this chapter for the privilege
7 of selling its products in the State, and the
8 value or gross proceeds of sales of the products,
9 thus subjected to tax, may be deducted insofar as
10 duplicated as to the same products by the measure
11 of the tax upon the manufacturer or producer for
12 the privilege of manufacturing or producing in
13 the State[+] under chapter A; provided that no
14 producer of agricultural products who sells the
15 products to a purchaser who will process the
16 products outside the State shall be required to
17 pay the tax imposed in this chapter for the
18 privilege of producing or selling those
19 products[-]; and
20 [(E)] (D) A taxpayer selling to a federal cost-plus
21 contractor may make the election provided for by
22 paragraph [(3)(C)-] (2)(C), and in that case the



1 tax shall be computed pursuant to the election,
2 notwithstanding this paragraph [~~or paragraph (1)~~]
3 to the contrary[~~;~~];

4 [~~(F)~~] ~~The department, by rule, may require that a~~
5 ~~seller take from the purchaser of tangible~~
6 ~~personal property a certificate, in a form~~
7 ~~prescribed by the department, certifying that the~~
8 ~~sale is a sale at wholesale; provided that:~~

9 ~~(i) Any purchaser who furnishes a certificate~~
10 ~~shall be obligated to pay to the seller,~~
11 ~~upon demand, the amount of the additional~~
12 ~~tax that is imposed upon the seller whenever~~
13 ~~the sale in fact is not at wholesale; and~~

14 ~~(ii) The absence of a certificate in itself shall~~
15 ~~give rise to the presumption that the sale~~
16 ~~is not at wholesale unless the sales of the~~
17 ~~business are exclusively at wholesale.~~

18 ~~(3)~~] (2) Tax upon contractors[~~;~~]:

19 (A) Upon every person engaging or continuing within
20 the State in the business of contracting, the tax
21 shall be equal to four per cent of the gross
22 income of the business[~~;~~];



1 (B) In computing the tax levied under this paragraph,
2 there shall be deducted from the gross income of
3 the taxpayer so much thereof as has been included
4 in the measure of the tax levied under
5 subparagraph (A) or section 237-16, on:

6 (i) Another taxpayer who is a contractor, as
7 defined in section 237-6;

8 (ii) A specialty contractor, duly licensed by the
9 department of commerce and consumer affairs
10 pursuant to section 444-9, in respect of the
11 specialty contractor's business; or

12 (iii) A specialty contractor who is not licensed
13 by the department of commerce and consumer
14 affairs pursuant to section 444-9, but who
15 performs contracting activities on federal
16 military installations and nowhere else in
17 this State;

18 provided that any person claiming a deduction
19 under this paragraph shall be required to show in
20 the person's return the name and general excise
21 number of the person paying the tax on the amount
22 deducted by the person[-];



1 (C) In computing the tax levied under this paragraph
2 against any federal cost-plus contractor, there
3 shall be excluded from the gross income of the
4 contractor so much thereof as fulfills the
5 following requirements:

6 (i) The gross income exempted shall constitute
7 reimbursement of costs incurred for
8 materials, plant, or equipment purchased
9 from a taxpayer licensed under this chapter,
10 not exceeding the gross proceeds of sale of
11 the taxpayer on account of the transaction;
12 and

13 (ii) The taxpayer making the sale shall have
14 certified to the department that the
15 taxpayer is taxable with respect to the
16 gross proceeds of the sale, and that the
17 taxpayer elects to have the tax on gross
18 income computed the same as upon a sale to
19 the state government[-];

20 (D) A person who, as a business or as a part of a
21 business in which the person is engaged, erects,
22 constructs, or improves any building or



1 structure, of any kind or description, or makes,
2 constructs, or improves any road, street,
3 sidewalk, sewer, or water system, or other
4 improvements on land held by the person (whether
5 held as a leasehold, fee simple, or otherwise),
6 upon the sale or other disposition of the land or
7 improvements, even if the work was not done
8 pursuant to a contract, shall be liable to the
9 same tax as if engaged in the business of
10 contracting, unless the person shows that at the
11 time the person was engaged in making the
12 improvements the person intended, and for the
13 period of at least one year after completion of
14 the building, structure, or other improvements
15 the person continued to intend to hold and not
16 sell or otherwise dispose of the land or
17 improvements. The tax in respect of the
18 improvements shall be measured by the amount of
19 the proceeds of the sale or other disposition
20 that is attributable to the erection,
21 construction, or improvement of [~~such~~] the
22 building or structure, or the making,



1 constructing, or improving of the road, street,
2 sidewalk, sewer, or water system, or other
3 improvements. The measure of tax in respect of
4 the improvements shall not exceed the amount
5 ~~[which]~~ that would have been taxable had the work
6 been performed by another, subject as in other
7 cases to the deductions allowed by subparagraph
8 (B). Upon the election of the taxpayer, this
9 paragraph may be applied notwithstanding that the
10 improvements were not made by the taxpayer, or
11 were not made as a business or as a part of a
12 business, or were made with the intention of
13 holding the same. However, this paragraph shall
14 not apply in respect of any proceeds that
15 constitute or are in the nature of rent; all
16 ~~[such]~~ gross income shall be taxable under
17 paragraph ~~[+9)+]~~ (6); provided that insofar as
18 the business of renting or leasing real property
19 under a lease is taxed under section 237-16.5,
20 the tax shall be levied by section 237-16.5~~[-]~~;
21 ~~[+4)]~~ (3) Tax upon theaters, amusements, radio broadcasting
22 stations, etc.:



1 ~~[(A)]~~ Upon every person engaging or continuing within
2 the State in the business of operating a theater,
3 opera house, moving picture show, vaudeville,
4 amusement park, dance hall, skating rink, radio
5 broadcasting station, or any other place at which
6 amusements are offered to the public, unless
7 taxed under section A-6, the tax shall be equal
8 to four per cent of the gross income of the
9 business~~[, and in the case of a sale of an~~
10 ~~amusement at wholesale under section 237-~~
11 ~~4(a)(13), the tax shall be subject to section~~
12 ~~237-13.3.~~

13 ~~(B)~~ ~~The department may require that the person~~
14 ~~rendering an amusement at wholesale take from the~~
15 ~~licensed seller a certificate, in a form~~
16 ~~prescribed by the department, certifying that the~~
17 ~~sale is a sale at wholesale; provided that:~~

18 ~~(i) Any licensed seller who furnishes a~~
19 ~~certificate shall be obligated to pay to the~~
20 ~~person rendering the amusement, upon demand,~~
21 ~~the amount of additional tax that is imposed~~



1 ~~upon the seller whenever the sale is not at~~
2 ~~wholesale; and~~
3 ~~(ii) The absence of a certificate in itself shall~~
4 ~~give rise to the presumption that the sale~~
5 ~~is not at wholesale unless the person~~
6 ~~rendering the sale is exclusively rendering~~
7 ~~the amusement at wholesale.];~~

8 [~~(5)~~] (4) Tax upon sales representatives, etc. Upon every
9 person classified as a representative or purchasing
10 agent under section 237-1, engaging or continuing
11 within the State in the business of performing
12 services for another, other than as an employee, there
13 is likewise hereby levied and shall be assessed and
14 collected a tax equal to four per cent of the
15 commissions and other compensation attributable to the
16 services so rendered by the person~~[-]~~, unless taxable
17 under chapter A or C;

18 [~~(6)~~] (5) Tax on service business~~[-]~~:
19 (A) Upon every person engaging or continuing within
20 the State in any service business or calling
21 including professional services not otherwise
22 specifically taxed under this chapter, chapter A,



1 or chapter C, there is likewise hereby levied and
2 shall be assessed and collected a tax equal to
3 four per cent of the gross income of the
4 business[, ~~and in the case of a wholesaler under~~
5 ~~section 237-4(a)(10), the tax shall be equal to~~
6 ~~one half of one per cent of the gross income of~~
7 ~~the business. Notwithstanding the foregoing, a~~
8 ~~wholesaler under section 237-4(a)(10) shall be~~
9 ~~subject to section 237-13.3.~~

10 ~~(B) The department may require that the person~~
11 ~~rendering a service at wholesale take from the~~
12 ~~licensed seller a certificate, in a form~~
13 ~~prescribed by the department, certifying that the~~
14 ~~sale is a sale at wholesale; provided that:~~

15 ~~(i) Any licensed seller who furnishes a~~
16 ~~certificate shall be obligated to pay to the~~
17 ~~person rendering the service, upon demand,~~
18 ~~the amount of additional tax that is imposed~~
19 ~~upon the seller whenever the sale is not at~~
20 ~~wholesale; and~~

21 ~~(ii) The absence of a certificate in itself shall~~
22 ~~give rise to the presumption that the sale~~



1 ~~is not at wholesale unless the person~~
2 ~~rendering the sale is exclusively rendering~~
3 ~~services at wholesale.~~

4 ~~(C) Where any person engaging or continuing within~~
5 ~~the State in any service business or calling~~
6 ~~renders those services upon the order of or at~~
7 ~~the request of another taxpayer who is engaged in~~
8 ~~the service business and who, in fact, acts as or~~
9 ~~acts in the nature of an intermediary between the~~
10 ~~person rendering those services and the ultimate~~
11 ~~recipient of the benefits of those services, so~~
12 ~~much of the gross income as is received by the~~
13 ~~person rendering the services shall be subjected~~
14 ~~to the tax at the rate of one half of one per~~
15 ~~cent and all of the gross income received by the~~
16 ~~intermediary from the principal shall be~~
17 ~~subjected to a tax at the rate of four per cent.~~
18 ~~Where the taxpayer is subject to both this~~
19 ~~subparagraph and to the lowest tax rate under~~
20 ~~subparagraph (A), the taxpayer shall be taxed~~
21 ~~under this subparagraph. This subparagraph shall~~
22 ~~be repealed on January 1, 2006.] ;~~



1 [~~D~~] (B) Where any person is engaged in the business
2 of selling interstate or foreign common carrier
3 [~~telecommunication~~] telecommunications services
4 within and without the State, other than as a
5 home service provider, the tax shall be imposed
6 on that portion of gross income received by a
7 person from service which is originated or
8 terminated in this State and is charged to a
9 telephone number, customer, or account in this
10 State notwithstanding any other state law (except
11 for the exemption under section 237-23(a)(1)) to
12 the contrary. If, under the Constitution and
13 laws of the United States, the entire gross
14 income as determined under this paragraph of a
15 business selling interstate or foreign common
16 carrier [~~telecommunication~~] telecommunications
17 services cannot be included in the measure of the
18 tax, the gross income shall be apportioned as
19 provided in section 237-21; provided that the
20 apportionment factor and formula shall be the
21 same for all persons providing those services in
22 the State~~[-]~~;



1 [~~(E)~~] (C) Where any person is engaged in the business
2 of a home service provider, the tax shall be
3 imposed on the gross income received or derived
4 from providing interstate or foreign mobile
5 telecommunications services to a customer with a
6 place of primary use in this State when [~~such~~]
7 the services originate in one state and terminate
8 in another state, territory, or foreign country;
9 provided that all charges for mobile
10 telecommunications services [~~which~~] that are
11 billed by or for the home service provider are
12 deemed to be provided by the home service
13 provider at the customer's place of primary use,
14 regardless of where the mobile telecommunications
15 originate, terminate, or pass through; provided
16 further that the income from charges specifically
17 derived from interstate or foreign mobile
18 telecommunications services, as determined by
19 books and records that are kept in the regular
20 course of business by the home service provider
21 in accordance with section 239-24, shall be
22 apportioned under any apportionment factor or



1 formula adopted under [~~section 237-13(6)(D).~~]

2 subparagraph (B). Gross income shall not

3 include:

4 (i) Gross receipts from mobile

5 telecommunications services provided to a

6 customer with a place of primary use outside

7 this State;

8 (ii) Gross receipts from mobile

9 telecommunications services that are subject

10 to the tax imposed by chapter 239;

11 (iii) Gross receipts from mobile

12 telecommunications services taxed under

13 section 237-13.8; and

14 (iv) Gross receipts of a home service provider

15 acting as a serving carrier providing mobile

16 telecommunications services to another home

17 service provider's customer.

18 For the purposes of this paragraph, "charges for

19 mobile telecommunications services", "customer",

20 "home service provider", "mobile

21 telecommunications services", "place of primary



1 use", and "serving carrier" have the same meaning
2 as in section 239-22[-]; and

3 ~~[-7] Tax on producers. Upon every person engaged as a~~
4 ~~licensed producer pursuant to chapter 431, there is~~
5 ~~hereby levied and shall be assessed and collected a~~
6 ~~tax equal to 0.15 per cent of the commissions due to~~
7 ~~that activity.~~

8 ~~[-8] Tax on receipts of sugar benefit payments. Upon the~~
9 ~~amounts received from the United States government by~~
10 ~~any producer of sugar (or the producer's legal~~
11 ~~representative or heirs), as defined under and by~~
12 ~~virtue of the Sugar Act of 1948, as amended, or other~~
13 ~~Acts of the Congress of the United States relating~~
14 ~~thereto, there is hereby levied a tax of one half of~~
15 ~~one per cent of the gross amount received; provided~~
16 ~~that the tax levied hereunder on any amount so~~
17 ~~received and actually disbursed to another by a~~
18 ~~producer in the form of a benefit payment shall be~~
19 ~~paid by the person or persons to whom the amount is~~
20 ~~actually disbursed, and the producer actually making a~~
21 ~~benefit payment to another shall be entitled to claim~~
22 ~~on the producer's return a deduction from the gross~~



1 ~~amount taxable hereunder in the sum of the amount so~~
2 ~~disbursed. The amounts taxed under this paragraph~~
3 ~~shall not be taxable under any other paragraph,~~
4 ~~subsection, or section of this chapter.~~

5 ~~(9)]~~ (6) Tax on other business. Upon every person
6 engaging or continuing within the State in any
7 business, trade, activity, occupation, or calling not
8 included in the preceding paragraphs or any other
9 provisions of this chapter, there is likewise hereby
10 levied and shall be assessed and collected, a tax
11 equal to four per cent of the gross income thereof.
12 In addition, the rate prescribed by this paragraph
13 shall apply to a business taxable under one or more of
14 the preceding paragraphs or other provisions of this
15 chapter, as to any gross income thereof not taxed
16 thereunder as gross income or gross proceeds of sales
17 or by taxing an equivalent value of products, unless
18 specifically exempted~~[=]~~ or subject to tax under
19 chapter A or chapter C."

20 SECTION 13. Section 237-18, Hawaii Revised Statutes,
21 amended to read as follows:



1 "**§237-18 Further provisions as to application of tax.** (a)

2 Where a coin operated device produces gross income which is
3 divided between the owner or operator of the device, on the one
4 hand, and the owner or operator of the premises where the device
5 is located, on the other hand, the tax imposed by this chapter
6 shall apply to each [~~such~~] person with respect to the person's
7 portion of the proceeds, and no more.

8 (b) Where gate receipts or other admissions are divided
9 between the person furnishing or producing a play, concert,
10 lecture, athletic event, or similar spectacle (including any
11 motion picture showing) on the one hand, and a promoter
12 (including any proprietor or other operator of a motion picture
13 house) offering the spectacle to the public, on the other hand,
14 the tax imposed by this chapter, if the promoter is subject to
15 the tax imposed by this chapter, shall apply only to the
16 promoter measured by the whole of the proceeds, and the promoter
17 shall be authorized to deduct and withhold from the portion of
18 the proceeds payable to the person furnishing or producing the
19 spectacle the amount of the tax payable by the person upon such
20 portion. No tax shall apply to a promoter with respect to
21 [~~such~~] the portion of the proceeds as is payable to a person



1 furnishing or producing the spectacle, who is exempted by
2 section 237-23 from taxation upon [~~such~~] the activity.

3 ~~[(c) Where, through the activity of a person taxable under~~
4 ~~section 237-13(6), a product has been milled, processed, or~~
5 ~~otherwise manufactured upon the order of another taxpayer who is~~
6 ~~a manufacturer taxable upon the value of the entire manufactured~~
7 ~~products, which consists in part of the value of the services~~
8 ~~taxable under section 237-13(6), so much gross income as is~~
9 ~~derived from the rendering of the services shall be subjected to~~
10 ~~tax on the person rendering the services at the rate of one half~~
11 ~~of one per cent, and the value of the entire product shall be~~
12 ~~included in the measure of the tax imposed on the other taxpayer~~
13 ~~as elsewhere provided.~~

14 ~~(d) Where, through the activity of a person taxable under~~
15 ~~section 237-13(6), there have been rendered to a cane planter~~
16 ~~services consisting in the harvesting or hauling of the cane, or~~
17 ~~consisting in road maintenance, under a contract between the~~
18 ~~person rendering the services and the cane planter, covering the~~
19 ~~services and also the milling of the sugar, the services of~~
20 ~~harvesting and hauling the cane and road maintenance shall be~~
21 ~~treated the same as the service of milling the cane, as provided~~
22 ~~by subsection (c), and the value of the entire product,~~



1 ~~manufactured or sold for the cane planter under the contract,~~
2 ~~shall be included in the measure of the tax imposed on the~~
3 ~~person as elsewhere provided.~~

4 ~~(e)]~~ (c) Where [~~insurance agents, including general~~
5 ~~agents, subagents, or solicitors, who are not employees and are~~
6 ~~licensed pursuant to chapter 431, or]~~ real estate brokers or
7 salespersons, who are not employees and are licensed pursuant to
8 chapter 467, produce commissions [~~which]~~ that are divided
9 between [~~such general agents, subagents, or solicitors, or~~
10 ~~between such]~~ real estate brokers or salespersons, [~~as the case~~
11 ~~may be,~~] the tax levied under section [~~237-13(6)]~~ 237-13(5) as
12 to real estate brokers or salespersons[~~, or under section 237-~~
13 ~~13(7) as to insurance general agents, subagents, or solicitors]~~
14 shall apply to each [~~such]~~ person with respect to the person's
15 portion of the commissions, and no more.

16 [~~(f)]~~ (d) Where tourism related services are furnished
17 through arrangements made by a travel agency or tour packager
18 and the gross income is divided between the provider of the
19 services and the travel agency or tour packager, the tax imposed
20 by this chapter shall apply to each [~~such]~~ person with respect
21 to [~~such]~~ the person's respective portion of the proceeds, and
22 no more.



1 As used in this subsection "tourism related services" means
2 catamaran cruises, canoe rides, dinner cruises, lei greetings,
3 transportation included in a tour package, sightseeing tours not
4 subject to chapter 239, admissions to luaus, dinner shows,
5 extravaganzas, cultural and educational facilities, and other
6 services rendered directly to the customer or tourist, but only
7 if the providers of the services other than air transportation
8 are subject to a four per cent tax under this chapter or chapter
9 239.

10 [~~(g)~~] (e) Where transient accommodations are furnished
11 through arrangements made by a travel agency or tour packager at
12 noncommissioned negotiated contract rates and the gross income
13 is divided between the operator of transient accommodations on
14 the one hand and the travel agency or tour packager on the other
15 hand, the tax imposed by this chapter shall apply to each [~~such~~]
16 person with respect to [~~such~~] the person's respective portion of
17 the proceeds, and no more.

18 As used in this subsection, the words "transient
19 accommodations" and "operator" shall be defined in the same
20 manner as they are defined in section 237D-1.

21 [~~(h)~~] (f) Where the transportation of passengers or
22 property is furnished through arrangements between motor



1 carriers, and the gross income is divided between the motor
2 carriers, any tax imposed by this chapter shall apply to each
3 motor carrier with respect to each motor carrier's respective
4 portion of the proceeds.

5 As used in this subsection:

6 "Carrier" means a person who engages in transportation, and
7 does not include a person such as a freight forwarder or tour
8 packager who provides transportation by contracting with others,
9 except to the extent that [~~such~~] the person [~~oneself~~] engages in
10 transportation.

11 "Contract carrier" means a person other than a public
12 utility as defined under section 239-2 or taxicab, which under
13 contracts or agreements, engages in the transportation of
14 persons or property for compensation, by land, water, or air.

15 "Motor carrier" means a common carrier or contract carrier
16 transporting persons or property for compensation on the public
17 highways, other than a public utility as defined under section
18 239-2 or taxicab.

19 "Public highways" has the meaning defined by section 264-1
20 including both state and county highways, but operation upon
21 rails shall not be deemed transportation on the public
22 highways."



1 SECTION 14. Section 237-21, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§237-21 Apportionment.** If any person~~[, other than~~
4 ~~persons liable to the tax on manufacturers as provided by~~
5 ~~section 237-13(1),]~~ is engaged in business both within and
6 without the State or in selling goods for delivery outside the
7 State, and if under the Constitution or laws of the United
8 States or section 237-29.5 the entire gross income of [~~such~~] the
9 person cannot be included in the measure of this tax, there
10 shall be apportioned to the State and included in the measure of
11 the tax that portion of the gross income [~~which~~] that is derived
12 from activities within the State, to the extent that the
13 apportionment is required by the Constitution or laws of the
14 United States or section 237-29.5. [~~In the case of a tax upon~~
15 ~~the production of property in the State the apportionment shall~~
16 ~~be determined as in the case of the tax on manufacturers.] In~~
17 other cases, if and to the extent that the apportionment cannot
18 be accurately made by separate accounting methods, there shall
19 be apportioned to the State and included in the measure of this
20 tax that proportion of the total gross income, so requiring
21 apportionment, which the cost of doing business within the
22 State, applicable to the gross income, bears to the cost of



1 doing business both within and without the State, applicable to
2 the gross income."

3 SECTION 15. Section 237-24, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§237-24 Amounts not taxable.** This chapter shall not
6 apply to the following amounts:

- 7 (1) Amounts received under life insurance policies and
8 contracts paid by reason of the death of the insured;
- 9 (2) Amounts received (other than amounts paid by reason of
10 death of the insured) under life insurance, endowment,
11 or annuity contracts, either during the term or at
12 maturity or upon surrender of the contract;
- 13 (3) Amounts received under any accident insurance or
14 health insurance policy or contract or under workers'
15 compensation acts or employers' liability acts, as
16 compensation for personal injuries, death, or
17 sickness, including also the amount of any damages or
18 other compensation received, whether as a result of
19 action or by private agreement between the parties on
20 account of the personal injuries, death, or sickness;



- 1 (4) The value of all property of every kind and sort
2 acquired by gift, bequest, or devise, and the value of
3 all property acquired by descent or inheritance;
- 4 (5) Amounts received by any person as compensatory damages
5 for any tort injury to the person, or to the person's
6 character reputation, or received as compensatory
7 damages for any tort injury to or destruction of
8 property, whether as the result of action or by
9 private agreement between the parties (provided that
10 amounts received as punitive damages for tort injury
11 or breach of contract injury shall be included in
12 gross income);
- 13 (6) Amounts received as salaries or wages for services
14 rendered by an employee to an employer;
- 15 (7) Amounts received as alimony and other similar payments
16 and settlements;
- 17 (8) Amounts collected by distributors as fuel taxes on
18 "liquid fuel" imposed by chapter 243, and the amounts
19 collected by ~~such~~ distributors as a fuel tax imposed
20 by any Act of the Congress of the United States;
- 21 (9) Taxes on liquor imposed by chapter 244D on dealers
22 holding permits under that chapter;



- 1 ~~[(10)]~~ ~~The amounts of taxes on cigarettes and tobacco~~
2 ~~products imposed by chapter 245 on wholesalers or~~
3 ~~dealers holding licenses under that chapter and~~
4 ~~selling the products at wholesale;~~
- 5 ~~+(11)]~~ (10) Federal excise taxes imposed on articles sold at
6 retail and collected from the purchasers thereof and
7 paid to the federal government by the retailer;
- 8 ~~[(12)]~~ ~~The amounts of federal taxes under chapter 37 of the~~
9 ~~Internal Revenue Code, or similar federal taxes,~~
10 ~~imposed on sugar manufactured in the State, paid by~~
11 ~~the manufacturer to the federal government;~~
- 12 ~~+(13)]~~ (11) ~~[An amount up to, but not in excess of, \$2,000 a~~
13 ~~year of gross income]~~ Amounts received by any blind,
14 deaf, or totally disabled person engaging, or
15 continuing, in any business, trade, activity,
16 occupation, or calling within the State; a corporation
17 all of whose outstanding shares are owned by an
18 individual or individuals who are blind, deaf, or
19 totally disabled; a general, limited, or limited
20 liability partnership, all of whose partners are
21 blind, deaf, or totally disabled; or a limited



1 liability company, all of whose members are blind,
2 deaf, or totally disabled;

3 ~~[(14) Amounts received by a producer of sugarcane from the~~
4 ~~manufacturer to whom the producer sells the sugarcane,~~
5 ~~where:~~

6 ~~(A) The producer is an independent cane farmer, so~~
7 ~~classed by the Secretary of Agriculture under the~~
8 ~~Sugar Act of 1948 (61 Stat. 922, Chapter 519) as~~
9 ~~the Act may be amended or supplemented;~~

10 ~~(B) The value or gross proceeds of sale of the sugar,~~
11 ~~and other products manufactured from the~~
12 ~~sugarcane, is included in the measure of the tax~~
13 ~~levied on the manufacturer under section 237-~~
14 ~~13(1) or (2);~~

15 ~~(C) The producer's gross proceeds of sales are~~
16 ~~dependent upon the actual value of the products~~
17 ~~manufactured therefrom or the average value of~~
18 ~~all similar products manufactured by the~~
19 ~~manufacturer; and~~

20 ~~(D) The producer's gross proceeds of sales are~~
21 ~~reduced by reason of the tax on the value or sale~~
22 ~~of the manufactured products;~~



- 1 ~~(15)~~] (12) Money paid by the State or eleemosynary child-
2 placing organizations to foster parents for their care
3 of children in foster homes; and
- 4 ~~(16)~~] (13) Amounts received by a cooperative housing
5 corporation from its shareholders in reimbursement of
6 funds paid by [~~such~~] the corporation for lease rental,
7 real property taxes, and other expenses of operating
8 and maintaining the cooperative land and improvements;
9 provided that [~~such a~~] the cooperative corporation is
10 a corporation:
- 11 (A) Having one and only one class of stock
12 outstanding;
- 13 (B) Each of the stockholders of which is entitled
14 solely by reason of the stockholder's ownership
15 of stock in the corporation, to occupy for
16 dwelling purposes a house, or an apartment in a
17 building owned or leased by the corporation; and
- 18 (C) No stockholder of which is entitled (either
19 conditionally or unconditionally) to receive any
20 distribution not out of earnings and profits of
21 the corporation except in a complete or partial
22 liquidation of the corporation."



1 SECTION 16. Section 237-24.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§237-24.3 Additional amounts not taxable.** In addition to
4 the amounts not taxable under section 237-24, this chapter shall
5 not apply to:

6 (1) Amounts received from the loading, transportation, and
7 unloading of agricultural commodities shipped for a
8 producer or produce dealer on one island of this State
9 to a person, firm, or organization on another island
10 of this State. The terms "agricultural commodity",
11 "producer", and "produce dealer" shall be defined in
12 the same manner as they are defined in section 147-1;
13 provided that agricultural commodities need not have
14 been produced in the State;

15 (2) Amounts received from sales of:
16 (A) Intoxicating liquor as the term "liquor" is
17 defined in chapter 244D;
18 (B) Cigarettes and tobacco products as defined in
19 chapter 245; and
20 (C) Agricultural, meat, or fish products;
21 to any person or common carrier in interstate or
22 foreign commerce, or both, whether ocean-going or air,



1 for consumption out-of-state on the shipper's vessels
2 or airplanes;

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

5 (A) An association of apartment owners of a
6 condominium property regime established in
7 accordance with chapter 514B; or

8 (B) A nonprofit homeowners or community association
9 incorporated in accordance with chapter 414D or
10 any predecessor thereto and existing pursuant to
11 covenants running with the land,

12 in reimbursement of sums paid for common expenses;

13 (4) Amounts received or accrued from:

14 (A) The loading or unloading of cargo from ships,
15 barges, vessels, or aircraft, whether or not the
16 ships, barges, vessels, or aircraft travel
17 between the State and other states or countries
18 or between the islands of the State;

19 (B) Tugboat services including pilotage fees
20 performed within the State, and the towage of
21 ships, barges, or vessels in and out of state
22 harbors, or from one pier to another; and



1 (C) The transportation of pilots or governmental
2 officials to ships, barges, or vessels offshore;
3 rigging gear; checking freight and similar
4 services; standby charges; and use of moorings
5 and running mooring lines;

6 (5) Amounts received by an employee benefit plan by way of
7 contributions, dividends, interest, and other income;
8 and amounts received by a nonprofit organization or
9 office, as payments for costs and expenses incurred
10 for the administration of an employee benefit plan;
11 provided that this exemption shall not apply to any
12 gross rental income or gross rental proceeds received
13 after June 30, 1994, as income from investments in
14 real property in this State; and provided further that
15 gross rental income or gross rental proceeds from
16 investments in real property received by an employee
17 benefit plan after June 30, 1994, under written
18 contracts executed prior to July 1, 1994, shall not be
19 taxed until the contracts are renegotiated, renewed,
20 or extended, or until after December 31, 1998,
21 whichever is earlier. For the purposes of this
22 paragraph, "employee benefit plan" means any plan as



1 defined in section 1002(3) of title 29 of the United
2 States Code, as amended;

3 (6) Amounts received for purchases made with United States
4 Department of Agriculture food coupons under the
5 federal food stamp program, and amounts received for
6 purchases made with United States Department of
7 Agriculture food vouchers under the Special
8 Supplemental Foods Program for Women, Infants and
9 Children;

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

18 (A) "Prescription drugs" are those drugs defined
19 under section 328-1 and dispensed by filling or
20 refilling a written or oral prescription by a
21 practitioner licensed under law to administer the
22 drug and sold by a licensed pharmacist under



1 section 328-16 or practitioners licensed to
2 administer drugs; and

3 (B) "Prosthetic device" means [~~any artificial device~~
4 ~~or appliance, instrument, apparatus, or~~
5 ~~contrivance, including their components, parts,~~
6 ~~accessories, and replacements thereof, used to~~
7 ~~replace a missing or surgically removed part of~~
8 ~~the human body, which is prescribed by a licensed~~
9 ~~practitioner of medicine, osteopathy, or podiatry~~
10 ~~and which is sold by the practitioner or which is~~
11 ~~dispensed and sold by a dealer of prosthetic~~
12 ~~devices; provided that "prosthetic device" shall~~
13 ~~not mean any auditory, ophthalmic, dental, or~~
14 ~~ocular device or appliance, instrument,~~
15 ~~apparatus, or contrivance;]~~ a replacement,
16 corrective, or supportive device including repair
17 and replacement parts for the device, worn on or
18 in the body to:

19 (i) Artificially replace a missing portion of
20 the body;

21 (ii) Prevent or correct physical deformity or
22 malfunction; or



1 (iii) Support a weak or deformed portion of the
2 body.

3 A prosthetic device does not include corrective
4 eyeglasses, contact lenses, hearing aids, and
5 dental prothesis;

6 (8) Taxes on transient accommodations imposed by chapter
7 237D and passed on and collected by operators holding
8 certificates of registration under that chapter;

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

16 (10) Amounts received by a labor organization for real
17 property leased to:

18 (A) A labor organization; or

19 (B) A trust fund established by a labor organization
20 for the benefit of its members, families, and
21 dependents for medical or hospital care, pensions
22 on retirement or death of employees,



1 apprenticeship and training, and other membership
2 service programs.

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

7 (11) Amounts received from foreign diplomats and consular
8 officials who are holding cards issued or authorized
9 by the United States Department of State granting them
10 an exemption from state taxes; and

11 (12) Amounts received as rent for the rental or leasing of
12 aircraft or aircraft engines used by the lessees or
13 renters for interstate air transportation of
14 passengers and goods. For purposes of this paragraph,
15 payments made pursuant to a lease shall be considered
16 rent regardless of whether the lease is an operating
17 lease or a financing lease. The definition of
18 "interstate air transportation" is the same as in 49
19 U.S.C. 40102."

20 SECTION 17. Section 237-34, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) All tax returns and return information required to be
2 filed under this chapter, and the report of any investigation of
3 the return or of the subject matter of the return, shall be
4 confidential. It shall be unlawful for any person or any
5 officer or employee of the State to intentionally make known
6 information imparted by any tax return or return information
7 filed pursuant to this chapter, or any report of any
8 investigation of the return or of the subject matter of the
9 return, or to wilfully permit any [~~such~~] return, return
10 information, or report so made, or any copy thereof, to be seen
11 or examined by any person; provided that for tax purposes only
12 the taxpayer, the taxpayer's authorized agent, or persons with a
13 material interest in the return, return information, or report
14 may examine them. Unless otherwise provided by law, persons
15 with a material interest in the return, return information, or
16 report shall include:

- 17 (1) Trustees;
- 18 (2) Partners;
- 19 (3) Persons named in a board resolution or a one per cent
20 shareholder in case of a corporate return;
- 21 (4) The person authorized to act for a corporation in
22 dissolution;



- 1 (5) The shareholder of an S corporation;
- 2 (6) The personal representative, trustee, heir, or
3 beneficiary of an estate or trust in case of the
4 estate's or decedent's return;
- 5 (7) The committee, trustee, or guardian of any person in
6 paragraphs (1) to (6) who is incompetent;
- 7 (8) The trustee in bankruptcy or receiver, and the
8 attorney-in-fact of any person in paragraphs (1) to
9 (7);
- 10 (9) Persons duly authorized by the State in connection
11 with their official duties;
- 12 (10) Any duly accredited tax official of the United States
13 or of any state or territory;
- 14 (11) The Multistate Tax Commission or its authorized
15 representative;
- 16 (12) Members of a limited liability company; [~~and~~]
- 17 (13) A person contractually obligated to pay the taxes
18 assessed against another when the latter person is
19 under audit by the department[~~-~~]; and
- 20 (14) The Streamlined Sales Tax Governing Board,
21 Incorporated, or its authorized representative.

22 Any violation of this subsection shall be a misdemeanor."



1 SECTION 18. Section 238-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§238-2 Imposition of tax on tangible personal property;**
4 **exemptions.** There is hereby levied an excise tax on the use in
5 this State of tangible personal property [~~which~~] that is
6 imported by a taxpayer in this State whether owned, purchased
7 from an unlicensed seller, or however acquired for use in this
8 State[~~-~~], unless subject to tax or exempt from tax under chapter

9 B. The tax imposed by this chapter shall accrue when the
10 property is acquired by the importer or purchaser and becomes
11 subject to the taxing jurisdiction of the State. The [~~rates~~]
12 rate of the tax hereby imposed [~~and the exemptions thereof are~~
13 ~~as follows:~~

14 ~~(1) If the importer or purchaser is licensed under chapter~~
15 ~~237 and is:~~

16 ~~(A) A wholesaler or jobber importing or purchasing~~
17 ~~for purposes of sale or resale; or~~

18 ~~(B) A manufacturer importing or purchasing material~~
19 ~~or commodities which are to be incorporated by~~
20 ~~the manufacturer into a finished or saleable~~
21 ~~product (including the container or package in~~
22 ~~which the product is contained) wherein it will~~



1 ~~remain in such form as to be perceptible to the~~
2 ~~senses, and which finished or saleable product is~~
3 ~~to be sold in such manner as to result in a~~
4 ~~further tax on the activity of the manufacturer~~
5 ~~as the manufacturer or as a wholesaler, and not~~
6 ~~as a retailer,~~

7 ~~there shall be no tax; provided that if the~~
8 ~~wholesaler, jobber, or manufacturer is also engaged in~~
9 ~~business as a retailer (so classed under chapter 237),~~
10 ~~paragraph (2) shall apply to the wholesaler, jobber,~~
11 ~~or manufacturer, but the director of taxation shall~~
12 ~~refund to the wholesaler, jobber, or manufacturer, in~~
13 ~~the manner provided under section 231-23(c) such~~
14 ~~amount of tax as the wholesaler, jobber, or~~
15 ~~manufacturer shall, to the satisfaction of the~~
16 ~~director, establish to have been paid by the~~
17 ~~wholesaler, jobber, or manufacturer to the director~~
18 ~~with respect to property which has been used by the~~
19 ~~wholesaler, jobber, or manufacturer for the purposes~~
20 ~~stated in this paragraph;~~

21 ~~(2) If the importer or purchaser is licensed under chapter~~
22 ~~237 and is:~~



- 1 ~~(A) A retailer or other person importing or~~
2 ~~purchasing for purposes of sale or resale, not~~
3 ~~exempted by paragraph (1);~~
- 4 ~~(B) A manufacturer importing or purchasing material~~
5 ~~or commodities which are to be incorporated by~~
6 ~~the manufacturer into a finished or saleable~~
7 ~~product (including the container or package in~~
8 ~~which the product is contained) wherein it will~~
9 ~~remain in such form as to be perceptible to the~~
10 ~~senses, and which finished or saleable product is~~
11 ~~to be sold at retail in this State, in such~~
12 ~~manner as to result in a further tax on the~~
13 ~~activity of the manufacturer in selling such~~
14 ~~products at retail;~~
- 15 ~~(C) A contractor importing or purchasing material or~~
16 ~~commodities which are to be incorporated by the~~
17 ~~contractor into the finished work or project~~
18 ~~required by the contract and which will remain in~~
19 ~~such finished work or project in such form as to~~
20 ~~be perceptible to the senses;~~
- 21 ~~(D) A person engaged in a service business or calling~~
22 ~~as defined in section 237-7, or a person~~



1 ~~furnishing transient accommodations subject to~~
2 ~~the tax imposed by section 237D-2, in which the~~
3 ~~import or purchase of tangible personal property~~
4 ~~would have qualified as a sale at wholesale as~~
5 ~~defined in section 237-4(a)(8) had the seller of~~
6 ~~the property been subject to the tax in chapter~~
7 ~~237; or~~

8 ~~(E) A publisher of magazines or similar printed~~
9 ~~materials containing advertisements, when the~~
10 ~~publisher is under contract with the advertisers~~
11 ~~to distribute a minimum number of magazines or~~
12 ~~similar printed materials to the public or~~
13 ~~defined segment of the public, whether or not~~
14 ~~there is a charge to the persons who actually~~
15 ~~receive the magazines or similar printed~~
16 ~~materials,~~

17 ~~the tax shall be one half of one per cent of the~~
18 ~~purchase price of the property, if the purchase and~~
19 ~~sale are consummated in Hawaii; or, if there is no~~
20 ~~purchase price applicable thereto, or if the purchase~~
21 ~~or sale is consummated outside of Hawaii, then one~~



1 ~~half of one per cent of the value of such property;~~

2 and

3 ~~(3) In all other cases,~~ is four per cent of the value of
4 the property.

5 For purposes of this section, tangible personal property is
6 property that is imported by the taxpayer for use in this State,
7 notwithstanding the fact that title to the property, or the risk
8 of loss to the property, passes to the purchaser of the property
9 at a location outside this State."

10 SECTION 19. Section 238-2.3, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§238-2.3 Imposition of tax on imported services or**
13 **contracting; exemptions.** There is hereby levied an excise tax
14 on the value of services or contracting as defined in section
15 237-6 that are performed by an unlicensed seller at a point
16 outside the State and imported or purchased for use in this
17 State~~[-]~~, unless subject to tax or exempt from tax under chapter
18 B. The tax imposed by this chapter shall accrue when the
19 service or contracting as defined in section 237-6 is received
20 by the importer or purchaser and becomes subject to the taxing
21 jurisdiction of the State. The [~~rates~~] rate of the tax hereby
22 imposed [~~and the exemptions from the tax are as follows:~~



1 ~~(1) If the importer or purchaser is licensed under chapter~~
2 ~~237 and is:~~

3 ~~(A) Engaged in a service business or calling in which~~
4 ~~the imported or purchased services or contracting~~
5 ~~become identifiable elements, excluding overhead,~~
6 ~~of the services rendered by the importer or~~
7 ~~purchaser, and the gross income of the importer~~
8 ~~or purchaser is subject to the tax imposed under~~
9 ~~chapter 237 on services at the rate of one-half~~
10 ~~of one per cent or the rate of tax imposed under~~
11 ~~section 237-13.3; or~~

12 ~~(B) A manufacturer importing or purchasing services~~
13 ~~or contracting that become identifiable elements,~~
14 ~~excluding overhead, of a finished or saleable~~
15 ~~product (including the container or package in~~
16 ~~which the product is contained) and the finished~~
17 ~~or saleable product is to be sold in a manner~~
18 ~~that results in a further tax on the manufacturer~~
19 ~~as a wholesaler, and not a retailer;~~

20 ~~there shall be no tax imposed on the value of the~~
21 ~~imported or purchased services or contracting;~~

22 ~~provided that if the manufacturer is also engaged in~~



1 ~~business as a retailer as classified under chapter~~
2 ~~237, paragraph (2) shall apply to the manufacturer,~~
3 ~~but the director of taxation shall refund to the~~
4 ~~manufacturer, in the manner provided under section~~
5 ~~231-23(c), that amount of tax that the manufacturer,~~
6 ~~to the satisfaction of the director, shall establish~~
7 ~~to have been paid by the manufacturer to the director~~
8 ~~with respect to services that have been used by the~~
9 ~~manufacturer for the purposes stated in this~~
10 ~~paragraph.~~

11 ~~(2) If the importer or purchaser is a person licensed~~
12 ~~under chapter 237 and is:~~

13 ~~(A) Engaged in a service business or calling in which~~
14 ~~the imported or purchased services or contracting~~
15 ~~become identifiable elements, excluding overhead,~~
16 ~~of the services rendered by the importer or~~
17 ~~purchaser, and the gross income from those~~
18 ~~services when sold by the importer or purchaser~~
19 ~~is subject to the tax imposed under chapter 237~~
20 ~~at the highest rate;~~

21 ~~(B) A manufacturer importing or purchasing services~~
22 ~~or contracting that become identifiable elements,~~



1 ~~excluding overhead, of the finished or saleable~~
2 ~~manufactured product (including the container or~~
3 ~~package in which the product is contained) and~~
4 ~~the finished or saleable product is to be sold in~~
5 ~~a manner that results in a further tax under~~
6 ~~chapter 237 on the activity of the manufacturer~~
7 ~~as a retailer; or~~

8 ~~(C) A contractor importing or purchasing services or~~
9 ~~contracting that become identifiable elements,~~
10 ~~excluding overhead, of the finished work or~~
11 ~~project required, under the contract, and where~~
12 ~~the gross proceeds derived by the contractor are~~
13 ~~subject to the tax under section 237 13(3) as a~~
14 ~~contractor,~~

15 ~~the tax shall be one-half of one per cent of the value~~
16 ~~of the imported or purchased services or contracting;~~
17 ~~and~~

18 ~~(3) In all other cases, the importer or purchaser is~~
19 ~~subject to the tax at the rate of] is four per cent on~~
20 ~~the value of the imported or purchased services or~~
21 ~~contracting."~~



1 SECTION 20. Section 238-2.6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The county surcharge on state tax, upon the adoption
4 of a county ordinance and in accordance with the requirements of
5 section 46-16.8, shall be levied, assessed, and collected as
6 provided in this section on the value of property and services
7 taxable under this chapter. No county shall set the surcharge
8 on state tax at a rate greater than one-half of one per cent of
9 the value of property taxable under this chapter. All
10 provisions of this chapter shall apply to the county surcharge
11 on state tax. No county shall conduct an independent audit of
12 sellers registered under the streamlined sales tax agreement.
13 With respect to the surcharge, the director shall have all the
14 rights and powers provided under this chapter. In addition, the
15 director of taxation shall have the exclusive rights and power
16 to determine the county or counties in which a person imports or
17 purchases tangible personal property and, in the case of a
18 person importing or purchasing tangible property in more than
19 one county, the director shall determine, through apportionment
20 or other means, that portion of the surcharge on state tax
21 attributable to the importation or purchase in each county."



1 SECTION 21. Section 237-4, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§237-4 "Wholesaler", "jobber", defined.~~ (a)

4 ~~"Wholesaler" or "jobber" applies only to a person making sales~~
5 ~~at wholesale. Only the following are sales at wholesale:~~

6 (1) ~~Sales to a licensed retail merchant, jobber, or other~~
7 ~~licensed seller for purposes of resale;~~

8 (2) ~~Sales to a licensed manufacturer of materials or~~
9 ~~commodities that are to be incorporated by the~~
10 ~~manufacturer into a finished or saleable product~~
11 ~~(including the container or package in which the~~
12 ~~product is contained) during the course of its~~
13 ~~preservation, manufacture, or processing, including~~
14 ~~preparation for market, and that will remain in such~~
15 ~~finished or saleable product in such form as to be~~
16 ~~perceptible to the senses, which finished or saleable~~
17 ~~product is to be sold and not otherwise used by the~~
18 ~~manufacturer;~~

19 (3) ~~Sales to a licensed producer or cooperative~~
20 ~~association of materials or commodities that are to be~~
21 ~~incorporated by the producer or by the cooperative~~
22 ~~association into a finished or saleable product that~~



1 ~~is to be sold and not otherwise used by the producer~~
2 ~~or cooperative association, including specifically~~
3 ~~materials or commodities expended as essential to the~~
4 ~~planting, growth, nurturing, and production of~~
5 ~~commodities that are sold by the producer or by the~~
6 ~~cooperative association;~~

7 ~~(4) Sales to a licensed contractor, of materials or~~
8 ~~commodities that are to be incorporated by the~~
9 ~~contractor into the finished work or project required~~
10 ~~by the contract and that will remain in such finished~~
11 ~~work or project in such form as to be perceptible to~~
12 ~~the senses;~~

13 ~~(5) Sales to a licensed producer, or to a cooperative~~
14 ~~association described in section 237 23(a)(7) for sale~~
15 ~~to a licensed producer, or to a licensed person~~
16 ~~operating a feed lot, of poultry or animal feed,~~
17 ~~hatching eggs, semen, replacement stock, breeding~~
18 ~~services for the purpose of raising or producing~~
19 ~~animal or poultry products for disposition as~~
20 ~~described in section 237 5 or for incorporation into a~~
21 ~~manufactured product as described in paragraph (2) or~~
22 ~~for the purpose of breeding, hatching, milking, or egg~~



1 ~~laying other than for the customer's own consumption~~
2 ~~of the meat, poultry, eggs, or milk so produced;~~
3 ~~provided that in the case of a feed lot operator, only~~
4 ~~the segregated cost of the feed furnished by the feed~~
5 ~~lot operator as part of the feed lot operator's~~
6 ~~service to a licensed producer of poultry or animals~~
7 ~~to be butchered or to a cooperative association~~
8 ~~described in section 237 23(a)(7) of such licensed~~
9 ~~producers shall be deemed to be a sale at wholesale;~~
10 ~~and provided further that any amount derived from the~~
11 ~~furnishing of feed lot services, other than the~~
12 ~~segregated cost of feed, shall be deemed taxable at~~
13 ~~the service business rate. This paragraph shall not~~
14 ~~apply to the sale of feed for poultry or animals to be~~
15 ~~used for hauling, transportation, or sports purposes;~~
16 ~~(6) Sales to a licensed producer, or to a cooperative~~
17 ~~association described in section 237 23(a)(7) for sale~~
18 ~~to the producer, of seed or seedstock for producing~~
19 ~~agricultural and aquacultural products, or bait for~~
20 ~~catching fish (including the catching of bait for~~
21 ~~catching fish), which agricultural and aquacultural~~
22 ~~products or fish are to be disposed of as described in~~



- 1 ~~section 237-5 or to be incorporated in a manufactured~~
2 ~~product as described in paragraph (2);~~
- 3 ~~(7) Sales to a licensed producer, or to a cooperative~~
4 ~~association described in section 237-23(a)(7) for sale~~
5 ~~to such producer; of polypropylene shade cloth; of~~
6 ~~polyfilm; of polyethylene film; of cartons and such~~
7 ~~other containers, wrappers, and sacks, and binders to~~
8 ~~be used for packaging eggs, vegetables, fruits, and~~
9 ~~other agricultural and aquacultural products; of~~
10 ~~seedlings and cuttings for producing nursery plants or~~
11 ~~aquacultural products; or of chick containers; which~~
12 ~~cartons and such other containers, wrappers, and~~
13 ~~sacks, binders, seedlings, cuttings, and containers~~
14 ~~are to be used as described in section 237-5, or to be~~
15 ~~incorporated in a manufactured product as described in~~
16 ~~paragraph (2);~~
- 17 ~~(8) Sales of tangible personal property:~~
- 18 ~~(A) To a licensed seller engaged in a service~~
19 ~~business or calling; provided that:~~
- 20 ~~(i) The property is not consumed or incidental~~
21 ~~to the performance of the services;~~



- 1 ~~(ii) There is a resale of the article at the~~
- 2 ~~retail rate of four per cent; and~~
- 3 ~~(iii) The resale of the article is separately~~
- 4 ~~charged or billed by the person rendering~~
- 5 ~~the services;~~
- 6 ~~(B) Where:~~
- 7 ~~(i) Tangible personal property is sold upon the~~
- 8 ~~order or request of a licensed seller for~~
- 9 ~~the purpose of rendering a service in the~~
- 10 ~~course of the person's service business or~~
- 11 ~~calling, or upon the order or request of a~~
- 12 ~~person subject to tax under section 237D-2~~
- 13 ~~for the purpose of furnishing transient~~
- 14 ~~accommodations;~~
- 15 ~~(ii) The tangible personal property becomes or is~~
- 16 ~~used as an identifiable element of the~~
- 17 ~~service rendered; and~~
- 18 ~~(iii) The cost of the tangible personal property~~
- 19 ~~does not constitute overhead to the licensed~~
- 20 ~~seller;~~
- 21 ~~the sale shall be subject to section 237-13.3; or~~

1 ~~(C) Where the taxpayer is subject to both~~
2 ~~subparagraphs (A) and (B), then the taxpayer~~
3 ~~shall be taxed under subparagraph (A).~~
4 ~~Subparagraphs (A) and (C) shall be repealed on~~
5 ~~January 1, 2006;~~

6 ~~(9) Sales to a licensed leasing company of capital goods~~
7 ~~that have a depreciable life, are purchased by the~~
8 ~~leasing company for lease to its customers, and are~~
9 ~~thereafter leased as a service to others;~~

10 ~~(10) Sales of services to a licensed seller engaging in a~~
11 ~~business or calling whenever:~~

12 ~~(A) Either:~~

13 ~~(i) In the context of a service to service~~
14 ~~transaction, a service is rendered upon the~~
15 ~~order or request of a licensed seller for~~
16 ~~the purpose of rendering another service in~~
17 ~~the course of the seller's service business~~
18 ~~or calling;~~

19 ~~(ii) In the context of a service to tangible~~
20 ~~personal property transaction, a service is~~
21 ~~rendered upon the order or request of a~~
22 ~~licensed seller for the purpose of~~



- 1 ~~manufacturing, producing, or preparing~~
2 ~~tangible personal property to be sold;~~
- 3 ~~(iii) In the context of a services to contracting~~
4 ~~transaction, a service is rendered upon the~~
5 ~~order or request of a licensed contractor as~~
6 ~~defined in section 237-6 for the purpose of~~
7 ~~assisting that licensed contractor; or~~
- 8 ~~(iv) In the context of a services to transient~~
9 ~~accommodations rental transaction, a service~~
10 ~~is rendered upon the order or request of a~~
11 ~~person subject to tax under section 237D-2~~
12 ~~for the purpose of furnishing transient~~
13 ~~accommodations;~~
- 14 ~~(B) The benefit of the service passes to the customer~~
15 ~~of the licensed seller, licensed contractor, or~~
16 ~~person furnishing transient accommodations as an~~
17 ~~identifiable element of the other service or~~
18 ~~property to be sold, the contracting, or the~~
19 ~~furnishing of transient accommodations;~~
- 20 ~~(C) The cost of the service does not constitute~~
21 ~~overhead to the licensed seller, licensed~~



- 1 ~~contractor, or person furnishing transient~~
2 ~~accommodations;~~
- 3 ~~(D) The gross income of the licensed seller is not~~
4 ~~divided between the licensed seller and another~~
5 ~~licensed seller, contractor, or person furnishing~~
6 ~~transient accommodations for imposition of the~~
7 ~~tax under this chapter;~~
- 8 ~~(E) The gross income of the licensed seller is not~~
9 ~~subject to a deduction under this chapter or~~
10 ~~chapter 237D; and~~
- 11 ~~(F) The resale of the service, tangible personal~~
12 ~~property, contracting, or transient~~
13 ~~accommodations is subject to the tax imposed~~
14 ~~under this chapter at the highest tax rate.~~
- 15 ~~Sales subject to this paragraph shall be subject to~~
16 ~~section 237-13.3;~~
- 17 ~~(11) Sales to a licensed retail merchant, jobber, or other~~
18 ~~licensed seller of bulk condiments or prepackaged~~
19 ~~single-serving packets of condiments that are provided~~
20 ~~to customers by the licensed retail merchant, jobber,~~
21 ~~or other licensed seller;~~



1 ~~(12) Sales to a licensed retail merchant, jobber, or other~~
2 ~~licensed seller of tangible personal property that~~
3 ~~will be incorporated or processed by the licensed~~
4 ~~retail merchant, jobber, or other licensed seller into~~
5 ~~a finished or saleable product during the course of~~
6 ~~its preparation for market (including disposable,~~
7 ~~nonreturnable containers, packages, or wrappers, in~~
8 ~~which the product is contained and that are generally~~
9 ~~known and most commonly used to contain food or~~
10 ~~beverage for transfer or delivery), and which finished~~
11 ~~or saleable product is to be sold and not otherwise~~
12 ~~used by the licensed retail merchant, jobber, or other~~
13 ~~licensed seller;~~

14 ~~(13) Sales of amusements subject to taxation under section~~
15 ~~237-13(4) to a licensed seller engaging in a business~~
16 ~~or calling whenever;~~

17 ~~(A) Either:~~

18 ~~(i) In the context of an amusement to service~~
19 ~~transaction, an amusement is rendered upon~~
20 ~~the order or request of a licensed seller~~
21 ~~for the purpose of rendering another service~~



1 ~~in the course of the seller's service~~
2 ~~business or calling;~~

3 ~~(ii) In the context of an amusement to tangible~~
4 ~~personal property transaction, an amusement~~
5 ~~is rendered upon the order or request of a~~
6 ~~licensed seller for the purpose of selling~~
7 ~~tangible personal property; or~~

8 ~~(iii) In the context of an amusement to amusement~~
9 ~~transaction, an amusement is rendered upon~~
10 ~~the order or request of a licensed seller~~
11 ~~for the purpose of rendering another~~
12 ~~amusement in the course of the person's~~
13 ~~amusement business;~~

14 ~~(B) The benefit of the amusement passes to the~~
15 ~~customer of the licensed seller as an~~
16 ~~identifiable element of the other service,~~
17 ~~tangible personal property to be sold, or~~
18 ~~amusement;~~

19 ~~(C) The cost of the amusement does not constitute~~
20 ~~overhead to the licensed seller;~~

21 ~~(D) The gross income of the licensed seller is not~~
22 ~~divided between the licensed seller and another~~



1 ~~licensed seller, person furnishing transient~~
2 ~~accommodations, or person rendering an amusement~~
3 ~~for imposition of the tax under chapter 237;~~

4 ~~(E) The gross income of the licensed seller is not~~
5 ~~subject to a deduction under this chapter; and~~

6 ~~(F) The resale of the service, tangible personal~~
7 ~~property, or amusement is subject to the tax~~
8 ~~imposed under this chapter at the highest rate.~~

9 ~~As used in this paragraph, "amusement" means~~
10 ~~entertainment provided as part of a show for which~~
11 ~~there is an admission charge. Sales subject to this~~
12 ~~paragraph shall be subject to section 237 13.3; and~~

13 ~~(14) Sales by a printer to a publisher of magazines or~~
14 ~~similar printed materials containing advertisements,~~
15 ~~when the publisher is under contract with the~~
16 ~~advertisers to distribute a minimum number of~~
17 ~~magazines or similar printed materials to the public~~
18 ~~or defined segment of the public, whether or not there~~
19 ~~is a charge to the persons who actually receive the~~
20 ~~magazines or similar printed materials.~~

21 ~~(b) If the use tax law is finally held by a court of~~
22 ~~competent jurisdiction to be unconstitutional or invalid insofar~~



1 ~~as it purports to tax the use or consumption of tangible~~
2 ~~personal property imported into the State in interstate or~~
3 ~~foreign commerce or both, wholesalers and jobbers shall be taxed~~
4 ~~thereafter under this chapter in accordance with the following~~
5 ~~definition (which shall supersede the preceding paragraph~~
6 ~~otherwise defining "wholesaler" or "jobber"): "Wholesaler" or~~
7 ~~"jobber" means a person, or a definitely organized division~~
8 ~~thereof, definitely organized to render and rendering a general~~
9 ~~distribution service that buys and maintains at the person's~~
10 ~~place of business a stock or lines of merchandise that the~~
11 ~~person distributes; and that the person, through salespersons,~~
12 ~~advertising, or sales promotion devices, sells to licensed~~
13 ~~retailers, to institutional or licensed commercial or industrial~~
14 ~~users, in wholesale quantities and at wholesale rates. A~~
15 ~~corporation deemed not to be carrying on a trade or business in~~
16 ~~this State under section 235-6 shall nevertheless be deemed to~~
17 ~~be a wholesaler and shall be subject to the tax imposed by this~~
18 ~~chapter."]~~

19 SECTION 22. Section 237-5, Hawaii Revised Statutes, is
20 repealed.

21 ["~~§237-5 "Producer" defined.~~ "Producer" means any person
22 engaged in the business of raising and producing agricultural



1 ~~products in their natural state, or in producing natural~~
2 ~~resource products, or engaged in the business of fishing or~~
3 ~~aquaculture, for sale, or for shipment or transportation out of~~
4 ~~the State, of the agricultural or aquaculture products in their~~
5 ~~natural or processed state, or butchered and dressed, or the~~
6 ~~natural resource products, or fish.~~

7 ~~As used in this section "agricultural products" include~~
8 ~~floricultural, horticultural, viticultural, forestry, nut,~~
9 ~~coffee, dairy, livestock, poultry, bee, animal, and any other~~
10 ~~farm, agronomic, or plantation products."]~~

11 SECTION 23. Section 237-13.3, Hawaii Revised Statutes, is
12 repealed.

13 [~~§237-13.3 Application of sections 237-4(a)(8), 237-~~
14 ~~4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-~~
15 ~~13(6)(A). (a) Sections 237-4(a)(8), 237-4(a)(10), 237-~~
16 ~~4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to the~~
17 ~~contrary notwithstanding, instead of the tax levied under~~
18 ~~section 237-13(2)(A) on wholesale sales subject to section 237-~~
19 ~~4(a)(8)(B), under section 237-13(4)(A) on a wholesaler subject~~
20 ~~to section 237-4(a)(13), and under section 237-13(6)(A) on a~~
21 ~~wholesaler subject to section 237-4(a)(10) at one half of one~~



1 ~~per cent, during the period January 1, 2000, to December 31,~~
2 ~~2005, the tax shall be as follows:~~

3 ~~(1) In calendar year 2000, 3.5 per cent;~~

4 ~~(2) In calendar year 2001, 3.0 per cent;~~

5 ~~(3) In calendar year 2002, 2.5 per cent;~~

6 ~~(4) In calendar year 2003, 2.0 per cent;~~

7 ~~(5) In calendar year 2004, 1.5 per cent;~~

8 ~~(6) In calendar year 2005, 1.0 per cent; and~~

9 ~~(7) In calendar year 2006 and thereafter, the tax shall be~~
10 ~~0.5 per cent.~~

11 ~~(b) The department shall have the authority to implement~~
12 ~~the tax rate changes in subsection (a) by prescribing tax forms~~
13 ~~and instructions that require tax reporting and payment by~~
14 ~~deduction, allocation, or any other method to determine tax~~
15 ~~liability with due regard to the tax rate changes."]~~

16 SECTION 24. Section 237-13.5, Hawaii Revised Statutes, is
17 repealed.

18 ["~~§237-13.5 Assessment on generated electricity. Any~~
19 ~~other provision of the law to the contrary notwithstanding, the~~
20 ~~levy and assessment of the general excise tax on the gross~~
21 ~~proceeds from the sale of electric power to a public utility~~
22 ~~company for resale to the public, shall be made only as a tax on~~



1 ~~the business of a producer, at the rate assessed producers,~~
2 ~~under section 237-13(2)(A)."]~~

3 SECTION 25. Section 237-15, Hawaii Revised Statutes, is
4 repealed.

5 [~~"§237-15 Technicians. When technicians supply dentists~~
6 ~~or physicians with dentures, orthodontic devices, braces, and~~
7 ~~similar items which have been prepared by the technician in~~
8 ~~accordance with specifications furnished by the dentist or~~
9 ~~physician, and such items are to be used by the dentist or~~
10 ~~physician in the dentist's or physician's professional practice~~
11 ~~for a particular patient who is to pay the dentist or physician~~
12 ~~for the same as a part of the dentist's or physician's~~
13 ~~professional services, the technician shall be taxed as though~~
14 ~~the technician were a manufacturer selling a product to a~~
15 ~~licensed retailer, rather than at the rate of four per cent~~
16 ~~which is generally applied to professions and services."]~~

17 SECTION 26. Section 237-29.55, Hawaii Revised Statutes, is
18 repealed.

19 [~~"[§237-29.55] Exemption for sale of tangible personal~~
20 ~~property for resale at wholesale. (a) There shall be exempted~~
21 ~~from, and excluded from the measure of, the taxes imposed by~~
22 ~~this chapter all of the gross proceeds or gross income arising~~



1 ~~from the sale of tangible personal property imported to Hawaii~~
2 ~~from a foreign or domestic source to a licensed taxpayer for~~
3 ~~subsequent resale for the purpose of wholesale as defined under~~
4 ~~section 237-4.~~

5 ~~(b) The department, by rule, may provide that a seller may~~
6 ~~take from the purchaser of imported tangible personal property,~~
7 ~~a certificate, in a form that the department shall prescribe,~~
8 ~~certifying that the purchaser of the imported tangible personal~~
9 ~~property shall resell the imported tangible personal property at~~
10 ~~wholesale as defined under section 237-4. Any purchaser who~~
11 ~~furnishes a certificate shall be obligated to pay to the seller,~~
12 ~~upon demand, if the sale in fact is not a sale for the purpose~~
13 ~~of resale at wholesale, the amount of the additional tax which~~
14 ~~by reason thereof is imposed upon the seller. The absence of a~~
15 ~~certificate, unless the sales of the business are exclusively a~~
16 ~~sale for the purpose of resale at wholesale, in itself, shall~~
17 ~~give rise to the presumption that the sale is not a sale for the~~
18 ~~purpose of resale at wholesale."]~~

19 SECTION 27. Section 238-4, Hawaii Revised Statutes, is
20 repealed.

21 ["~~§238-4 Certain property used by producers.~~ If a
22 licensed producer, or a cooperative association acting under the



1 ~~authority of chapter 421 or 422, in order to sell to such~~
2 ~~producer, or a licensed person, imports into the State or~~
3 ~~acquires in the State commodities, materials, items, services,~~
4 ~~or living things enumerated in section [237-4(a)(3) and (5) to~~
5 ~~(7)], then section 237-4 shall apply. If section 237-4 applies~~
6 ~~and the producer is engaged in the sale of the producer's~~
7 ~~products at retail or in any manner other than at wholesale,~~
8 ~~then the tax upon use of property in the State imposed by~~
9 ~~section 238-2(2) shall apply the same as in the case of a~~
10 ~~purchaser who is a licensed retailer. In other such cases no~~
11 ~~tax shall be imposed under this chapter."]~~

12 SECTION 28. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ _____, or so
14 much thereof as may be necessary for fiscal year 2006-2007, to
15 carry out the purposes of this Act, including the hiring of
16 necessary staff.

17 The sum appropriated shall be expended by the department of
18 taxation.

19 SECTION 29. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ _____, or so
21 much thereof as may be necessary for fiscal year 2006-2007, for



1 technical assistance and briefings to enable the legislature to
2 carry out its responsibilities under this Act.

3 Technical assistance may include analysis of the fiscal and
4 legal impacts of proposed conformance with the existing general
5 excise tax law and other laws and any other issues that might
6 result from the implementation of a streamlined and sales and
7 use tax. Funds may also be expended for preparation of proposed
8 legislation above and beyond that which could be undertaken by
9 state employees due to the specialized nature of this project.
10 Funds may be further expended in briefings of legislators and
11 any other parties deemed appropriate by the designees of the
12 president of the senate and the speaker of the house of
13 representatives and in any other support activities for this
14 project.

15 The sum appropriated shall be expended by the office of the
16 auditor for the purposes of this Act. The office of the auditor
17 shall secure the services necessary to support the project in as
18 expeditious a manner as possible and without regard to chapter
19 103D, Hawaii Revised Statutes.

20 SECTION 30. Notwithstanding the provisions of any law
21 making it unlawful for any person, officer, or employee of the
22 State to make known information imparted by any tax return or



1 permit any tax return to be seen or examined by any person, it
2 shall be lawful to permit a private contractor contracted under
3 section 29 of this Act to inspect any tax return of any
4 taxpayer, or to furnish to the private contractor an abstract of
5 the return or supply the private contractor with information
6 concerning any item contained in the return or disclosed by the
7 report of any investigation of the return or of the subject
8 matter of the return only for the purposes of conforming the
9 State's general excise and use taxes to be operative with the
10 Streamlined Sales Tax Project's Model Agreement and Act.

11 SECTION 31. In codifying the new chapters and sections
12 added to the Hawaii Revised Statutes by this Act, the revisor of
13 statutes shall substitute appropriate section numbers for the
14 letters used in designating the new chapters and sections in
15 this Act.

16 SECTION 32. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 33. This Act shall take effect on July 1, 3000;
19 provided that sections 28 and 29 shall take effect on July 1,
20 3000.

