

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.



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 In order to participate in the streamlined sales and use
2 tax agreement, Hawaii must amend its tax law in conformity with
3 the streamlined sales and use tax agreement. To conform, Hawaii
4 must adopt 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 one-half of one per cent tax rate for
10 wholesale transactions to a 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:



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"CHAPTER
TAX ON WHOLESALERS, SERVICE BUSINESSES, AND CONTRACTORS

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

§A-2 "Wholesaler" and "jobber" defined. (a) "Wholesaler" or "jobber" applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in a finished or saleable product in a form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed producer or cooperative association of materials or commodities that are to be

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

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

15 (5) Sales to a licensed producer, or to a cooperative
16 association described in section 237-23(a)(7) for sale
17 to a licensed producer, or to a licensed person
18 operating a feed lot, of poultry or animal feed,
19 hatching eggs, semen, replacement stock, breeding
20 services for the purpose of raising or producing
21 animal or poultry products for disposition as
22 described in section A-3 or for incorporation into a



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

18 (6) Sales to a licensed producer, or to a cooperative
19 association described in section 237-23(a)(7) for sale
20 to the producer, of seed or seedstock for producing
21 agricultural and aquacultural products, or bait for
22 catching fish (including the catching of bait for



1 catching fish), which agricultural and aquacultural
2 products or fish are to be disposed of as described in
3 section A-3 or to be incorporated in a manufactured
4 product as described in paragraph (2);

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

19 (8) Sales of tangible personal property:

20 (A) To a licensed seller engaged in a service
21 business or calling; provided that:



1 (i) The property is not consumed or incidental
2 to the performance of the services;

3 (ii) There is a resale of the article at the
4 retail rate of four per cent; and

5 (iii) The resale of the article is separately
6 charged or billed by the person rendering
7 the services;

8 (B) Where:

9 (i) Tangible personal property is sold upon the
10 order or request of a licensed seller for
11 the purpose of rendering a service in the
12 course of the person's service business or
13 calling, or upon the order or request of a
14 person subject to tax under section 237D-2
15 for the purpose of furnishing transient
16 accommodations;

17 (ii) The tangible personal property becomes or is
18 used as an identifiable element of the
19 service rendered; and

20 (iii) The cost of the tangible personal property
21 does not constitute overhead to the licensed
22 seller; 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 (9) Sales to a licensed leasing company of capital goods
5 that have a depreciable life, are purchased by the
6 leasing company for lease to its customers, and are
7 thereafter leased as a service to others;
- 8 (10) Sales of services to a licensed seller engaging in a
9 business or calling whenever:
- 10 (A) Either:
- 11 (i) In the context of a service-to-service
12 transaction, a service is rendered upon the
13 order or request of a licensed seller for
14 the purpose of rendering another service in
15 the course of the seller's service business
16 or calling;
- 17 (ii) In the context of a service-to-tangible
18 personal property transaction, a service is
19 rendered upon the order or request of a
20 licensed seller for the purpose of
21 manufacturing, producing, or preparing
22 tangible personal property to be sold;



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

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

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

9 (F) The resale of the service, tangible personal
10 property, contracting, or transient
11 accommodations is subject to the tax imposed
12 under this chapter at the highest tax rate;

13 (11) Sales to a licensed retail merchant, jobber, or other
14 licensed seller of bulk condiments or prepackaged
15 single-serving packets of condiments that are provided
16 to customers by the licensed retail merchant, jobber,
17 or other licensed seller;

18 (12) Sales to a licensed retail merchant, jobber, or other
19 licensed seller of tangible personal property that
20 will be incorporated or processed by the licensed
21 retail merchant, jobber, or other licensed seller into
22 a finished or saleable product during the course of



1 its preparation for market (including disposable,
2 nonreturnable containers, packages, or wrappers, in
3 which the product is contained and that are generally
4 known and most commonly used to contain food or
5 beverage for transfer or delivery), and which finished
6 or saleable product is to be sold and not otherwise
7 used by the licensed retail merchant, jobber, or other
8 licensed seller;

9 (13) Sales of amusements subject to taxation under section
10 237-13(2) to a licensed seller engaging in a business
11 or calling whenever:

12 (A) Either:

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

19 (ii) In the context of an amusement-to-tangible
20 personal property transaction, an amusement
21 is rendered upon the order or request of a



- 1 licensed seller for the purpose of selling
2 tangible personal property; or
- 3 (iii) In the context of an amusement-to-amusement
4 transaction, an amusement is rendered upon
5 the order or request of a licensed seller
6 for the purpose of rendering another
7 amusement in the course of the person's
8 amusement business;
- 9 (B) The benefit of the amusement passes to the
10 customer of the licensed seller as an
11 identifiable element of the other service,
12 tangible personal property to be sold, or
13 amusement;
- 14 (C) The cost of the amusement does not constitute
15 overhead to the licensed seller;
- 16 (D) The gross income of the licensed seller is not
17 divided between the licensed seller and another
18 licensed seller, person furnishing transient
19 accommodations, or person rendering an amusement
20 for imposition of the tax under chapter 237;
- 21 (E) The gross income of the licensed seller is not
22 subject to a deduction under this chapter; and



1 (F) The resale of the service, tangible personal
2 property, or amusement is subject to the tax
3 imposed under this chapter at the highest rate.

4 As used in this paragraph, "amusement" means
5 entertainment provided as part of a show for
6 which there is an admission charge; and

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

15 (b) If the use tax law is finally held by a court of
16 competent jurisdiction to be unconstitutional or invalid insofar
17 as it purports to tax the use or consumption of tangible
18 personal property imported into the State in interstate or
19 foreign commerce or both, wholesalers and jobbers shall be taxed
20 thereafter under this chapter in accordance with the following
21 definition (which shall supersede the preceding paragraph
22 otherwise defining "wholesaler" or "jobber"): "Wholesaler" or



1 "jobber" means a person, or a definitely organized division
2 thereof, definitely organized to render and rendering a general
3 distribution service that buys and maintains at the person's
4 place of business a stock or lines of merchandise that the
5 person distributes; and that the person, through salespersons,
6 advertising, or sales promotion devices, sells to licensed
7 retailers, to institutional or licensed commercial or industrial
8 users, in wholesale quantities and at wholesale rates. A
9 corporation deemed not to be carrying on a trade or business in
10 this State under section 235-6 shall nevertheless be deemed to
11 be a wholesaler and shall be subject to the tax imposed by this
12 chapter.

13 **§A-3 "Producer" defined.** "Producer" means any person
14 engaged in the business of raising and producing agricultural
15 products in their natural state, or in producing natural
16 resource products, or engaged in the business of fishing or
17 aquaculture, for sale, or for shipment or transportation out of
18 the State, of the agricultural or aquaculture products in their
19 natural or processed state, or butchered and dressed, or the
20 natural resource products, or fish.

21 As used in this section "agricultural products" include
22 floricultural, horticultural, viticultural, forestry, nut,



1 coffee, dairy, livestock, poultry, bee, animal, and any other
2 farm, agronomic, or plantation products.

3 **§A-4 Definitions.** The definitions contained in sections
4 237-6 and 237-7 shall be applicable for this chapter.

5 **§A-5 Administrative provisions.** Sections 237-8, 237-9,
6 237-9.5, 237-11, and 237-12 shall be applicable for this
7 chapter.

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

14 (1) Tax on manufacturers:

15 (A) Upon every person engaging or continuing within
16 the State in the business of manufacturing,
17 including compounding, canning, preserving,
18 packing, printing, publishing, milling,
19 processing, refining, or preparing for sale,
20 profit, or commercial use, either directly or
21 through the activity of others, in whole or in
22 part, any article or articles, substance or



1 substances, commodity or commodities, the amount
2 of the tax to be equal to the value of the
3 articles, substances, or commodities,
4 manufactured, compounded, canned, preserved,
5 packed, printed, milled, processed, refined, or
6 prepared for sale, as shown by the gross proceeds
7 derived from the sale thereof by the manufacturer
8 or person compounding, preparing, or printing
9 them, multiplied by one-half of one per cent;

10 (B) The measure of the tax on manufacturers is the
11 value of the entire product for sale, regardless
12 of the place of sale or the fact that deliveries
13 may be made to points outside the State;

14 (C) If any person liable for the tax on manufacturers
15 ships or transports the person's product, or any
16 part thereof, out of the State, whether in a
17 finished or unfinished condition, or sells the
18 same for delivery to points outside the State
19 (for example, consigned to a mainland purchaser
20 via common carrier f.o.b. Honolulu), the value of
21 the products in the condition or form in which
22 they exist immediately before entering interstate



1 or foreign commerce, determined as hereinafter
2 provided, shall be the basis for the assessment
3 of the tax imposed by this paragraph. This tax
4 shall be due and payable as of the date of entry
5 of the products into interstate or foreign
6 commerce, whether the products are then sold or
7 not. The department shall determine the basis
8 for assessment, as provided by this paragraph, as
9 follows:

10 (i) If the products at the time of their entry
11 into interstate or foreign commerce already
12 have been sold, the gross proceeds of sale,
13 less the transportation expenses, if any,
14 incurred in realizing the gross proceeds for
15 transportation from the time of entry of the
16 products into interstate or foreign
17 commerce, including insurance and storage in
18 transit, shall be the measure of the value
19 of the products;

20 (ii) If the products have not been sold at the
21 time of their entry into interstate or
22 foreign commerce, and in cases governed by



1 clause (i) in which the products are sold
2 under circumstances such that the gross
3 proceeds of sale are not indicative of the
4 true value of the products, the value of the
5 products constituting the basis for
6 assessment shall correspond as nearly as
7 possible to the gross proceeds of sales for
8 delivery outside the State, adjusted as
9 provided in clause (i), or if sufficient
10 data are not available, sales in the State,
11 of similar products of like quality and
12 character and in similar quantities, made by
13 the taxpayer (unless not indicative of the
14 true value) or by others. Sales outside the
15 State, adjusted as provided in clause (i),
16 may be considered when they constitute the
17 best available data. The department shall
18 prescribe uniform and equitable rules for
19 ascertaining the values;

20 (iii) At the election of the taxpayer and with the
21 approval of the department, the taxpayer may
22 make the taxpayer's returns under clause (i)



1 even though the products have not been sold
2 at the time of their entry into interstate
3 or foreign commerce; and

4 (iv) In all cases in which products leave the
5 State in an unfinished condition, the basis
6 for assessment shall be adjusted so as to
7 deduct the portion of the value as is
8 attributable to the finishing of the goods
9 outside the State;

10 (2) Tax on producers:

11 (A) Upon every person engaging or continuing within
12 this State in the business of a producer, the tax
13 shall be equal to one-half of one per cent of the
14 gross proceeds of sales of the business, or the
15 value of the products, for sale, if sold for
16 delivery outside the State or shipped or
17 transported out of the State, and the value of
18 the products shall be determined in the same
19 manner as the value of manufactured products
20 covered in the cases under paragraph (1)(C);

21 (3) No manufacturer or producer, engaged in such business
22 in the State and selling the manufacturer's or



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

9 (4) Tax upon theaters, amusements, radio broadcasting
10 stations, etc. Upon every person engaging or
11 continuing within the State in the business of
12 operating a theater, opera house, moving picture show,
13 vaudeville, amusement park, dance hall, skating rink,
14 radio broadcasting station, or any other place at
15 which amusements are offered to the public, at
16 wholesale;

17 (5) Tax on service business:

18 (A) Upon every person engaging or continuing within
19 the State in any service business or calling
20 including professional services not otherwise
21 specifically taxed under this chapter, as a
22 wholesaler described in section A-2, the tax



1 shall be equal to one-half of one per cent of the
2 gross income of the business;

3 (6) Tax on sales by wholesalers:

4 (A) Upon every person who is engaged in the business
5 of a wholesaler or jobber as described in section
6 A-2 of selling any tangible personal property
7 whatsoever (not including, however, bonds or
8 other evidences of indebtedness, or stocks),
9 there is hereby levied, and shall be assessed and
10 collected, a tax equivalent to one-half of one
11 per cent of the gross proceeds of sales of the
12 business as a wholesaler or jobber as defined in
13 section A-2;

14 (B) Gross proceeds of sales of tangible property in
15 interstate and foreign commerce shall constitute
16 a part of the measure of the tax imposed on
17 persons in the business of selling tangible
18 personal property as a wholesaler, to the extent,
19 under the conditions, and in accordance with the
20 provisions of the Constitution of the United
21 States and the Acts of Congress of the United
22 States which may be now in force or may be



1 hereafter adopted, and whenever there occurs in
2 the State an activity to which, under the
3 Constitution and Acts of Congress, there may be
4 attributed gross proceeds of sales, the gross
5 proceeds shall be so attributed.

6 (b) When a manufacturer or producer, as defined in this
7 chapter engaged in such business in the State, also is engaged
8 in selling the manufacturer's or producer's products in the
9 State at wholesale, taxed under this chapter, retail, or in any
10 other manner, the tax for the privilege of engaging in the
11 business of selling the products in the State shall apply to the
12 manufacturer or producer as well as the tax for the privilege of
13 manufacturing or producing in the State, and the manufacturer or
14 producer shall make the returns of the gross proceeds of the
15 wholesale, retail, or other sales required for the privilege of
16 selling in the State, as well as making the returns of the value
17 or gross proceeds of sales of the products required for the
18 privilege of manufacturing or producing in the State. The
19 manufacturer or producer shall pay the tax imposed in this
20 chapter for the privilege of selling its products in the State,
21 and the value or gross proceeds of sales of the products, thus
22 subjected to tax, may be deducted insofar as duplicated as to



1 the same products by the measure of the tax upon the
2 manufacturer or producer for the privilege of manufacturing or
3 producing in the State under this chapter; provided that no
4 producer of agricultural products who sells the products to a
5 purchaser who will process the products outside the State shall
6 be required to pay the tax imposed in this chapter for the
7 privilege of producing or selling those products.

8 **§A-7 Resale certificates.** (a) The department, by rule,
9 may require that a seller take from the purchaser of tangible
10 personal property a certificate, in a form prescribed by the
11 department, certifying that the sale is a sale at wholesale;
12 provided that:

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

18 (2) The absence of a certificate in itself shall give rise
19 to the presumption that the sale is not at wholesale
20 unless the sales of the business are exclusively at
21 wholesale.



1 (b) The department may require that the person rendering
2 an amusement 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 amusement, 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 the amusement at wholesale.

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

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



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

5 **§A-8 Tax on receipts of sugar benefit payments.** Upon the
6 amounts received from the United States government by any
7 producer of sugar (or the producer's legal representative or
8 heirs), as defined under and by virtue of the Sugar Act of 1948,
9 as amended, or other Acts of the Congress of the United States
10 relating thereto, there is hereby levied a tax of one-half of
11 one per cent of the gross amount received; provided that the tax
12 levied hereunder on any amount so received and actually
13 disbursed to another by a producer in the form of a benefit
14 payment shall be paid by the person or persons to whom the
15 amount is actually disbursed, and the producer actually making a
16 benefit payment to another shall be entitled to claim on the
17 producer's return a deduction from the gross amount taxable
18 hereunder in the sum of the amount so disbursed. The amounts
19 taxed under this paragraph shall not be taxable under any other
20 paragraph, subsection, or section of this chapter.

21 **§A-9 Segregation of gross income, etc., on records and in**
22 **returns.** The imposition of taxes and the application of tax



1 rates do not depend upon the business in which the taxpayer is
2 primarily engaged. One business may be subject to two or more
3 tax rates. If a business is within the purview of two or more
4 of the paragraphs of section 237-13 or other provisions of this
5 chapter all of them apply, each provision being applicable to
6 the appropriate item of gross income, gross proceeds of sales,
7 or value of products. However, any person engaging or
8 continuing in a business having gross income, gross proceeds of
9 sales, and value of products, or any of these as the case may
10 be, taxable at different rates, shall be subject to taxation
11 upon the aggregate amount of the gross income, gross proceeds of
12 sales, and value of products of the business at the highest rate
13 applicable to any part of the aggregate, unless the person shall
14 segregate the parts taxable at different rates upon the person's
15 records and in the person's returns, and shall sustain the
16 burden of proving that the segregation was correctly made.

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



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

14 **§A-12 Activity ordered by others.** (a) Where, through the
15 activity of a person taxable under section 237-13(5), a product
16 has been milled, processed, or otherwise manufactured upon the
17 order of another taxpayer who is a manufacturer taxable upon the
18 value of the entire manufactured products, which consists in
19 part of the value of the services taxable under section 237-
20 13(5), so much gross income as is derived from the rendering of
21 the services shall be subjected to tax on the person rendering
22 the services at the rate of one-half of one per cent, and the



1 value of the entire product shall be included in the measure of
2 the tax imposed on the other taxpayer as elsewhere provided.

3 (b) Where, through the activity of a person taxable under
4 section 237-13(5), there have been rendered to a cane planter
5 services consisting in the harvesting or hauling of the cane, or
6 consisting in road maintenance, under a contract between the
7 person rendering the services and the cane planter, covering the
8 services and also the milling of the sugar, the services of
9 harvesting and hauling the cane and road maintenance shall be
10 treated the same as the service of milling the cane, as provided
11 by subsection (a), and the value of the entire product,
12 manufactured or sold for the cane planter under the contract,
13 shall be included in the measure of the tax imposed on the
14 persons elsewhere provided.

15 **§A-13 Apportionment.** In the case of a tax upon the
16 production of property in the State the apportionment shall be
17 determined as in the case of the tax on manufacturers provided
18 in section A-5.

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



1 **§A-15 Exemptions.** The exemptions provided in section 237-
2 23, 237-26, 237-27.5, 237-29, 237-29.5, and 237-29.53 shall
3 apply to this chapter.

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

- 6 (1) The amounts of taxes on cigarettes and tobacco
7 products imposed by chapter 245 on wholesalers or
8 dealers holding licenses under that chapter and
9 selling the products at wholesale;
- 10 (2) The amounts of federal taxes under chapter 37 of the
11 Internal Revenue Code, or similar federal taxes,
12 imposed on sugar manufactured in the State, paid by
13 the manufacturer to the federal government;
- 14 (3) Gross income received by any blind, deaf, or totally
15 disabled person engaging, or continuing, in any
16 business, trade, activity, occupation, or calling
17 within the State; a corporation all of whose
18 outstanding shares are owned by an individual or
19 individuals who are blind, deaf, or totally disabled;
20 a general, limited or limited liability partnership,
21 all of whose partners are blind, deaf, or totally



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

3 (4) 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);

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 **§A-17 Exemption for sale of tangible personal property for**
2 **resale at wholesale.** (a) There shall be exempted from, and
3 excluded from the measure of, the taxes imposed by this chapter
4 all of the gross proceeds or gross income arising from the sale
5 of tangible personal property imported to Hawaii from a foreign
6 or domestic source to a licensed taxpayer for subsequent resale
7 for the purpose of wholesale as denied under section A-2.

8 (b) The department, by rule, may provide that a seller may
9 take from the purchaser of imported tangible personal property,
10 a certificate, in a form that the department shall prescribe,
11 certifying that the purchaser of the imported tangible personal
12 property shall resell the imported tangible personal property at
13 wholesale as defined under section A-2. Any purchaser who
14 furnishes a certificate shall be obligated to pay to the seller,
15 upon demand, if the sale in fact is not a sale for the purpose
16 of resale at wholesale, the amount of the additional tax which
17 by reason thereof is imposed upon the seller. The absence of a
18 certificate, unless the sales of the business are exclusively a
19 sale for the purpose of resale at wholesale, in itself, shall
20 give rise to the presumption that the sale is not a sale for the
21 purpose of resale at wholesale.



1 **§A-18 Administrative provisions.** Sections 237-20, 237-21,
2 237-27, 237-30, 237-31, 237-32, 237-33, 237-33.5, 237-34, 237-
3 35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-42, 237-
4 43, 237-46, 237-47, and 237-49 shall apply to this chapter."

5 SECTION 3. The Hawaii Revised Statutes is amended by
6 adding a new chapter to be appropriately designated and to read
7 as follows:

8 **"CHAPTER**

9 **TAX ON IMPORT OF GOODS, SERVICES AND CONTRACTING FOR RESALE**

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

12 **§B-2 Imposition of tax on tangible personal property;**
13 **exemptions.** There is hereby levied an excise tax on the use in
14 this State of tangible personal property which is imported by a
15 taxpayer in this State whether owned, purchased from an
16 unlicensed seller, or however acquired for use in this State.
17 The tax imposed by this chapter shall accrue when the property
18 is acquired by the importer or purchaser and becomes subject to
19 the taxing jurisdiction of the State. The rates of the tax
20 hereby imposed and the exemptions thereof are as follows:

21 (1) If the importer or purchaser is licensed under chapter
22 A and is:



1 (A) A wholesaler or jobber importing or purchasing
2 for purposes of sale or resale; or

3 (B) A manufacturer importing or purchasing material
4 or commodities that are to be incorporated by the
5 manufacturer into a finished or saleable product
6 (including the container or package in which the
7 product is contained) wherein it will remain in a
8 form as to be perceptible to the senses, and the
9 finished or saleable product is to be sold in a
10 manner as to result in a further tax on the
11 activity of the manufacturer as the manufacturer
12 or as a wholesaler, and not as a retailer;

13 there shall be no tax; provided that if the
14 wholesaler, jobber, or manufacturer is also engaged in
15 business as a retailer (so classed under chapter 237),
16 paragraph (2) shall apply to the wholesaler, jobber,
17 or manufacturer, but the director of taxation shall
18 refund to the wholesaler, jobber, or manufacturer, in
19 the manner provided under section 231-23(c) the amount
20 of tax as the wholesaler, jobber, or manufacturer
21 shall establish, to the satisfaction of the director,
22 to have been paid by the wholesaler, jobber, or



1 manufacturer to the director with respect to property
2 that has been used by the wholesaler, jobber, or
3 manufacturer for the purposes stated in this
4 paragraph;

5 (2) If the importer or purchaser is licensed under chapter
6 237 and is:

7 (A) A retailer or other person importing or
8 purchasing for purposes of sale or resale, not
9 exempted by paragraph (1);

10 (B) A manufacturer importing or purchasing material
11 or commodities that are to be incorporated by the
12 manufacturer into a finished or saleable product
13 (including the container or package in which the
14 product is contained) wherein it will remain in a
15 form as to be perceptible to the senses, and the
16 finished or saleable product is to be sold at
17 retail in this State, in a manner as to result in
18 a further tax on the activity of the manufacturer
19 in selling the products at retail;

20 (C) A contractor importing or purchasing material or
21 commodities that are to be incorporated by the
22 contractor into the finished work or project



1 required by the contract and that will remain in
2 the finished work or project in a form as to be
3 perceptible to the senses;

4 (D) A person engaged in a service business or calling
5 as defined in section 237-7, or a person
6 furnishing transient accommodations subject to
7 the tax imposed by section 237D-2, in which the
8 import or purchase of tangible personal property
9 would have qualified as a sale at wholesale as
10 defined in section A-2 had the seller of the
11 property been subject to the tax in chapter 237;
12 or

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



1 the tax shall be one-half of one per cent of the
2 purchase price of the property, if the purchase and
3 sale are consummated in Hawaii; or, if there is no
4 purchase price applicable thereto, or if the purchase
5 or sale is consummated outside of Hawaii, then one-
6 half of one per cent of the value of the property.

7 **§B-3 Imposition of tax on imported services or**
8 **contracting; exemptions.** There is hereby levied an excise tax
9 on the value of services or contracting as defined in section
10 237-6 that are performed by an unlicensed seller at a point
11 outside the State and imported or purchased for use in this
12 State. The tax imposed by this chapter shall accrue when the
13 service or contracting as defined in section 237-6 is received
14 by the importer or purchaser and becomes subject to the taxing
15 jurisdiction of the State. The rates of the tax hereby imposed
16 and the exemptions from the tax are as follows:

17 (1) If the importer or purchaser is licensed under chapter
18 237 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 of the importer
2 or purchaser is subject to the tax imposed under
3 chapter A on services at the rate of one-half of
4 one per cent; or

5 (B) A manufacturer importing or purchasing services
6 or contracting that become identifiable elements,
7 excluding overhead, of a finished or saleable
8 product (including the container or package in
9 which the product is contained) and the finished
10 or saleable product is to be sold in a manner
11 that results in a further tax on the manufacturer
12 as a wholesaler, and not a retailer;

13 there shall be no tax imposed on the value of the
14 imported or purchased services or contracting;

15 provided that if the manufacturer is also engaged in
16 business as a retailer as classified under chapter
17 237, paragraph (2) shall apply to the manufacturer,
18 but the director of taxation shall refund to the
19 manufacturer, in the manner provided under section
20 231-23(c), that amount of tax that the manufacturer,
21 to the satisfaction of the director, shall establish
22 to have been paid by the manufacturer to the director



1 with respect to services that have been used by the
2 manufacturer for the purposes stated in this
3 paragraph;

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

6 (A) Engaged in a service business or calling in which
7 the imported or purchased services or contracting
8 become identifiable elements, excluding overhead,
9 of the services rendered by the importer or
10 purchaser, and the gross income from those
11 services when sold by the importer or purchaser
12 is subject to the tax imposed under chapter 237;

13 (B) A manufacturer importing or purchasing services
14 or contracting that become identifiable elements,
15 excluding overhead, of the finished or saleable
16 manufactured product (including the container or
17 package in which the product is contained) and
18 the finished or saleable product is to be sold in
19 a manner that results in a further tax under
20 chapter 237 on the activity of the manufacturer
21 as a retailer; or



1 (C) A contractor importing or purchasing services or
2 contracting that become identifiable elements,
3 excluding overhead, of the finished work or
4 project required, under the contract, and where
5 the gross proceeds derived by the contractor are
6 subject to the tax under section 237-13(2) as a
7 contractor;

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

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

12 **§B-5 Certain property used by producers.** If a licensed
13 producer, or a cooperative association acting under the
14 authority of chapter 421 or 422, in order to sell to the
15 producer, or a licensed person, imports into the State or
16 acquires in the State commodities, materials, items, services,
17 or living things enumerated in section A-2(3) and (5) to (7),
18 then section A-2 shall apply. If section A-2 applies and the
19 producer is engaged in the sale of the producer's products at
20 retail or in any manner other than at wholesale, then the tax
21 upon use of property in the State imposed by section 238-2 shall
22 apply the same as in the case of a purchaser who is a licensed



1 retailer. In other cases no tax shall be imposed under this
2 chapter.

3 **§B-6 Administration.** (a) Sections 238-5, 238-6, 238-7,
4 238-8, 238-9, 238-9.5, 238-10, 238-11, 238-13, 238-14 and 238-16
5 shall apply to this chapter."

6 SECTION 4. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated and to read
8 as follows:

9 "CHAPTER

10 INSURANCE PRODUCER'S TAX

11 **§C-1 Definitions.** The definitions contained in sections
12 237-1, 237-2 and 237-3 shall apply to this chapter.

13 **§C-2 Tax on insurance producers.** Upon every person
14 engaged as a licensed producer pursuant to chapter 431, there is
15 hereby levied and shall be assessed and collected a tax equal to
16 0.15 per cent of the commissions due to that activity.

17 **§C-3 Apportionment.** Where insurance agents, including
18 general agents, subagents, or solicitors, who are not employees
19 and are licensed pursuant to chapter 431, produce commissions
20 that are divided between the general agents, subagents, or
21 solicitors, as the case may be, the tax levied under section C-2
22 as to insurance general agents, subagents, or solicitors shall



1 apply to each person with respect to the person's portion of the
2 commissions, and no more.

3 **§C-4 Administrative provisions.** Sections 237-8, 237-9,
4 237-9.5, 237-11, 237-12, 237-30, 237-31, 237-33, 237-33.5, 237-
5 34, 237-35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-
6 42, 237-43, and 237-46 shall apply to this chapter."

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

10 "§46- County compliance with the streamlined sales and
11 use tax agreement. The counties shall not adopt any law or
12 interpret any law in such a manner that violates the provisions
13 of the streamlined sales and use tax agreement established by
14 the Streamlined Sales Tax Governing Board, Incorporated, and
15 adopted pursuant to chapter 255D."

16 SECTION 6. Chapter 237, Hawaii Revised Statutes, is
17 amended by adding six new sections to be appropriately
18 designated and to read as follows:

19 "§237-A General sourcing rules.

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



- 1 (A) When the product is received by the purchaser at
2 a business location of the seller, the sale is
3 sourced to that business location;
- 4 (B) When the product is not received by the purchaser
5 at a business location of the seller, the sale is
6 sourced to the location where receipt by the
7 purchaser (or the purchaser's donee, designated
8 as such by the purchaser) occurs, including the
9 location indicated by instructions for delivery
10 to the purchaser (or donee), known to the seller;
- 11 (C) When subparagraphs (A) and (B) do not apply, the
12 sale is sourced to the location indicated by an
13 address for the purchaser that is available from
14 the business records of the seller that are
15 maintained in the ordinary course of the seller's
16 business when use of this address does not
17 constitute bad faith;
- 18 (D) When subparagraphs (A), (B), and (C) do not
19 apply, the sale is sourced to the location
20 indicated by an address for the purchaser
21 obtained during the consummation of the sale,
22 including the address of a purchaser's payment



1 instrument, if no other address is available,
2 when use of this address does not constitute bad
3 faith; or

4 (E) When none of the previous rules of subsections
5 (A), (B), (C), or (D) apply, including the
6 circumstance in which the seller is without
7 sufficient information to apply the previous
8 rules, then the location shall be determined by
9 the address from which tangible personal property
10 was shipped, from which the digital good or the
11 computer software delivered electronically was
12 first available for transmission by the seller,
13 or from which the service was provided
14 (disregarding for these purposes any location
15 that merely provided the digital transfer of the
16 product sold);

17 (2) The lease or rental of tangible personal property,
18 other than property identified in paragraphs (3) or
19 (4), shall be sourced as follows:

20 (A) For a lease or rental that requires recurring
21 periodic payments, the first periodic payment is
22 sourced the same as a retail sale in accordance



1 with paragraph (1). Periodic payments made
2 subsequent to the first payment are sourced to
3 the primary property location for each period
4 covered by the payment. The primary property
5 location shall be as indicated by an address for
6 the property provided by the lessee that is
7 available to the lessor from its records
8 maintained in the ordinary course of business,
9 when use of this address does not constitute bad
10 faith. The property location shall not be
11 altered by intermittent use at different
12 locations, such as use of business property that
13 accompanies employees on business trips and
14 service calls; or

15 (B) For a lease or rental that does not require
16 recurring periodic payments, the payment is
17 sourced the same as a retail sale in accordance
18 with paragraph (1);

19 This paragraph does not affect the imposition or
20 computation of general excise or use tax on leases or
21 rentals based on a lump sum or accelerated basis, or
22 on the acquisition of property for lease;



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

5 (A) For a lease or rental that requires recurring
6 periodic payments, each periodic payment is
7 sourced to the primary property location. The
8 primary property location shall be as indicated
9 by an address for the property provided by the
10 lessee that is available to the lessor from its
11 records maintained in the ordinary course of
12 business, when use of this address does not
13 constitute bad faith. This location shall not be
14 altered by intermittent use at different
15 locations; or

16 (B) For a lease or rental that does not require
17 recurring periodic payments, the payment is
18 sourced the same as a retail sale in accordance
19 with paragraph (1);

20 This paragraph does not affect the imposition or
21 computation of general excise or use tax on leases or



1 rentals based on a lump sum or accelerated basis, or
2 on the acquisition of property for lease;

3 (4) The retail sale, including lease or rental, of
4 transportation equipment shall be sourced the same as
5 a retail sale in accordance with paragraph (1),
6 notwithstanding the exclusion of lease or rental in
7 paragraph (1). "Transportation equipment" means any
8 of the following:

9 (A) Locomotives and railcars that are utilized for
10 the carriage of persons or property in interstate
11 commerce;

12 (B) Trucks and truck-tractors with a gross vehicle
13 weight rating of 10,001 pounds or greater,
14 trailers, semi-trailers, or passenger buses that
15 are:

16 (i) Registered through the international
17 registration plan; and

18 (ii) Operated under authority of a carrier
19 authorized and certificated by the United
20 States Department of Transportation or
21 another federal authority to engage in the



1 carriage of persons or property in

2 interstate commerce;

3 (C) Aircraft that are operated by air carriers
4 authorized and certificated by the United States
5 Department of Transportation or another federal
6 or a foreign authority to engage in the carriage
7 of persons or property in interstate or foreign
8 commerce; and

9 (D) Containers designed for use on and component
10 parts attached or secured on the items set forth
11 in subparagraph (A) to (C).

12 **§237-B General sourcing definitions.** For the purposes of
13 section 237-A(1), the terms "receive" and "receipt" mean:

14 (1) Taking possession of tangible personal property;

15 (2) Making first use of services; or

16 (3) Taking possession or making first use of digital
17 goods, whichever comes first.

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

20 **§237-C Telecommunication sourcing rule.** (a) Except for
21 the defined telecommunication services in subsection (c), the



1 sale of telecommunication service sold on a call-by-call basis
2 shall be sourced to:

- 3 (1) Each level of taxing jurisdiction where the call
4 originates and terminates in that jurisdiction; or
5 (2) Each level of taxing jurisdiction where the call
6 either originates or terminates and in which the
7 service address is also located.

8 (b) Except for the defined telecommunication services in
9 subsection (c), a sale of telecommunications services sold on a
10 basis other than a call-by-call basis, is sourced to the
11 customer's place of primary use.

12 (c) The sale of the following telecommunication services
13 shall be sourced to each level of taxing jurisdiction as
14 follows:

- 15 (1) A sale of mobile telecommunications services other
16 than air-to-ground radiotelephone service and prepaid
17 calling service, is sourced to the customer's place of
18 primary use as required by the Mobile
19 Telecommunications Sourcing Act;
20 (2) A sale of post-paid calling service is sourced to the
21 origination point of the telecommunications signal as
22 first identified by either:



- 1 (A) The seller's telecommunications system; or
2 (B) Information received by the seller from its
3 service provider, where the system used to
4 transport such signals is not that of the seller;
- 5 (3) Until December 31, 2007, a sale of prepaid calling
6 service is sourced in accordance with section 237-A;
7 provided that in the case of a sale of mobile
8 telecommunications service that is a prepaid
9 telecommunications service, the rule provided in
10 section 237-A(1)(E) shall include as an option the
11 location associated with the mobile telephone number;
- 12 (4) Effective January 1, 2008, a sale of prepaid calling
13 service or a sale of a prepaid wireless calling
14 service is sourced in accordance with section 237-A;
15 provided that in the case of a sale of prepaid
16 wireless calling service, the rule provided in section
17 237-A(1)(E) shall include as an option the location
18 associated with the mobile telephone number; or
- 19 (5) A sale of a private communication service is sourced
20 as follows:
- 21 (A) Service for a separate charge related to a
22 customer channel termination point is sourced to



1 each level of jurisdiction in which the customer
2 channel termination point is located;

3 (B) Service where all customer termination points are
4 located entirely within one jurisdiction or
5 levels of jurisdiction is sourced in the
6 jurisdiction in which the customer channel
7 termination points are located; or

8 (C) Service for segments of a channel between two
9 customer channel termination points located in
10 different jurisdictions and which segment of
11 channel are separately charged is sourced fifty
12 per cent in each level of jurisdiction in which
13 the customer channel termination points are
14 located.

15 Service for segments of a channel located in more than
16 one jurisdiction or levels of jurisdiction and which
17 segments are not separately billed is sourced in each
18 jurisdiction based on the percentage determined by
19 dividing the number of customer channel termination
20 points in such jurisdiction by the total number of
21 customer channel termination points.



1 §237-D Telecommunication sourcing definitions. Until
2 December 31, 2007, for the purposes of section 237-C, the
3 following definitions shall apply:

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

8 "Call-by-call basis" means any method of charging for
9 telecommunications services where the price is measured by
10 individual calls.

11 "Communications channel" means a physical or virtual path
12 of communications over which signals are transmitted between or
13 among customer channel termination points.

14 "Customer" means the person or entity that contracts with
15 the seller of telecommunications services. If the end user of
16 telecommunications services is not the contracting party, the
17 end user of the telecommunications service is the customer of
18 the telecommunication service, but this sentence only applies
19 for the purpose of sourcing sales of telecommunications services
20 under section 237-C. "Customer" does not include a reseller of
21 telecommunications service or for mobile telecommunications
22 service of a serving carrier under an agreement to serve the



1 customer outside the home service provider's licensed service
2 area.

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

5 "End user" means the person who utilizes the
6 telecommunication service. In the case of an entity, "end user"
7 means the individual who utilizes the service on behalf of the
8 entity.

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

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

15 "Place of primary use" means the street address
16 representative of where the customer's use of the
17 telecommunications service primarily occurs, which shall be the
18 residential street address or the primary business street
19 address of the customer. In the case of mobile
20 telecommunications services, "place of primary use" shall be
21 within the licensed service area of the home service provider.



1 "Post-paid calling service" means the telecommunications
2 service obtained by making a payment on a call-by-call basis
3 either through the use of a credit card or payment mechanism
4 such as a bank card, travel card, credit card, or debit card, or
5 by charge made to a telephone number that is not associated with
6 the origination or termination of the telecommunications
7 service. A post-paid calling service includes a
8 telecommunications service that would be a prepaid calling
9 service except it is not exclusively a telecommunication
10 service.

11 "Prepaid calling service" means the right to access
12 exclusively telecommunications services, which must be paid for
13 in advance and that enables the origination of calls using an
14 access number or authorization code, whether manually or
15 electronically dialed, and that is sold in predetermined units
16 or dollars of which the number declines with use in a known
17 amount.

18 "Private communication service" means a telecommunication
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 services 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 such
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-E Telecommunications sourcing definitions.** Effective
20 January 1, 2008, for the purpose of section 237-C, the following
21 definitions shall apply:



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

5 "Call-by-call basis" means any method of charging for
6 telecommunications services where the price is measured by
7 individual calls.

8 "Communications channel" means a physical or virtual path
9 of communications over which signals are transmitted between or
10 among customer channel termination points.

11 "Customer" means the person or entity that contracts with
12 the seller of telecommunications services. If the end user of
13 telecommunications services is not the contracting party, the
14 end user of the telecommunications service is the customer of
15 the telecommunication service, but this sentence only applies
16 for the purpose of sourcing sales of telecommunications services
17 under section 237-C. "Customer" does not include a reseller of
18 telecommunications service or for mobile telecommunications
19 service of a serving carrier under an agreement to serve the
20 customer outside the home service provider's licensed service
21 area.



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

3 "End user" means the person who utilizes the
4 telecommunication service. In the case of an entity, "end user"
5 means the individual who utilizes the service on behalf of the
6 entity.

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

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

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

20 "Post-paid calling service" means the telecommunications
21 service obtained by making a payment on a call-by-call basis
22 either through the use of a credit card or payment mechanism



1 such as a bank card, travel card, credit card, or debit card, or
2 by charge made to a telephone number that is not associated with
3 the origination or termination of the telecommunications
4 service. A post-paid calling service includes a
5 telecommunications service, except a prepaid wireless calling
6 service, that would be a prepaid calling service except it is
7 not exclusively a telecommunication service.

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

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



1 "Private communication service" means a telecommunication
2 service that entitles the customer to exclusive or priority use
3 of a communications channel or group of channels between or
4 among termination points, regardless of the manner in which the
5 channel or channels are connected, and includes switching
6 capacity, extension lines, stations, and any other associated
7 services that are provided in connection with the use of the
8 channel or channels.

9 "Service address" means:

- 10 (1) The location of the telecommunications equipment to
11 which a customer's call is charged and from which the
12 call originates or terminates, regardless of where the
13 call is billed or paid;
- 14 (2) If the location in paragraph (1) is not known, service
15 address means the origination point of the signal of
16 the telecommunications services first identified by
17 either the seller's telecommunications system or in
18 information received by the seller from its service
19 provider, where the system used to transport such
20 signals is not that of the seller; or



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

4 **§237-F Deduction for bad debts.** (a) A seller shall be
5 allowed a deduction from taxable sales for bad debts. A seller
6 may deduct the amount of bad debts from the seller's gross
7 sales, rentals, or services used for the computation of the tax.
8 The amount of gross sales, rentals, or services deducted shall
9 be charged off as uncollectible on the books and records of the
10 seller at the time the debt becomes worthless and deducted on
11 the return for the period during which the bad debt is written
12 off as uncollectible in the claimant's books and records and
13 shall be eligible to be deducted for federal income tax
14 purposes.

15 For the purposes of this section, a claimant who is not
16 required to file a federal income tax return may deduct a bad
17 debt on a return filed for the period in which the bad debt
18 becomes worthless and is written off as uncollectible in the
19 claimant's books and records and would be eligible for a bad
20 debt deduction for federal income tax purposes if the claimant
21 was required to file a federal income tax return.



1 If a consumer or other person pays all or part of a bad
2 debt with respect to which a seller claimed a deduction under
3 this section, the seller is liable for the amount of taxes
4 deducted in connection with that portion of the debt for which
5 payment is received and shall remit these taxes in his or her
6 next payment to the department. Any payments made on a bad debt
7 shall be applied proportionally first to the taxable price of
8 the property and the tax on the property and second to any
9 interest, service, or other charge.

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

19 (c) If a certified service provider assumed filing
20 responsibility under the streamlined sales and use tax
21 administration act, the certified service provider may claim, on
22 behalf of the seller, any bad debt allowable to the seller and



1 shall credit or refund that amount of bad debt allowed or
2 refunded to the seller.

3 (d) If the books and records of a seller under the
4 streamlined sales and use tax administration act that claims a
5 bad debt allowance support an allocation of the bad debts among
6 member states of that agreement, the seller may allocate the bad
7 debts.

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

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

17 (1) Interest, finance charge, or use tax on the purchase
18 price;

19 (2) Uncollectible amounts on property that remains in the
20 possession of the seller until the full purchase price
21 is paid;



1 (3) Expenses incurred in attempting to collect any account
2 receivable or any portion of the debt recovered;

3 (4) Any accounts receivable that have been sold to and
4 remain in the possession of a third party for
5 collection; or

6 (5) Repossessed property."

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

10 "Delivery charges" means charges by the seller for
11 preparation and delivery to a location designated by the
12 purchaser of personal property or services including, but not
13 limited to, transportation, shipping, postage, handling,
14 crating, and packing. If a shipment includes both exempt and
15 taxable property, the seller should allocate the delivery charge
16 by using: (1) a percentage based on the total sales price of
17 the taxable property compared to the total sales price of all
18 property in the shipment; or (2) a percentage based on the total
19 weight of the taxable property compared to the total weight of
20 all property in the shipment.

21 "Lease or rental":



- 1 (1) After _____, means any transfer of possession
2 or control of tangible personal property for a fixed
3 or indeterminate term for consideration;
- 4 (2) May include future options to purchase or extend;
- 5 (3) Does not include:
- 6 (A) A transfer of possession or control of property
7 under a security agreement or deferred payment
8 plan that requires the transfer of title upon
9 completion of the required payments;
- 10 (B) A transfer of possession or control of property
11 under an agreement that requires the transfer of
12 title upon completion of required payments and
13 payment of an option price does not exceed the
14 greater of \$100 or one per cent of the total
15 required payments;
- 16 (C) Providing tangible personal property along with
17 an operator for a fixed or indeterminate period
18 of time. A condition of this exclusion is that
19 the operator is necessary for the equipment to
20 perform as designed. For the purpose of this
21 subparagraph, an operator shall do more than



1 maintain, inspect, or set-up the tangible
2 personal property; or
3 (D) Agreements covering motor vehicles and trailers
4 where the amount of consideration may be
5 increased or decreased by reference to the amount
6 realized upon sale or disposition of the property
7 as defined in 26 U.S.C. section 7701(h)(1).

8 For the purposes of this chapter, the definition of "lease
9 or rental" shall be used regardless of whether a transaction is
10 characterized as a lease or rental under generally accepted
11 accounting principles, the federal Internal Revenue Code, or
12 other provisions of federal, state or local law.

13 "Sales price" applies to the measure subject to tax and
14 means the total amount of consideration, including, cash credit,
15 property, and services for which personal property or services
16 are sold, leased, rented, valued in money, whether money is
17 received or otherwise, without any deduction for the following:

- 18 (1) The seller's cost of the property sold;
19 (2) The cost of the materials used, labor or service cost,
20 losses, all costs of transportation to the seller, all
21 taxes imposed on the seller, and any other expense of
22 the seller;



1 (3) Charges by the seller for any services necessary to
2 complete the sale, other than delivery and
3 installation charges;

4 (4) Delivery and installation charges; or

5 (5) Installation charges.

6 "Tangible personal property" means personal property that
7 can be seen, weighed, measured, felt, or touched, or that is in
8 any manner perceptible to the senses. "Tangible personal
9 property" prewritten computer software."

10 SECTION 8. Chapter 255D, Hawaii Revised Statutes, is
11 amended by adding seven new sections to be appropriately
12 designated and to read as follows:

13 "§255D-A Relief from certain liability. All sellers and
14 certified service providers as defined in section 255D-2 using
15 databases pursuant to section 255D-D(f) and (g) shall be
16 relieved from liability to the state and local jurisdictions for
17 having charged and collected the incorrect amount of general
18 excise or use tax resulting from the seller or certified service
19 provider relying on erroneous data provided by the state on tax
20 rates, boundaries, or taxing jurisdiction assignments.



1 §255D-B Rounding rule. The department of taxation shall
2 adopt a rounding algorithm for general excise and use taxes with
3 the following criteria:

4 (1) Tax computation shall be carried to the third decimal
5 place; and

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

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

12 §255D-C Amnesty for registration under this chapter. (a)
13 The department shall provide amnesty for uncollected or unpaid
14 general excise tax under chapter 237 or use tax under chapter
15 238, including any county surcharge, to a seller who registers
16 to pay or to collect and remit applicable general excise or use
17 tax on sales made to purchasers in the State in accordance with
18 the terms of the streamlined sales and use tax agreement,
19 provided that the seller was not so registered in the State in
20 the twelve-month period preceding the effective date of the
21 State's participation in the streamlined sales and use tax
22 agreement.



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

8 (c) The amnesty shall not be available to a seller with
9 respect to any matter or matters for which the seller received
10 notice of the commencement of an audit and the audit is not yet
11 finally resolved including any related administrative and
12 judicial processes.

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

16 (e) The amnesty shall be fully effective, absent the
17 seller's fraud or intentional misrepresentation of a material
18 fact, as long as the seller continues registration and continues
19 payment or collection and remittance of applicable general
20 excise or use taxes for a period of at least thirty-six months.
21 The statute of limitations is tolled with respect to asserting a
22 tax liability during this thirty-six month period.



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

4 **§255D-D Local rate and boundary changes.** (a) Any rate
5 changes by a county shall be effective only on the first day of
6 a calendar quarter after a minimum of sixty days' notice to
7 sellers.

8 (b) Any county tax rate changes to purchases from printed
9 catalogs wherein the purchaser computed the tax based upon
10 county tax rates published in the catalog shall be effective
11 only on the first day of a calendar quarter after a minimum of
12 one hundred twenty days' notice to sellers.

13 (c) For general excise and use tax purposes only, local
14 jurisdiction boundary changes apply only on the first day of a
15 calendar quarter after a minimum of sixty days' notice to
16 sellers.

17 (d) The department of taxation shall provide and maintain
18 a database that describes boundary changes for all taxing
19 jurisdictions. The database shall include a description of the
20 change and the effective date of the change for general excise
21 tax under chapter 237 and use tax under chapter 238 purposes.



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

12 (f) The department of taxation shall provide and maintain
13 a database that assigns each five digit and nine digit zip code
14 within the State to the proper tax rates and jurisdictions. The
15 department of taxation shall apply the lowest combined tax rate
16 imposed in the zip code area if the area includes more than one
17 tax rate in any level of taxing jurisdictions. If a nine digit
18 zip code designation is not available for a street address or if
19 a seller or certified service provider is unable to determine
20 the nine digit zip code designation of a purchaser after
21 exercising due diligence to determine the designation, the
22 seller or certified service provider may apply the rate for the



1 five digit zip code area. For the purposes of this section,
2 there is a rebuttable presumption that a seller or certified
3 service provider has exercised due diligence if the seller has
4 attempted to determine the nine digit zip code designation by
5 utilizing software approved by the Streamlined Sales Tax
6 Governing Board, Incorporated, that makes this designation from
7 the street address and the five digit zip code of the purchaser.

8 The State shall participate with other states in the
9 development of an address-based system for assigning taxing
10 jurisdictions. The system shall meet the requirements developed
11 pursuant to the federal Mobile Telecommunications Sourcing Act
12 (4 U.S.C. Sec. 119(a)). If any state develops an address-based
13 assignment system pursuant to the Mobile Telecommunications
14 Sourcing Act, a seller may use that system in place of the
15 system provided for in subsection (e) of this section.

16 **§255D-E Certified service provider; agent of the seller.**

17 (a) A certified service provider is the agent of a seller, with
18 whom the certified service provider has contracted for the
19 collection and remittance of general excise and use taxes. As
20 the seller's agent, the certified service provider is liable for
21 general excise and use tax due to the State on all sales



1 transactions it processes for the seller unless the seller made
2 a material misrepresentation or committed fraud.

3 (b) A seller that uses a certified automated system is
4 responsible and is liable to the State for reporting and
5 remitting tax.

6 **§255D-F Confidentiality of records.** (a) Except as
7 provided in subsection (c), a certified service provider shall
8 not retain or disclose the personally identifiable information
9 of consumers. A certified service provider's system shall be
10 designed and tested to ensure the privacy of consumers by
11 protecting their anonymity.

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

18 (c) A certified service provider's retention or disclosure
19 to member states of personally identifiable information is
20 limited to that required to ensure the validity of exemptions
21 claimed because of a consumer's status or intended use of the
22 goods or services purchased.



1 (d) A certified service provider shall provide the
2 necessary technical, physical, and administrative safeguards to
3 protect personally identifiable information from unauthorized
4 access and disclosure.

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

7 (f) If personally identifiable information is retained by
8 the State for the purpose of subsection (c), in the absence of
9 exigent circumstances, a person shall be afforded reasonable
10 access to their own data, with a right to correct inaccurately
11 recorded data.

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

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

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

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

21 (4) Prevent, consistent with federal law, disclosures or
22 misuse of federal return information obtained under a



1 disclosure agreement with the internal revenue
2 service; and

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

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

9 (i) The department shall destroy personally identifiable
10 information obtained from a certified service provider when the
11 information is no longer required for purposes under subsection
12 (c).

13 (j) If a person other than a member state or person
14 authorized by a member state's law or the agreement seeks to
15 discover personally identifiable information about an individual
16 from the State, the department shall make a reasonable and
17 timely effort to notify that individual of the request.

18 (k) As used in this section, "personally identifiable
19 information" means information that identifies a specific
20 person.

21 **§255D-G Liability for uncollected tax.** (a) A seller
22 registered under the agreement is not liable for any uncollected



1 or nonremitted tax on transactions with purchasers in the State
2 before the date of registration if the seller was not licensed
3 or registered under chapter 237 in the twelve-month period
4 preceding the effective date of the State's participation in the
5 agreement. The seller is also not responsible for any penalty
6 or interest that may be due on those transactions. This
7 subsection applies only if the seller is registered in this
8 state within 12 months of the effective date of this state's
9 participation in the agreement.

10 (b) Subsection (a) does not apply to the following:

11 (1) Any tax liability of the registered seller for
12 transactions that are subject to general excise or use
13 tax in the State in which the registered seller is the
14 purchaser;

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

18 (3) Any transactions for which the seller received notice
19 of the commencement of an audit and the audit is not
20 finally resolved, including related administrative or
21 judicial processes.



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

8 **§255D-H Rate changes.** (a) The department shall publish
9 on the state website a notification to sellers registered under
10 the agreement of a change in rate or tax base within five
11 business days of receiving notice of the public act number
12 assigned by the governor to the act that changes that tax rate
13 or base or of an amendment to general excise and use tax rules.
14 Whenever possible, a rate or tax base change should occur on the
15 first day of a calendar quarter.

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

19 (c) The department shall complete a taxability matrix as
20 provided for under section 328 of the agreement, maintain it in
21 a database in a downloadable format approved by the board, and
22 provide notice of changes in the matrix."



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

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



1 the purposes of this chapter on the accrual basis for the same
2 period.

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

7 SECTION 10. Section 237-9, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§237-9 Licenses; penalty.** (a) Except as provided in
10 this section, any person who has a gross income or gross
11 proceeds of sales or value of products upon which a privilege
12 tax is imposed by this chapter, as a condition precedent to
13 engaging or continuing in such business, shall in writing apply
14 for and obtain from the department of taxation, upon a one-time
15 payment of the sum of \$20, a license to engage in and to conduct
16 such business, upon condition that the person shall pay the
17 taxes accruing to the State under this chapter, and the person
18 shall thereby be duly licensed to engage in and conduct the
19 business. Any person licensed or holding a license under this
20 chapter before January 1, 1990, shall pay a one-time license
21 renewal fee of \$20 on or before January 31, 1990, as a condition
22 precedent to engaging or continuing in business. The license



1 shall not be transferable and shall be valid only for the person
2 in whose name it is issued and for the transaction of business
3 at the place designated therein. The license may be inspected
4 and examined, and shall at all times be conspicuously displayed
5 at the place for which it is issued.

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

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



1 (c) If the license fee is paid, the department shall not
2 refuse to issue a license or revoke or cancel a license for the
3 exercise of a privilege protected by the First Amendment of the
4 Constitution of the United States, or for the carrying on of
5 interstate or foreign commerce, or for any privilege the
6 exercise of which, under the Constitution and laws of the United
7 States, cannot be restrained on account of nonpayment of taxes,
8 nor shall section 237-46 be invoked to restrain the exercise of
9 such a privilege, or the carrying on of such commerce.

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



- 1 (1) Notify all of its direct sellers making sales in the
2 State that it has been designated to collect, report,
3 and pay over the tax imposed by this chapter and
4 chapter 238 on their behalf on the business activity
5 conducted through the marketing arrangement;
- 6 (2) If required by the director as a condition of
7 obtaining the license, furnish with the annual return,
8 a list (including identification numbers) of all
9 direct sellers for the taxable year who have been
10 provided (by the tax collection agent) information
11 returns required under section 6041A of the Internal
12 Revenue Code of 1986, as amended, and any other
13 information that is relevant to ensure proper payment
14 of taxes due under this section; and
- 15 (3) Be personally liable for the taxes due and collected
16 under the tax collection agreement if taxes are
17 collected, but not reported or paid, together with
18 penalties and interest as provided by law.
- 19 (e) The director may authorize a person to assume the
20 obligation of self-accruing and remitting tax due on purchases
21 or leases directly to the department under a direct payment
22 authorization, if the following conditions are met:



- 1 (1) The authorization is to be used for the purchase or
2 lease of tangible personal property or services;
- 3 (2) The authorization is necessary because it is either
4 impractical at the time of acquisition to determine
5 the manner in which the tangible personal property or
6 services will be used or it will facilitate improved
7 compliance with the tax laws of the State; and
- 8 (3) The person requesting authorization for direct payment
9 maintains accurate and complete records of all
10 purchases or leases and uses of tangible personal
11 property or services purchased pursuant to the direct
12 payment authorization in a form acceptable to the
13 department.

14 The department may identify items that are not eligible for a
15 direct payment authorization.

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

17 "Consumer product" shall include tangible consumer products
18 and intangible consumer services.

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



1 (1) To any buyer on a buy-sell basis, a deposit-commission
2 basis, or any similar basis, that the director
3 prescribes by rule adopted pursuant to chapter 91, for
4 resale other than in a permanent retail establishment;

5 (2) Other than in a permanent retail establishment;
6 provided that:

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

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

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

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



1 SECTION 11. Section 237-13, Hawaii Revised Statutes, is
2 amended to read as follows:

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

9 [~~(1) Tax on manufacturers.~~

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



1 ~~prepared for sale, as shown by the gross proceeds~~
2 ~~derived from the sale thereof by the manufacturer~~
3 ~~or person compounding, preparing, or printing~~
4 ~~them, multiplied by one half of one per cent.~~

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

9 ~~(C) If any person liable for the tax on manufacturers~~
10 ~~ships or transports the person's product, or any~~
11 ~~part thereof, out of the State, whether in a~~
12 ~~finished or unfinished condition, or sells the~~
13 ~~same for delivery to points outside the State~~
14 ~~(for example, consigned to a mainland purchaser~~
15 ~~via common carrier f.o.b. Honolulu), the value of~~
16 ~~the products in the condition or form in which~~
17 ~~they exist immediately before entering interstate~~
18 ~~or foreign commerce, determined as hereinafter~~
19 ~~provided, shall be the basis for the assessment~~
20 ~~of the tax imposed by this paragraph. This tax~~
21 ~~shall be due and payable as of the date of entry~~
22 ~~of the products into interstate or foreign~~



1 ~~commerce, whether the products are then sold or~~
2 ~~not. The department shall determine the basis~~
3 ~~for assessment, as provided by this paragraph, as~~
4 ~~follows:~~

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

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



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

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

21 ~~(iv) In all cases in which products leave the~~
22 ~~State in an unfinished condition, the basis~~



1 ~~for assessment shall be adjusted so as to~~
2 ~~deduct the portion of the value as is~~
3 ~~attributable to the finishing of the goods~~
4 ~~outside the State.~~

5 ~~(2)]~~ (1) Tax on business of selling tangible personal
6 property~~[; producing.]~~;

7 (A) Upon every person engaging or continuing in the
8 business of selling any tangible personal
9 property [~~whatsoever~~] (not including, however,
10 bonds or other evidence of indebtedness, or
11 stocks), unless subject to chapter A, there is
12 [~~likewise~~] hereby levied, and shall be assessed
13 and collected, a tax equivalent to four per cent
14 of the gross proceeds of sales of the business;
15 [~~provided that insofar as certain retailing is~~
16 ~~taxed by section 237 16, the tax shall be that~~
17 ~~levied by section 237 16, and in the case of a~~
18 ~~wholesaler, the tax shall be equal to one half of~~
19 ~~one per cent of the gross proceeds of sales of~~
20 ~~the business; provided that insofar as the sale~~
21 ~~of tangible personal property is a wholesale sale~~
22 ~~under section 237 4(a)(8)(B), the sale shall be~~



1 ~~subject to section 237-13.3. Upon every person~~
2 ~~engaging or continuing within this State in the~~
3 ~~business of a producer, the tax shall be equal to~~
4 ~~one half of one per cent of the gross proceeds of~~
5 ~~sales of the business, or the value of the~~
6 ~~products, for sale, if sold for delivery outside~~
7 ~~the State or shipped or transported out of the~~
8 ~~State, and the value of the products shall be~~
9 ~~determined in the same manner as the value of~~
10 ~~manufactured products covered in the cases under~~
11 ~~paragraph (1)(C).]~~

12 (B) Gross proceeds of sales of tangible property,
13 unless subject to chapter A, in interstate and
14 foreign commerce shall constitute a part of the
15 measure of the tax imposed on persons in the
16 business of selling tangible personal property,
17 to the extent, under the conditions, and in
18 accordance with the provisions of the
19 Constitution of the United States and the Acts of
20 the Congress of the United States which may be
21 now in force or may be hereafter adopted, and
22 whenever there occurs in the State an activity to



1 which, under the Constitution and Acts of
2 Congress, there may be attributed gross proceeds
3 of sales, the gross proceeds shall be so
4 attributed[];

5 [~~(C)~~ ~~No manufacturer or producer, engaged in such~~
6 ~~business in the State and selling the~~
7 ~~manufacturer's or producer's products for~~
8 ~~delivery outside of the State (for example,~~
9 ~~consigned to a mainland purchaser via common~~
10 ~~carrier f.o.b. Honolulu), shall be required to~~
11 ~~pay the tax imposed in this chapter for the~~
12 ~~privilege of so selling the products, and the~~
13 ~~value or gross proceeds of sales of the products~~
14 ~~shall be included only in determining the measure~~
15 ~~of the tax imposed upon the manufacturer or~~
16 ~~producer.~~

17 ~~(D)~~] (C) When a manufacturer or producer, as defined
18 under section A-1, engaged in such business in
19 the State, also is engaged in selling the
20 manufacturer's or producer's products in the
21 State at wholesale[] and taxed under chapter A,
22 retail, or in any other manner, the tax for the



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



1 products outside the State shall be required to
2 pay the tax imposed in this chapter for the
3 privilege of producing or selling those
4 products~~[-]~~; and

5 ~~[(E)]~~ (D) A taxpayer selling to a federal cost-plus
6 contractor may make the election provided for by
7 paragraph ~~[(3)(C)]~~, (2)(C), and in that case the
8 tax shall be computed pursuant to the election,
9 notwithstanding this paragraph ~~[or paragraph (1)]~~
10 to the contrary.

11 ~~[(F)]~~ ~~The department, by rule, may require that a~~
12 ~~seller take from the purchaser of tangible~~
13 ~~personal property a certificate, in a form~~
14 ~~prescribed by the department, certifying that the~~
15 ~~sale is a sale at wholesale; provided that:~~

- 16 ~~(i) Any purchaser who furnishes a certificate~~
17 ~~shall be obligated to pay to the seller,~~
18 ~~upon demand, the amount of the additional~~
19 ~~tax that is imposed upon the seller whenever~~
20 ~~the sale in fact is not at 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 sales of the~~
2 ~~business are exclusively at wholesale.~~

3 ~~(3)]~~ (2) Tax upon contractors~~[-]~~;

4 (A) Upon every person engaging or continuing within
5 the State in the business of contracting, the tax
6 shall be equal to four per cent of the gross
7 income of the business; provided that insofar as
8 the business of contracting is taxed by section
9 237-16, which relates to certain retailing, the
10 tax shall be that levied by section 237-16~~[-]~~;

11 (B) In computing the tax levied under this paragraph
12 or section 237-16, there shall be deducted from
13 the gross income of the taxpayer so much thereof
14 as has been included in the measure of the tax
15 levied under subparagraph (A) or section 237-16,
16 on:

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

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



1 (iii) A specialty contractor who is not licensed
2 by the department of commerce and consumer
3 affairs pursuant to section 444-9, but who
4 performs contracting activities on federal
5 military installations and nowhere else in
6 this State;

7 provided that any person claiming a deduction
8 under this paragraph shall be required to show in
9 the person's return the name and general excise
10 number of the person paying the tax on the amount
11 deducted by the person[+];

12 (C) In computing the tax levied under this paragraph
13 against any federal cost-plus contractor, there
14 shall be excluded from the gross income of the
15 contractor so much thereof as fulfills the
16 following requirements:

17 (i) The gross income exempted shall constitute
18 reimbursement of costs incurred for
19 materials, plant, or equipment purchased
20 from a taxpayer licensed under this chapter,
21 not exceeding the gross proceeds of sale of



1 the taxpayer on account of the transaction;

2 and

3 (ii) The taxpayer making the sale shall have
4 certified to the department that the
5 taxpayer is taxable with respect to the
6 gross proceeds of the sale, and that the
7 taxpayer elects to have the tax on gross
8 income computed the same as upon a sale to
9 the state government[-];

10 (D) A person who, as a business or as a part of a
11 business in which the person is engaged, erects,
12 constructs, or improves any building or
13 structure, of any kind or description, or makes,
14 constructs, or improves any road, street,
15 sidewalk, sewer, or water system, or other
16 improvements on land held by the person (whether
17 held as a leasehold, fee simple, or otherwise),
18 upon the sale or other disposition of the land or
19 improvements, even if the work was not done
20 pursuant to a contract, shall be liable to the
21 same tax as if engaged in the business of
22 contracting, unless the person shows that at the



1 time the person was engaged in making the
2 improvements the person intended, and for the
3 period of at least one year after completion of
4 the building, structure, or other improvements
5 the person continued to intend to hold and not
6 sell or otherwise dispose of the land or
7 improvements. The tax in respect of the
8 improvements shall be measured by the amount of
9 the proceeds of the sale or other disposition
10 that is attributable to the erection,
11 construction, or improvement of such building or
12 structure, or the making, constructing, or
13 improving of the road, street, sidewalk, sewer,
14 or water system, or other improvements. The
15 measure of tax in respect of the improvements
16 shall not exceed the amount [~~which~~] that would
17 have been taxable had the work been performed by
18 another, subject as in other cases to the
19 deductions allowed by subparagraph (B). Upon the
20 election of the taxpayer, this paragraph may be
21 applied notwithstanding that the improvements
22 were not made by the taxpayer, or were not made



1 as a business or as a part of a business, or were
2 made with the intention of holding the same.

3 However, this paragraph shall not apply in
4 respect of any proceeds that constitute or are in
5 the nature of rent; all such gross income shall
6 be taxable under paragraph ~~[(9)]~~ (6); provided
7 that insofar as the business of renting or
8 leasing real property under a lease is taxed
9 under section 237-16.5, the tax shall be levied
10 by section 237-16.5~~[-]~~;

11 ~~[(4)]~~ (3) Tax upon theaters, amusements, radio broadcasting
12 stations, etc.

13 ~~[(A)]~~ Upon every person engaging or continuing within
14 the State in the business of operating a theater,
15 opera house, moving picture show, vaudeville,
16 amusement park, dance hall, skating rink, radio
17 broadcasting station, or any other place at which
18 amusements are offered to the public, unless
19 taxed under section A-6, the tax shall be equal
20 to four per cent of the gross income of the
21 business~~[, and in the case of a sale of an~~
22 ~~amusement at wholesale under section 237-~~



1 ~~4(a)(13), the tax shall be subject to section~~
2 ~~237-13.3.~~

3 ~~(B) The department may require that the person~~
4 ~~rendering an amusement at wholesale take from the~~
5 ~~licensed seller a certificate, in a form~~
6 ~~prescribed by the department, certifying that the~~
7 ~~sale is a sale at wholesale; provided that:~~

8 ~~(i) Any licensed seller who furnishes a~~
9 ~~certificate shall be obligated to pay to the~~
10 ~~person rendering the amusement, upon demand,~~
11 ~~the amount of additional tax that is imposed~~
12 ~~upon the seller whenever the sale is not at~~
13 ~~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 person~~
17 ~~rendering the sale is exclusively rendering~~
18 ~~the amusement at wholesale.];~~

19 ~~[(5)]~~ (4) Tax upon sales representatives, etc. Upon every
20 person classified as a representative or purchasing
21 agent under section 237-1, engaging or continuing
22 within the State in the business of performing



1 services for another, other than as an employee, there
2 is likewise hereby levied and shall be assessed and
3 collected a tax equal to four per cent of the
4 commissions and other compensation attributable to the
5 services so rendered by the person~~[-]~~, unless taxable
6 under chapters A or C;

7 ~~[+6+]~~ (5) Tax on service business~~[-]~~ :

8 (A) Upon every person engaging or continuing within
9 the State in any service business or calling
10 including professional services not otherwise
11 specifically taxed under this chapter, chapter A,
12 or chapter C, there is likewise hereby levied and
13 shall be assessed and collected a tax equal to
14 four per cent of the gross income of the
15 business~~[-, and in the case of a wholesaler under~~
16 ~~section 237-4(a)(10), the tax shall be equal to~~
17 ~~one half of one per cent of the gross income of~~
18 ~~the business. Notwithstanding the foregoing, a~~
19 ~~wholesaler under section 237-4(a)(10) shall be~~
20 ~~subject to section 237-13.3.~~

21 ~~(B) The department may require that the person~~
22 ~~rendering a service at wholesale take from the~~



1 ~~licensed seller a certificate, in a form~~
2 ~~prescribed by the department, certifying that the~~
3 ~~sale is a sale at wholesale; provided that:~~

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

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

15 ~~(C) Where any person engaging or continuing within~~
16 ~~the State in any service business or calling~~
17 ~~renders those services upon the order of or at~~
18 ~~the request of another taxpayer who is engaged in~~
19 ~~the service business and who, in fact, acts as or~~
20 ~~acts in the nature of an intermediary between the~~
21 ~~person rendering those services and the ultimate~~
22 ~~recipient of the benefits of those services, so~~



1 ~~much of the gross income as is received by the~~
2 ~~person rendering the services shall be subjected~~
3 ~~to the tax at the rate of one half of one per~~
4 ~~cent and all of the gross income received by the~~
5 ~~intermediary from the principal shall be~~
6 ~~subjected to a tax at the rate of four per cent.~~
7 ~~Where the taxpayer is subject to both this~~
8 ~~subparagraph and to the lowest tax rate under~~
9 ~~subparagraph (A), the taxpayer shall be taxed~~
10 ~~under this subparagraph. This subparagraph shall~~
11 ~~be repealed on January 1, 2006.];~~

12 [~~D~~] (B) Where any person is engaged in the business
13 of selling interstate or foreign common carrier
14 telecommunication services within and without the
15 State, other than as a home service provider, the
16 tax shall be imposed on that portion of gross
17 income received by a person from service which is
18 originated or terminated in this State and is
19 charged to a telephone number, customer, or
20 account in this State notwithstanding any other
21 state law (except for the exemption under section
22 237-23(a)(1)) to the contrary. If, under the



1 Constitution and laws of the United States, the
2 entire gross income as determined under this
3 paragraph of a business selling interstate or
4 foreign common carrier telecommunication services
5 cannot be included in the measure of the tax, the
6 gross income shall be apportioned as provided in
7 section 237-21; provided that the apportionment
8 factor and formula shall be the same for all
9 persons providing those services in the State[-];

10 [~~(E)~~] (C) Where any person is engaged in the business
11 of a home service provider, the tax shall be
12 imposed on the gross income received or derived
13 from providing interstate or foreign mobile
14 telecommunications services to a customer with a
15 place of primary use in this State when such
16 services originate in one state and terminate in
17 another state, territory, or foreign country;
18 provided that all charges for mobile
19 telecommunications services which are billed by
20 or for the home service provider are deemed to be
21 provided by the home service provider at the
22 customer's place of primary use, regardless of



1 where the mobile telecommunications originate,
2 terminate, or pass through; provided further that
3 the income from charges specifically derived from
4 interstate or foreign mobile telecommunications
5 services, as determined by books and records that
6 are kept in the regular course of business by the
7 home service provider in accordance with section
8 239-24, shall be apportioned under any
9 apportionment factor or formula adopted under
10 [~~section 237-13(6)(D).~~] subparagraph (B). Gross
11 income shall not include:

12 (i) Gross receipts from mobile
13 telecommunications services provided to a
14 customer with a place of primary use outside
15 this State;

16 (ii) Gross receipts from mobile
17 telecommunications services that are subject
18 to the tax imposed by chapter 239;

19 (iii) Gross receipts from mobile
20 telecommunications services taxed under
21 section 237-13.8; and



1 (iv) Gross receipts of a home service provider
2 acting as a serving carrier providing mobile
3 telecommunications services to another home
4 service provider's customer[-];

5 For the purposes of this paragraph, "charges for
6 mobile telecommunications services", "customer",
7 "home service provider", "mobile
8 telecommunications services", "place of primary
9 use", and "serving carrier" have the same meaning
10 as in section 239-22[-]; and

11 ~~[-(7) Tax on insurance solicitors and agents. Upon every~~
12 ~~person engaged as a licensed solicitor, general agent,~~
13 ~~or subagent pursuant to chapter 431, there is hereby~~
14 ~~levied and shall be assessed and collected a tax equal~~
15 ~~to .15 per cent of the commissions due to that~~
16 ~~activity.~~

17 ~~-(8) Tax on receipts of sugar benefit payments. Upon the~~
18 ~~amounts received from the United States government by~~
19 ~~any producer of sugar (or the producer's legal~~
20 ~~representative or heirs), as defined under and by~~
21 ~~virtue of the Sugar Act of 1948, as amended, or other~~
22 ~~Acts of the Congress of the United States relating~~



1 ~~thereto, there is hereby levied a tax of one-half of~~
2 ~~one per cent of the gross amount received; provided~~
3 ~~that the tax levied hereunder on any amount so~~
4 ~~received and actually disbursed to another by a~~
5 ~~producer in the form of a benefit payment shall be~~
6 ~~paid by the person or persons to whom the amount is~~
7 ~~actually disbursed, and the producer actually making a~~
8 ~~benefit payment to another shall be entitled to claim~~
9 ~~on the producer's return a deduction from the gross~~
10 ~~amount taxable hereunder in the sum of the amount so~~
11 ~~disbursed. The amounts taxed under this paragraph~~
12 ~~shall not be taxable under any other paragraph,~~
13 ~~subsection, or section of this chapter.~~

14 ~~(9)]~~ (6) Tax on other business. Upon every person
15 engaging or continuing within the State in any
16 business, trade, activity, occupation, or calling not
17 included in the preceding paragraphs or any other
18 provisions of this chapter, there is likewise hereby
19 levied and shall be assessed and collected, a tax
20 equal to four per cent of the gross income thereof.
21 In addition, the rate prescribed by this paragraph
22 shall apply to a business taxable under one or more of



1 the preceding paragraphs or other provisions of this
2 chapter, as to any gross income thereof not taxed
3 thereunder as gross income or gross proceeds of sales
4 or by taxing an equivalent value of products, unless
5 specifically exempted~~[-]~~ or subject to tax under
6 chapter A or chapter C."

7 SECTION 12. Section 237-18, Hawaii Revised Statutes,
8 amended to read as follows:

9 "**§237-18 Further provisions as to application of tax.** (a)

10 Where a coin operated device produces gross income which is
11 divided between the owner or operator of the device, on the one
12 hand, and the owner or operator of the premises where the device
13 is located, on the other hand, the tax imposed by this chapter
14 shall apply to each such person with respect to the person's
15 portion of the proceeds, and no more.

16 (b) Where gate receipts or other admissions are divided
17 between the person furnishing or producing a play, concert,
18 lecture, athletic event, or similar spectacle (including any
19 motion picture showing) on the one hand, and a promoter
20 (including any proprietor or other operator of a motion picture
21 house) offering the spectacle to the public, on the other hand,
22 the tax imposed by this chapter, if the promoter is subject to



1 the tax imposed by this chapter, shall apply only to the
2 promoter measured by the whole of the proceeds, and the promoter
3 shall be authorized to deduct and withhold from the portion of
4 the proceeds payable to the person furnishing or producing the
5 spectacle the amount of the tax payable by the person upon such
6 portion. No tax shall apply to a promoter with respect to such
7 portion of the proceeds as is payable to a person furnishing or
8 producing the spectacle, who is exempted by section 237-23 from
9 taxation upon such activity.

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

21 ~~(d) Where, through the activity of a person taxable under~~
22 ~~section 237-13(6), there have been rendered to a cane planter~~



1 ~~services consisting in the harvesting or hauling of the cane, or~~
2 ~~consisting in road maintenance, under a contract between the~~
3 ~~person rendering the services and the cane planter, covering the~~
4 ~~services and also the milling of the sugar, the services of~~
5 ~~harvesting and hauling the cane and road maintenance shall be~~
6 ~~treated the same as the service of milling the cane, as provided~~
7 ~~by subsection (c), and the value of the entire product,~~
8 ~~manufactured or sold for the cane planter under the contract,~~
9 ~~shall be included in the measure of the tax imposed on the~~
10 ~~person as elsewhere provided.]~~

11 ~~[(e)]~~ (c) Where ~~[insurance agents, including general~~
12 ~~agents, subagents, or solicitors, who are not employees and are~~
13 ~~licensed pursuant to chapter 431, or]~~ real estate brokers or
14 salespersons, who are not employees and are licensed pursuant to
15 chapter 467, produce commissions ~~[which]~~ that are divided
16 between ~~[such general agents, subagents, or solicitors, or~~
17 ~~between such]~~ real estate brokers or salespersons, ~~[as the case~~
18 ~~may be,]~~ the tax levied under section ~~[237-13(6)]~~ 237-13(5) as
19 to real estate brokers or salespersons~~[, or under section 237-~~
20 ~~13(7) as to insurance general agents, subagents, or solicitors]~~
21 shall apply to each ~~[such]~~ person with respect to the person's
22 portion of the commissions, and no more.



1 ~~(f)~~ (d) Where tourism related services are furnished
2 through arrangements made by a travel agency or tour packager
3 and the gross income is divided between the provider of the
4 services and the travel agency or tour packager, the tax imposed
5 by this chapter shall apply to each such person with respect to
6 such person's respective portion of the proceeds, and no more.

7 As used in this subsection "tourism related services" means
8 catamaran cruises, canoe rides, dinner cruises, lei greetings,
9 transportation included in a tour package, sightseeing tours not
10 subject to chapter 239, admissions to luaus, dinner shows,
11 extravaganzas, cultural and educational facilities, and other
12 services rendered directly to the customer or tourist, but only
13 if the providers of the services other than air transportation
14 are subject to a four per cent tax under this chapter or chapter
15 239.

16 ~~(g)~~ (e) Where transient accommodations are furnished
17 through arrangements made by a travel agency or tour packager at
18 noncommissioned negotiated contract rates and the gross income
19 is divided between the operator of transient accommodations on
20 the one hand and the travel agency or tour packager on the other
21 hand, the tax imposed by this chapter shall apply to each such



1 person with respect to such person's respective portion of the
2 proceeds, and no more.

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

6 [~~(h)~~] (f) Where the transportation of passengers or
7 property is furnished through arrangements between motor
8 carriers, and the gross income is divided between the motor
9 carriers, any tax imposed by this chapter shall apply to each
10 motor carrier with respect to each motor carrier's respective
11 portion of the proceeds.

12 As used in this subsection:

13 "Carrier" means a person who engages in transportation, and
14 does not include a person such as a freight forwarder or tour
15 packager who provides transportation by contracting with others,
16 except to the extent that such person oneself engages in
17 transportation.

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



1 "Motor carrier" means a common carrier or contract carrier
2 transporting persons or property for compensation on the public
3 highways, other than a public utility as defined under section
4 239-2 or taxicab.

5 "Public highways" has the meaning defined by section 264-1
6 including both state and county highways, but operation upon
7 rails shall not be deemed transportation on the public
8 highways."

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

11 "**§237-21 Apportionment.** If any person~~[, other than~~
12 ~~persons liable to the tax on manufacturers as provided by~~
13 ~~section 237-13(1),]~~ is engaged in business both within and
14 without the State or in selling goods for delivery outside the
15 State, and if under the Constitution or laws of the United
16 States or section 237-29.5 the entire gross income of such
17 person cannot be included in the measure of this tax, there
18 shall be apportioned to the State and included in the measure of
19 the tax that portion of the gross income which is derived from
20 activities within the State, to the extent that the
21 apportionment is required by the Constitution or laws of the
22 United States or section 237-29.5. [~~In the case of a tax upon~~



1 ~~the production of property in the State the apportionment shall~~
2 ~~be determined as in the case of the tax on manufacturers.] In~~
3 other cases, if and to the extent that the apportionment cannot
4 be accurately made by separate accounting methods, there shall
5 be apportioned to the State and included in the measure of this
6 tax that proportion of the total gross income, so requiring
7 apportionment, which the cost of doing business within the
8 State, applicable to the gross income, bears to the cost of
9 doing business both within and without the State, applicable to
10 the gross income."

11 SECTION 14. Section 237-24, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§237-24 Amounts not taxable.** This chapter shall not
14 apply to the following amounts:

- 15 (1) Amounts received under life insurance policies and
16 contracts paid by reason of the death of the insured;
- 17 (2) Amounts received (other than amounts paid by reason of
18 death of the insured) under life insurance, endowment,
19 or annuity contracts, either during the term or at
20 maturity or upon surrender of the contract;
- 21 (3) Amounts received under any accident insurance or
22 health insurance policy or contract or under workers'



1 compensation acts or employers' liability acts, as
2 compensation for personal injuries, death, or
3 sickness, including also the amount of any damages or
4 other compensation received, whether as a result of
5 action or by private agreement between the parties on
6 account of the personal injuries, death, or sickness;

7 (4) The value of all property of every kind and sort
8 acquired by gift, bequest, or devise, and the value of
9 all property acquired by descent or inheritance;

10 (5) Amounts received by any person as compensatory damages
11 for any tort injury to the person, or to the person's
12 character reputation, or received as compensatory
13 damages for any tort injury to or destruction of
14 property, whether as the result of action or by
15 private agreement between the parties (provided that
16 amounts received as punitive damages for tort injury
17 or breach of contract injury shall be included in
18 gross income);

19 (6) Amounts received as salaries or wages for services
20 rendered by an employee to an employer;

21 (7) Amounts received as alimony and other similar payments
22 and settlements;



- 1 (8) Amounts collected by distributors as fuel taxes on
2 "liquid fuel" imposed by chapter 243, and the amounts
3 collected by such distributors as a fuel tax imposed
4 by any Act of the Congress of the United States;
- 5 (9) Taxes on liquor imposed by chapter 244D on dealers
6 holding permits under that chapter;
- 7 ~~[(10) The amounts of taxes on cigarettes and tobacco
8 products imposed by chapter 245 on wholesalers or
9 dealers holding licenses under that chapter and
10 selling the products at wholesale;~~
- 11 ~~+(11)]~~ (10) Federal excise taxes imposed on articles sold at
12 retail and collected from the purchasers thereof and
13 paid to the federal government by the retailer;
- 14 ~~[(12) The amounts of federal taxes under chapter 37 of the
15 Internal Revenue Code, or similar federal taxes,
16 imposed on sugar manufactured in the State, paid by
17 the manufacturer to the federal government;~~
- 18 ~~+(13)]~~ (11) ~~[An amount up to, but not in excess of, \$2,000 a
19 year of gross income]~~ Amounts received by any blind,
20 deaf, or totally disabled person engaging, or
21 continuing, in any business, trade, activity,
22 occupation, or calling within the State; a corporation



1 all of whose outstanding shares are owned by an
2 individual or individuals who are blind, deaf, or
3 totally disabled; a general, limited, or limited
4 liability partnership, all of whose partners are
5 blind, deaf, or totally disabled; or a limited
6 liability company, all of whose members are blind,
7 deaf, or totally disabled;

8 [~~14~~] ~~Amounts received by a producer of sugarcane from the~~
9 ~~manufacturer to whom the producer sells the sugarcane,~~
10 ~~where:~~

11 ~~(A) The producer is an independent cane farmer, so~~
12 ~~classified by the Secretary of Agriculture under the~~
13 ~~Sugar Act of 1948 (61 Stat. 922, Chapter 519) as~~
14 ~~the Act may be amended or supplemented;~~

15 ~~(B) The value or gross proceeds of sale of the sugar,~~
16 ~~and other products manufactured from the~~
17 ~~sugarcane, is included in the measure of the tax~~
18 ~~levied on the manufacturer under section 237-~~
19 ~~13(1) or (2);~~

20 ~~(C) The producer's gross proceeds of sales are~~
21 ~~dependent upon the actual value of the products~~
22 ~~manufactured therefrom or the average value of~~



- 1 ~~all similar products manufactured by the~~
2 ~~manufacturer; and~~
- 3 ~~(D) The producer's gross proceeds of sales are~~
4 ~~reduced by reason of the tax on the value or sale~~
5 ~~of the manufactured products;~~
- 6 ~~(15)]~~ (12) Money paid by the State or eleemosynary child-
7 placing organizations to foster parents for their care
8 of children in foster homes; and
- 9 ~~(16)]~~ (13) Amounts received by a cooperative housing
10 corporation from its shareholders in reimbursement of
11 funds paid by such corporation for lease rental, real
12 property taxes, and other expenses of operating and
13 maintaining the cooperative land and improvements;
14 provided that such a cooperative corporation is a
15 corporation:
- 16 (A) Having one and only one class of stock
17 outstanding;
- 18 (B) Each of the stockholders of which is entitled
19 solely by reason of the stockholder's ownership
20 of stock in the corporation, to occupy for
21 dwelling purposes a house, or an apartment in a
22 building owned or leased by the corporation; and



1 (C) No stockholder of which is entitled (either
2 conditionally or unconditionally) to receive any
3 distribution not out of earnings and profits of
4 the corporation except in a complete or partial
5 liquidation of the corporation."

6 SECTION 15. Section 237-24.3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§237-24.3 Additional amounts not taxable.** In addition to
9 the amounts not taxable under section 237-24, this chapter shall
10 not apply to:

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

20 (2) Amounts received from sales of:

21 (A) Intoxicating liquor as the term "liquor" is
22 defined in chapter 244D;



- 1 (B) Cigarettes and tobacco products as defined in
2 chapter 245; and
- 3 (C) Agricultural, meat, or fish products;
4 to any person or common carrier in interstate or
5 foreign commerce, or both, whether ocean-going or air,
6 for consumption out-of-state on the shipper's vessels
7 or airplanes;
- 8 (3) Amounts received by the manager or board of directors
9 of:
- 10 (A) An association of apartment owners of a
11 condominium property regime established in
12 accordance with chapter 514B; or
- 13 (B) A nonprofit homeowners or community association
14 incorporated in accordance with chapter 414D or
15 any predecessor thereto and existing pursuant to
16 covenants running with the land,
17 in reimbursement of sums paid for common expenses;
- 18 (4) Amounts received or accrued from:
- 19 (A) The loading or unloading of cargo from ships,
20 barges, vessels, or aircraft, whether or not the
21 ships, barges, vessels, or aircraft travel



1 between the State and other states or countries
2 or between the islands of the State;

3 (B) Tugboat services including pilotage fees
4 performed within the State, and the towage of
5 ships, barges, or vessels in and out of state
6 harbors, or from one pier to another; and

7 (C) The transportation of pilots or governmental
8 officials to ships, barges, or vessels offshore;
9 rigging gear; checking freight and similar
10 services; standby charges; and use of moorings
11 and running mooring lines;

12 (5) Amounts received by an employee benefit plan by way of
13 contributions, dividends, interest, and other income;
14 and amounts received by a nonprofit organization or
15 office, as payments for costs and expenses incurred
16 for the administration of an employee benefit plan;
17 provided that this exemption shall not apply to any
18 gross rental income or gross rental proceeds received
19 after June 30, 1994, as income from investments in
20 real property in this State; and provided further that
21 gross rental income or gross rental proceeds from
22 investments in real property received by an employee



1 benefit plan after June 30, 1994, under written
2 contracts executed prior to July 1, 1994, shall not be
3 taxed until the contracts are renegotiated, renewed,
4 or extended, or until after December 31, 1998,
5 whichever is earlier. For the purposes of this
6 paragraph, "employee benefit plan" means any plan as
7 defined in section 1002(3) of title 29 of the United
8 States Code, as amended;

9 (6) Amounts received for purchases made with United States
10 Department of Agriculture food coupons under the
11 federal food stamp program, and amounts received for
12 purchases made with United States Department of
13 Agriculture food vouchers under the Special
14 Supplemental Foods Program for Women, Infants and
15 Children;

16 (7) Amounts received by a hospital, infirmary, medical
17 clinic, health care facility, pharmacy, or a
18 practitioner licensed to administer the drug to an
19 individual for selling prescription drugs or
20 prosthetic devices to an individual; provided that
21 this paragraph shall not apply to any amounts received



1 for services provided in selling prescription drugs or
2 prosthetic devices. As used in this paragraph:

3 (A) "Prescription drugs" are those drugs defined
4 under section 328-1 and dispensed by filling or
5 refilling a written or oral prescription by a
6 practitioner licensed under law to administer the
7 drug and sold by a licensed pharmacist under
8 section 328-16 or practitioners licensed to
9 administer drugs; and

10 (B) "Prosthetic device" means [~~any artificial device~~
11 ~~or appliance, instrument, apparatus, or~~
12 ~~contrivance, including their components, parts,~~
13 ~~accessories, and replacements thereof, used to~~
14 ~~replace a missing or surgically removed part of~~
15 ~~the human body, which is prescribed by a licensed~~
16 ~~practitioner of medicine, osteopathy, or podiatry~~
17 ~~and which is sold by the practitioner or which is~~
18 ~~dispensed and sold by a dealer of prosthetic~~
19 ~~devices; provided that "prosthetic device" shall~~
20 ~~not mean any auditory, ophthalmic, dental, or~~
21 ~~ocular device or appliance, instrument,~~
22 ~~apparatus, or contrivance;] a replacement,~~



1 corrective, or supportive device including repair
2 and replacement parts for same worn on or in the
3 body to:

4 (i) Artificially replace a missing portion of
5 the body;

6 (ii) Prevent or correct physical deformity or
7 malfunction; or

8 (iii) Support a weak or deformed portion of the
9 body.

10 A prosthetic device does not include corrective
11 eyeglasses, contact lenses, hearing aids, and
12 dental prothesis;

13 (8) Taxes on transient accommodations imposed by chapter
14 237D and passed on and collected by operators holding
15 certificates of registration under that chapter;

16 (9) Amounts received as dues by an unincorporated
17 merchants association from its membership for
18 advertising media, promotional, and advertising costs
19 for the promotion of the association for the benefit
20 of its members as a whole and not for the benefit of
21 an individual member or group of members less than the
22 entire membership;



- 1 (10) Amounts received by a labor organization for real
2 property leased to:
- 3 (A) A labor organization; or
- 4 (B) A trust fund established by a labor organization
5 for the benefit of its members, families, and
6 dependents for medical or hospital care, pensions
7 on retirement or death of employees,
8 apprenticeship and training, and other membership
9 service programs.

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

- 14 (11) Amounts received from foreign diplomats and consular
15 officials who are holding cards issued or authorized
16 by the United States Department of State granting them
17 an exemption from state taxes; and

- 18 (12) Amounts received as rent for the rental or leasing of
19 aircraft or aircraft engines used by the lessees or
20 renters for interstate air transportation of
21 passengers and goods. For purposes of this paragraph,
22 payments made pursuant to a lease shall be considered



1 rent regardless of whether the lease is an operating
2 lease or a financing lease. The definition of
3 "interstate air transportation" is the same as in 49
4 U.S.C. 40102."

5 SECTION 16. Section 237-34, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

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



- 1 (1) Trustees;
- 2 (2) Partners;
- 3 (3) Persons named in a board resolution or a one per cent
- 4 shareholder in case of a corporate return;
- 5 (4) The person authorized to act for a corporation in
- 6 dissolution;
- 7 (5) The shareholder of an S corporation;
- 8 (6) The personal representative, trustee, heir, or
- 9 beneficiary of an estate or trust in case of the
- 10 estate's or decedent's return;
- 11 (7) The committee, trustee, or guardian of any person in
- 12 paragraphs (1) to (6) who is incompetent;
- 13 (8) The trustee in bankruptcy or receiver, and the
- 14 attorney-in-fact of any person in paragraphs (1) to
- 15 (7);
- 16 (9) Persons duly authorized by the State in connection
- 17 with their official duties;
- 18 (10) Any duly accredited tax official of the United States
- 19 or of any state or territory;
- 20 (11) The Multistate Tax Commission or its authorized
- 21 representative;
- 22 (12) Members of a limited liability company; [~~and~~]



1 (13) A person contractually obligated to pay the taxes
2 assessed against another when the latter person is
3 under audit by the department~~[]~~; and

4 (14) The Streamlined Sales Tax Governing Board,
5 Incorporated, or its authorized representative.

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

7 SECTION 17. Section 238-2, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§238-2 Imposition of tax on tangible personal property;**
10 **exemptions.** There is hereby levied an excise tax on the use in
11 this State of tangible personal property which is imported by a
12 taxpayer in this State whether owned, purchased from an
13 unlicensed seller, or however acquired for use in this State~~[]~~,
14 unless subject to tax or exempt from tax under chapter B. The
15 tax imposed by this chapter shall accrue when the property is
16 acquired by the importer or purchaser and becomes subject to the
17 taxing jurisdiction of the State. The ~~[rates]~~ rate of the tax
18 hereby imposed ~~[and the exemptions thereof are as follows:]~~

19 ~~(1) If the importer or purchaser is licensed under chapter~~
20 ~~237 and is:~~

21 ~~(A) A wholesaler or jobber importing or purchasing~~
22 ~~for purposes of sale or resale; or~~



1 ~~(B) A manufacturer importing or purchasing material~~
2 ~~or commodities which are to be incorporated by~~
3 ~~the manufacturer into a finished or saleable~~
4 ~~product (including the container or package in~~
5 ~~which the product is contained) wherein it will~~
6 ~~remain in such form as to be perceptible to the~~
7 ~~senses, and which finished or saleable product is~~
8 ~~to be sold in such manner as to result in a~~
9 ~~further tax on the activity of the manufacturer~~
10 ~~as the manufacturer or as a wholesaler, and not~~
11 ~~as a retailer,~~

12 ~~there shall be no tax; provided that if the~~
13 ~~wholesaler, jobber, or manufacturer is also engaged in~~
14 ~~business as a retailer (so classed under chapter 237),~~
15 ~~paragraph (2) shall apply to the wholesaler, jobber,~~
16 ~~or manufacturer, but the director of taxation shall~~
17 ~~refund to the wholesaler, jobber, or manufacturer, in~~
18 ~~the manner provided under section 231-23(e) such~~
19 ~~amount of tax as the wholesaler, jobber, or~~
20 ~~manufacturer shall, to the satisfaction of the~~
21 ~~director, establish to have been paid by the~~
22 ~~wholesaler, jobber, or manufacturer to the director~~



1 ~~with respect to property which has been used by the~~
2 ~~wholesaler, jobber, or manufacturer for the purposes~~
3 ~~stated in this paragraph;~~

4 ~~(2) If the importer or purchaser is licensed under chapter~~
5 ~~237 and is:~~

6 ~~(A) A retailer or other person importing or~~
7 ~~purchasing for purposes of sale or resale, not~~
8 ~~exempted by paragraph (1);~~

9 ~~(B) A manufacturer importing or purchasing material~~
10 ~~or commodities which are to be incorporated by~~
11 ~~the manufacturer into a finished or saleable~~
12 ~~product (including the container or package in~~
13 ~~which the product is contained) wherein it will~~
14 ~~remain in such form as to be perceptible to the~~
15 ~~senses, and which finished or saleable product is~~
16 ~~to be sold at retail in this State, in such~~
17 ~~manner as to result in a further tax on the~~
18 ~~activity of the manufacturer in selling such~~
19 ~~products at retail;~~

20 ~~(C) A contractor importing or purchasing material or~~
21 ~~commodities which are to be incorporated by the~~
22 ~~contractor into the finished work or project~~



1 ~~required by the contract and which will remain in~~
2 ~~such finished work or project in such form as to~~
3 ~~be perceptible to the senses;~~

4 ~~(D) A person engaged in a service business or calling~~
5 ~~as defined in section 237-7, or a person~~
6 ~~furnishing transient accommodations subject to~~
7 ~~the tax imposed by section 237D-2, in which the~~
8 ~~import or purchase of tangible personal property~~
9 ~~would have qualified as a sale at wholesale as~~
10 ~~defined in section 237-4(a)(8) had the seller of~~
11 ~~the property been subject to the tax in chapter~~
12 ~~237; or~~

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



1 ~~the tax shall be one half of one per cent of the~~
2 ~~purchase price of the property, if the purchase and~~
3 ~~sale are consummated in Hawaii; or, if there is no~~
4 ~~purchase price applicable thereto, or if the purchase~~
5 ~~or sale is consummated outside of Hawaii, then one-~~
6 ~~half of one per cent of the value of such property;~~
7 and
8 (3) ~~In all other cases,~~ is four per cent of the value of
9 the property.

10 For purposes of this section, tangible personal property is
11 property that is imported by the taxpayer for use in this State,
12 notwithstanding the fact that title to the property, or the risk
13 of loss to the property, passes to the purchaser of the property
14 at a location outside this State."

15 SECTION 18. Section 238-2.3, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§238-2.3 Imposition of tax on imported services or**
18 **contracting; exemptions.** There is hereby levied an excise tax
19 on the value of services or contracting as defined in section
20 237-6 that are performed by an unlicensed seller at a point
21 outside the State and imported or purchased for use in this
22 State[-], unless subject to tax or exempt from tax under chapter



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

6 ~~(1) If the importer or purchaser is licensed under chapter~~
7 ~~237 and is:~~

8 ~~(A) Engaged in a service business or calling in which~~
9 ~~the imported or purchased services or contracting~~
10 ~~become identifiable elements, excluding overhead,~~
11 ~~of the services rendered by the importer or~~
12 ~~purchaser, and the gross income of the importer~~
13 ~~or purchaser is subject to the tax imposed under~~
14 ~~chapter 237 on services at the rate of one half~~
15 ~~of one per cent or the rate of tax imposed under~~
16 ~~section 237-13.3; 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 on the manufacturer~~
2 ~~as a wholesaler, and not a retailer;~~
3 ~~there shall be no tax imposed on the value of the~~
4 ~~imported or purchased services or contracting;~~
5 ~~provided that if the manufacturer is also engaged in~~
6 ~~business as a retailer as classified under chapter~~
7 ~~237, paragraph (2) shall apply to the manufacturer,~~
8 ~~but the director of taxation shall refund to the~~
9 ~~manufacturer, in the manner provided under section~~
10 ~~231-23(c), that amount of tax that the manufacturer,~~
11 ~~to the satisfaction of the director, shall establish~~
12 ~~to have been paid by the manufacturer to the director~~
13 ~~with respect to services that have been used by the~~
14 ~~manufacturer for the purposes stated in this~~
15 ~~paragraph.~~

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

18 ~~(A) Engaged in a service business or calling in which~~
19 ~~the imported or purchased services or contracting~~
20 ~~become identifiable elements, excluding overhead,~~
21 ~~of the services rendered by the importer or~~
22 ~~purchaser, and the gross income from those~~



1 ~~services when sold by the importer or purchaser~~
2 ~~is subject to the tax imposed under chapter 237~~
3 ~~at the highest rate;~~

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(3) 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;~~
22 ~~and~~



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

5 SECTION 19. Section 237-4, Hawaii Revised Statutes, is
6 repealed.

7 ~~["§237-4 "Wholesaler", "jobber", defined. (a)~~
8 ~~"Wholesaler" or "jobber" applies only to a person making sales~~
9 ~~at wholesale. Only the following are sales at wholesale:~~

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

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



- 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 such finished~~
15 ~~work or project in such form as to be perceptible to~~
16 ~~the 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 237-5 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 such 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. This paragraph shall not~~
18 ~~apply to the sale of feed for poultry or animals to be~~
19 ~~used for hauling, transportation, or sports purposes;~~
20 ~~(6) Sales to a licensed producer, or to a cooperative~~
21 ~~association described in section 237-23(a)(7) for sale~~
22 ~~to the producer, of seed or seedstock for producing~~



1 ~~agricultural and aquacultural products, or bait for~~
2 ~~catching fish (including the catching of bait for~~
3 ~~catching fish), which agricultural and aquacultural~~
4 ~~products or fish are to be disposed of as described in~~
5 ~~section 237-5 or to be incorporated in a manufactured~~
6 ~~product as described in paragraph (2);~~

7 ~~(7) Sales to a licensed producer, or to a cooperative~~
8 ~~association described in section 237-23(a)(7) for sale~~
9 ~~to such producer; of polypropylene shade cloth; of~~
10 ~~polyfilm; of polyethylene film; of cartons and such~~
11 ~~other containers, wrappers, and sacks, and binders to~~
12 ~~be used for packaging eggs, vegetables, fruits, and~~
13 ~~other agricultural and aquacultural products; of~~
14 ~~seedlings and cuttings for producing nursery plants or~~
15 ~~aquacultural products; or of chick containers; which~~
16 ~~cartons and such other containers, wrappers, and~~
17 ~~sacks, binders, seedlings, cuttings, and containers~~
18 ~~are to be used as described in section 237-5, or to be~~
19 ~~incorporated in a manufactured product as described in~~
20 ~~paragraph (2);~~

21 ~~(8) Sales of tangible personal property;~~



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



- 1 ~~(iii) The cost of the tangible personal property~~
2 ~~does not constitute overhead to the licensed~~
3 ~~seller;~~
- 4 ~~the sale shall be subject to section 237-13.3; or~~
- 5 ~~(C) Where the taxpayer is subject to both~~
6 ~~subparagraphs (A) and (B), then the taxpayer~~
7 ~~shall be taxed under subparagraph (A).~~
- 8 ~~Subparagraphs (A) and (C) shall be repealed on~~
9 ~~January 1, 2006;~~
- 10 ~~(9) Sales to a licensed leasing company of capital goods~~
11 ~~that have a depreciable life, are purchased by the~~
12 ~~leasing company for lease to its customers, and are~~
13 ~~thereafter leased as a service to others;~~
- 14 ~~(10) Sales of services to a licensed seller engaging in a~~
15 ~~business or calling whenever:~~
- 16 ~~(A) Either:~~
- 17 ~~(i) In the context of a service to service~~
18 ~~transaction, a service is rendered upon the~~
19 ~~order or request of a licensed seller for~~
20 ~~the purpose of rendering another service in~~
21 ~~the course of the seller's service business~~
22 ~~or calling;~~



- 1 ~~(ii) In the context of a service to tangible~~
2 ~~personal property transaction, a service is~~
3 ~~rendered upon the order or request of a~~
4 ~~licensed seller for the purpose of~~
5 ~~manufacturing, producing, or preparing~~
6 ~~tangible personal property to be sold;~~
- 7 ~~(iii) In the context of a services to contracting~~
8 ~~transaction, a service is rendered upon the~~
9 ~~order or request of a licensed contractor as~~
10 ~~defined in section 237-6 for the purpose of~~
11 ~~assisting that licensed contractor; or~~
- 12 ~~(iv) In the context of a services to transient~~
13 ~~accommodations rental transaction, a service~~
14 ~~is rendered upon the order or request of a~~
15 ~~person subject to tax under section 237D-2~~
16 ~~for the purpose of furnishing transient~~
17 ~~accommodations;~~
- 18 ~~(B) The benefit of the service passes to the customer~~
19 ~~of the licensed seller, licensed contractor, or~~
20 ~~person furnishing transient accommodations as an~~
21 ~~identifiable element of the other service or~~



- 1 ~~property to be sold, the contracting, or the~~
2 ~~furnishing of transient accommodations;~~
- 3 ~~(C) The cost of the service does not constitute~~
4 ~~overhead to the licensed seller, licensed~~
5 ~~contractor, or person furnishing transient~~
6 ~~accommodations;~~
- 7 ~~(D) The gross income of the licensed seller is not~~
8 ~~divided between the licensed seller and another~~
9 ~~licensed seller, contractor, or person furnishing~~
10 ~~transient accommodations for imposition of the~~
11 ~~tax under this chapter;~~
- 12 ~~(E) The gross income of the licensed seller is not~~
13 ~~subject to a deduction under this chapter or~~
14 ~~chapter 237D; and~~
- 15 ~~(F) The resale of the service, tangible personal~~
16 ~~property, contracting, or transient~~
17 ~~accommodations is subject to the tax imposed~~
18 ~~under this chapter at the highest tax rate.~~
- 19 ~~Sales subject to this paragraph shall be subject to~~
20 ~~section 237-13.3;~~
- 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 ~~237 13(4) 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; and~~

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

11 ~~As used in this paragraph, "amusement" means~~
12 ~~entertainment provided as part of a show for which~~
13 ~~there is an admission charge. Sales subject to this~~
14 ~~paragraph shall be subject to section 237 13.3; 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 is finally held by a court of~~
2 ~~competent jurisdiction to be unconstitutional or invalid insofar~~
3 ~~as it purports to tax the use or consumption of tangible~~
4 ~~personal property imported into the State in interstate or~~
5 ~~foreign commerce or both, wholesalers and jobbers shall be taxed~~
6 ~~thereafter under this chapter in accordance with the following~~
7 ~~definition (which shall supersede the preceding paragraph~~
8 ~~otherwise defining "wholesaler" or "jobber"): "Wholesaler" or~~
9 ~~"jobber" means a person, or a definitely organized division~~
10 ~~thereof, definitely organized to render and rendering a general~~
11 ~~distribution service that buys and maintains at the person's~~
12 ~~place of business a stock or lines of merchandise that the~~
13 ~~person distributes; and that the person, through salespersons,~~
14 ~~advertising, or sales promotion devices, sells to licensed~~
15 ~~retailers, to institutional or licensed commercial or industrial~~
16 ~~users, in wholesale quantities and at wholesale rates. A~~
17 ~~corporation deemed not to be carrying on a trade or business in~~
18 ~~this State under section 235-6 shall nevertheless be deemed to~~
19 ~~be a wholesaler and shall be subject to the tax imposed by this~~
20 ~~chapter."]~~

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



1 ["~~§237-5 "Producer" defined.~~ "Producer" means any person
2 engaged in the business of raising and producing agricultural
3 products in their natural state, or in producing natural
4 resource products, or engaged in the business of fishing or
5 aquaculture, for sale, or for shipment or transportation out of
6 the State, of the agricultural or aquaculture products in their
7 natural or processed state, or butchered and dressed, or the
8 natural resource products, or fish.

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

13 SECTION 21. Section 237-13.3, Hawaii Revised Statutes, is
14 repealed.

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



1 ~~wholesaler subject to section 237-4(a)(10) at one-half of one~~
2 ~~per cent, during the period January 1, 2000, to December 31,~~
3 ~~2005, the tax shall be as follows:~~

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

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

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

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

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

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

10 ~~(7) In calendar year 2006 and thereafter, the tax shall be~~
11 ~~0.5 per cent.~~

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

17 SECTION 22. Section 237-13.5, Hawaii Revised Statutes, is
18 repealed.

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



1 ~~company for resale to the public, shall be made only as a tax on~~
2 ~~the business of a producer, at the rate assessed producers,~~
3 ~~under section 237-13(2)(A)."]~~

4 SECTION 23. Section 237-15, Hawaii Revised Statutes, is
5 repealed.

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

18 SECTION 24. Section 237-29.55, Hawaii Revised Statutes, is
19 repealed.

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



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

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

20 SECTION 25. Section 238-4, Hawaii Revised Statutes, is
21 repealed.



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

14 SECTION 26. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$, or so much
16 thereof as may be necessary for fiscal year 2006-2007 to carry
17 out the purposes of this Act, including the hiring of necessary
18 staff.

19 The sum appropriated shall be expended by the department of
20 taxation.

21 SECTION 27. In codifying the new chapters and sections
22 added to the Hawaii Revised Statutes by this Act, the revisor of



1 statutes shall substitute appropriate section numbers for the
2 letters used in designating the new chapters and sections in
3 this Act.

4 SECTION 28. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 29. This Act shall take effect on _____ ;
7 provided that section 26 shall take effect on July 1, 2006.

8

INTRODUCED BY: _____

