

PROPOSED

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

H.B. NO. 2961
H.D. 2
S.D. 1

A BILL FOR AN ACT

RELATING TO TAXATION.

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.

2008-1961 HB2961 SD1 SMA



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 a single rate of general excise tax, Hawaii's
5 substitute for a sales tax. In accordance with advice received
6 from the Streamlined Sales Tax Governing Board and COST, a
7 national organization representing businesses, this was
8 accomplished by:

- 9 (1) Moving the 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 In addition, this Act offers an opportunity to fund the
20 preparation and planning for Hawaii's future in the twenty-first
21 century by earmarking a percentage of tax revenues collected
22 from wholesale transactions, insurance procedures, and imports



1 of property, services, and contracting for the education of
2 Hawaii's youth, including early childhood through K-12 schooling
3 to college and career and workforce training.

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 **"CHAPTER**

8 **TAX ON WHOLESALERS, SERVICE BUSINESSES, AND CONTRACTORS**

9 **§A-1 Definitions.** "Department" means the department of
10 taxation.

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

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

16 (1) Sales to a licensed retail merchant, jobber, or other
17 licensed seller for purposes of resale;

18 (2) Sales to a licensed manufacturer of materials or
19 commodities that are to be incorporated by the
20 manufacturer into a finished or saleable product
21 (including the container or package in which the
22 product is contained) during the course of its



1 preservation, manufacture, or processing, including
2 preparation for market, and that will remain in a
3 finished or saleable product in a form as to be
4 perceptible to the senses, which finished or saleable
5 product is to be sold and not otherwise used by the
6 manufacturer;

7 (3) Sales to a licensed producer or cooperative
8 association of materials or commodities that are to be
9 incorporated by the producer or by the cooperative
10 association into a finished or saleable product that
11 is to be sold and not otherwise used by the producer
12 or cooperative association, including specifically
13 materials or commodities expended as essential to the
14 planting, growth, nurturing, and production of
15 commodities that are sold by the producer or by the
16 cooperative association;

17 (4) Sales to a licensed contractor of materials or
18 commodities that are to be incorporated by the
19 contractor into the finished work or project required
20 by the contract and that will remain in a finished
21 work or project in a form as to be perceptible to the
22 senses;



1 (5) Sales to a licensed producer, or to a cooperative
2 association described in section 237-23(a)(7) for sale
3 to a licensed producer, or to a licensed person
4 operating a feed lot, of poultry or animal feed,
5 hatching eggs, semen, replacement stock, breeding
6 services for the purpose of raising or producing
7 animal or poultry products for disposition as
8 described in section A-3 or for incorporation into a
9 manufactured product as described in paragraph (2) or
10 for the purpose of breeding, hatching, milking, or egg
11 laying other than for the customer's own consumption
12 of the meat, poultry, eggs, or milk so produced;
13 provided that in the case of a feed lot operator, only
14 the segregated cost of the feed furnished by the feed
15 lot operator as part of the feed lot operator's
16 service to a licensed producer of poultry or animals
17 to be butchered or to a cooperative association
18 described in section 237-23(a)(7) of these licensed
19 producers shall be deemed to be a sale at wholesale;
20 and provided further that any amount derived from the
21 furnishing of feed lot services, other than the
22 segregated cost of feed, shall be deemed taxable at



1 the service business rate specified in section
2 A-6(a) (5). This paragraph shall not apply to the sale
3 of feed for poultry or animals to be used for hauling,
4 transportation, or sports purposes;

5 (6) Sales to a licensed producer, or to a cooperative
6 association described in section 237-23(a) (7) for sale
7 to the producer, of seed or seedstock for producing
8 agricultural and aquacultural products, or bait for
9 catching fish (including the catching of bait for
10 catching fish), which agricultural and aquacultural
11 products or fish are to be disposed of as described in
12 section A-3 or to be incorporated in a manufactured
13 product as described in paragraph (2);

14 (7) Sales to a licensed producer, or to a cooperative
15 association described in section 237-23(a) (7) for sale
16 to a licensed producer; of polypropylene shade cloth;
17 of polyfilm; of polyethylene film; of cartons and
18 other containers, wrappers, and sacks, and binders to
19 be used for packaging eggs, vegetables, fruits, and
20 other agricultural and aquacultural products; of
21 seedlings and cuttings for producing nursery plants or
22 aquacultural products; or of chick containers; which



1 cartons and other containers, wrappers, and sacks,
2 binders, seedlings, cuttings, and containers are to be
3 used as described in section A-3, or to be
4 incorporated in a manufactured product as described in
5 paragraph (2);

6 (8) Sales of tangible personal property where:

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

14 (B) The tangible personal property becomes or is used
15 as an identifiable element of the service
16 rendered; and

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

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



- 1 (10) Sales of services to a licensed seller engaging in a
- 2 business or calling whenever:
- 3 (A) Either:
- 4 (i) In the context of a service-to-service
- 5 transaction, a service is rendered upon the
- 6 order or request of a licensed seller for
- 7 the purpose of rendering another service in
- 8 the course of the seller's service business
- 9 or calling;
- 10 (ii) In the context of a service-to-tangible
- 11 personal property transaction, a service is
- 12 rendered upon the order or request of a
- 13 licensed seller for the purpose of
- 14 manufacturing, producing, or preparing
- 15 tangible personal property to be sold;
- 16 (iii) In the context of a services-to-contracting
- 17 transaction, a service is rendered upon the
- 18 order or request of a licensed contractor as
- 19 defined in section 237-6 for the purpose of
- 20 assisting that licensed contractor; or
- 21 (iv) In the context of a services-to-transient
- 22 accommodations rental transaction, a service



1 is rendered upon the order or request of a
2 person subject to tax under section 237D-2
3 for the purpose of furnishing transient
4 accommodations;

5 (B) The benefit of the service passes to the customer
6 of the licensed seller, licensed contractor, or
7 person furnishing transient accommodations as an
8 identifiable element of the other service or
9 property to be sold, the contracting, or the
10 furnishing of transient accommodations;

11 (C) The cost of the service does not constitute
12 overhead to the licensed seller, licensed
13 contractor, or person furnishing transient
14 accommodations;

15 (D) The gross income of the licensed seller is not
16 divided between the licensed seller and another
17 licensed seller, contractor, or person furnishing
18 transient accommodations for imposition of the
19 tax under this chapter or chapter 237;

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



- 1 (F) The resale of the service, tangible personal
2 property, contracting, or transient
3 accommodations is subject to the tax imposed
4 under this chapter or chapter 237;
- 5 (11) Sales to a licensed retail merchant, jobber, or other
6 licensed seller of bulk condiments or prepackaged
7 single-serving packets of condiments that are provided
8 to customers by the licensed retail merchant, jobber,
9 or other licensed seller;
- 10 (12) Sales to a licensed retail merchant, jobber, or other
11 licensed seller of tangible personal property that
12 will be incorporated or processed by the licensed
13 retail merchant, jobber, or other licensed seller into
14 a finished or saleable product during the course of
15 its preparation for market (including disposable,
16 nonreturnable containers, packages, or wrappers, in
17 which the product is contained and that are generally
18 known and most commonly used to contain food or
19 beverage for transfer or delivery), and which finished
20 or saleable product is to be sold and not otherwise
21 used by the licensed retail merchant, jobber, or other
22 licensed seller;



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

4 (A) Either:

5 (i) In the context of an amusement-to-service
6 transaction, an amusement is rendered upon
7 the order or request of a licensed seller
8 for the purpose of rendering another service
9 in the course of the seller's service
10 business or calling;

11 (ii) In the context of an amusement-to-tangible
12 personal property transaction, an amusement
13 is rendered upon the order or request of a
14 licensed seller for the purpose of selling
15 tangible personal property; or

16 (iii) In the context of an amusement-to-amusement
17 transaction, an amusement is rendered upon
18 the order or request of a licensed seller
19 for the purpose of rendering another
20 amusement in the course of the person's
21 amusement business;



- 1 (B) The benefit of the amusement passes to the
- 2 customer of the licensed seller as an
- 3 identifiable element of the other service,
- 4 tangible personal property to be sold, or
- 5 amusement;

- 6 (C) The cost of the amusement does not constitute
- 7 overhead to the licensed seller;

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

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

- 16 (F) The resale of the service, tangible personal
- 17 property, or amusement is subject to the tax
- 18 imposed under this chapter or chapter 237. As
- 19 used in this paragraph, "amusement" means
- 20 entertainment provided as part of a show for
- 21 which there is an admission charge; and



1 (14) Sales by a printer to a publisher of magazines or
 2 similar printed materials containing advertisements,
 3 when the publisher is under contract with the
 4 advertisers to distribute a minimum number of
 5 magazines or similar printed materials to the public
 6 or defined segment of the public, whether or not there
 7 is a charge to the persons who actually receive the
 8 magazines or similar printed materials.

9 (b) If the use tax law under chapter B is finally held by
 10 a court of competent jurisdiction to be unconstitutional or
 11 invalid insofar as it purports to tax the use or consumption of
 12 tangible personal property imported into the State in interstate
 13 or foreign commerce, or both, wholesalers and jobbers shall be
 14 taxed thereafter under this chapter in accordance with the
 15 following definition (which shall supersede the definitions for
 16 "wholesaler" or "jobber" in subsection (a) of this section):
 17 "Wholesaler" or "jobber" means a person, or an organized
 18 division thereof, definitely organized to render and rendering a
 19 general distribution service that buys and maintains at the
 20 person's place of business a stock or lines of merchandise that
 21 the person distributes; and that the person, through
 22 salespersons, advertising, or sales promotion devices, sells to



1 licensed retailers, to institutional, or licensed commercial or
2 industrial users, in wholesale quantities and at wholesale
3 rates. A corporation deemed not to be carrying on a trade or
4 business in this State under section 235-6 shall nevertheless be
5 deemed to be a wholesaler and shall be subject to the tax
6 imposed by this chapter.

7 **§A-3 "Producer" defined.** (a) "Producer" means any person
8 engaged in the business of raising and producing agricultural
9 products in their natural state, or in producing natural
10 resource products, or engaged in the business of fishing or
11 aquaculture, for sale, or for shipment or transportation out of
12 the State, of the agricultural or aquaculture products in their
13 natural or processed state, or butchered and dressed, or the
14 natural resource products, or fish.

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

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



1 **§A-5 Administrative provisions.** Sections 237-8, 237-9,
2 237-9.5, 237-11, and 237-12 shall be applicable for this
3 chapter.

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

10 (1) Tax on manufacturers:

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



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1 packed, printed, milled, processed, refined, or
2 prepared for sale, as shown by the gross proceeds
3 derived from the sale thereof by the manufacturer
4 or person compounding, preparing, or printing
5 them, multiplied by one-half of one per cent;

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

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



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

- 6 (i) If the products at the time of their entry
7 into interstate or foreign commerce already
8 have been sold, the gross proceeds of sale,
9 less the transportation expenses, if any,
10 incurred in realizing the gross proceeds for
11 transportation from the time of entry of the
12 products into interstate or foreign
13 commerce, including insurance and storage in
14 transit, shall be the measure of the value
15 of the products;
- 16 (ii) If the products have not been sold at the
17 time of their entry into interstate or
18 foreign commerce, and in cases governed by
19 clause (i) in which the products are sold
20 under circumstances such that the gross
21 proceeds of sale are not indicative of the
22 true value of the products, the value of the



1 products constituting the basis for
2 assessment shall correspond as nearly as
3 possible to the gross proceeds of sales for
4 delivery outside the State, adjusted as
5 provided in clause (i) or, if sufficient
6 data is not available, sales in the State of
7 similar products of like quality and
8 character and in similar quantities, made by
9 the taxpayer (unless not indicative of the
10 true value), or by others. Sales outside
11 the State, adjusted as provided in clause
12 (i), may be considered when they constitute
13 the best available data. The department of
14 taxation shall prescribe uniform and
15 equitable rules for ascertaining the values;
16 (iii) At the election of the taxpayer and with the
17 approval of the department of taxation, the
18 taxpayer may make the taxpayer's returns
19 under clause (i) even though the products
20 have not been sold at the time of their
21 entry into interstate or foreign commerce;
22 and



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

7 (2) Tax on producers. Upon every person engaging or
 8 continuing within this State in the business of a
 9 producer, the tax shall be equal to one-half of one
 10 per cent of the gross proceeds of sales of the
 11 business, or the value of the products, for sale, if
 12 sold for delivery outside the State or shipped or
 13 transported out of the State, and the value of the
 14 products shall be determined in the same manner as the
 15 value of manufactured products covered in the cases
 16 under paragraph (1) (C). No manufacturer or producer,
 17 engaged in the business of manufacturing or producing
 18 in the State and selling the manufacturer's or
 19 producer's products for delivery outside of the State
 20 (for example, consigned to a mainland purchaser via
 21 common carrier f.o.b. Honolulu), shall be required to
 22 pay the tax imposed in this chapter for the privilege



1 of so selling the products, and the value or gross
2 proceeds of sales of the products shall be included
3 only in determining the measure of the tax imposed
4 upon the manufacturer or producer;

5 (3) Tax upon theaters, amusements, radio broadcasting
6 stations, etc. Upon every person engaging or
7 continuing within the State in the business of
8 operating a theater, opera house, moving picture show,
9 vaudeville, amusement park, dance hall, skating rink,
10 radio broadcasting station, or any other place at
11 which amusements are offered to the public, at
12 wholesale, the tax shall be one-half of one per cent
13 of the gross proceeds of the business;

14 (4) Tax on service business. Upon every person engaging
15 or continuing within the State in any service business
16 or calling including professional services not
17 otherwise specifically taxed under this chapter, as a
18 wholesaler under section A-2, the tax shall be equal
19 to one-half of one per cent of the gross proceeds of
20 the business;

21 (5) Tax on sales by wholesalers:



- 1 (A) Upon every person who is engaged in the business
2 of a wholesaler or jobber under section A-2 or
3 selling any tangible personal property whatsoever
4 (not including, however, bonds or other evidences
5 of indebtedness, or stocks), there is hereby
6 levied, and shall be assessed and collected, a
7 tax equivalent to one-half of one per cent of the
8 gross proceeds of sales of the business as a
9 wholesaler or jobber as defined in section A-2;
10 and
- 11 (B) Gross proceeds of sales of tangible property in
12 interstate and foreign commerce shall constitute
13 a part of the measure of the tax imposed on
14 persons in the business of selling tangible
15 personal property as a wholesaler, to the extent,
16 under the conditions, and in accordance with the
17 provisions of the Constitution of the United
18 States and the Acts of Congress of the United
19 States that may be now in force or may be
20 hereafter adopted, and whenever there occurs in
21 the State an activity to which, under the
22 Constitution and Acts of Congress, there may be



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1 attributed gross proceeds of sales, the gross
2 proceeds shall be so attributed.

3 (b) When a manufacturer or producer, engaged in business
4 in the State, also is engaged in selling the manufacturer's or
5 producer's products in the State at wholesale taxed under this
6 chapter, retail, or in any other manner, the tax for the
7 privilege of engaging in the business of selling the products in
8 the State shall apply to the manufacturer or producer as well as
9 the tax for the privilege of manufacturing or producing in the
10 State, and the manufacturer or producer shall make the returns
11 of the gross proceeds of the wholesale, retail, or other sales
12 required for the privilege of selling in the State, as well as
13 making the returns of the value or gross proceeds of sales of
14 the products required for the privilege of manufacturing or
15 producing in the State. The manufacturer or producer shall pay
16 the tax imposed in this chapter for the privilege of selling its
17 products in the State, and the value or gross proceeds of sales
18 of the products, thus subjected to tax, may be deducted insofar
19 as duplicated as to the same products by the measure of the tax
20 upon the manufacturer or producer for the privilege of
21 manufacturing or producing in the State under this chapter;
22 provided that no producer of agricultural products who sells the



1 products to a purchaser who will process the products outside
2 the State shall be required to pay the tax imposed in this
3 chapter for the privilege of producing or selling those
4 products.

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

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

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

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



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

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

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

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

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



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

17 **SA-9 Segregation of gross income, etc., on records and in**
18 **returns.** The imposition of taxes and the application of tax
19 rates do not depend upon the business in which the taxpayer is
20 primarily engaged. One business may be subject to two or more
21 tax rates under this chapter and chapter 237. If a business is
22 within the purview of two or more of the paragraphs of section



1 237-13 or other provisions of this chapter or chapter 237, all
 2 of them apply, each provision being applicable to the
 3 appropriate item of gross income, gross proceeds of sales, or
 4 value of products. However, any person engaging or continuing
 5 in a business having gross income, gross proceeds of sales, and
 6 value of products, or any of these as the case may be, taxable
 7 at different rates, shall be subject to taxation upon the
 8 aggregate amount of the gross income, gross proceeds of sales,
 9 and value of products of the business at the highest rate
 10 applicable to any part of the aggregate, unless the person shall
 11 segregate the parts taxable at different rates upon the person's
 12 records and in the person's returns, and shall sustain the
 13 burden of proving that the segregation was correctly made.

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

20 **§A-11 Technicians.** When technicians supply dentists or
 21 physicians with dentures, orthodontic devices, braces, and
 22 similar items which have been prepared by the technician in



1 accordance with specifications furnished by the dentist or
2 physician, and these items are to be used by the dentist or
3 physician in the dentist's or physician's professional practice
4 for a particular patient who is to pay the dentist or physician
5 for the same as a part of the dentist's or physician's
6 professional services, the technician shall be taxed as though
7 the technician were a manufacturer selling a product to a
8 licensed retailer, rather than pursuant to chapter 237, at the
9 rate of four per cent that is generally applied to professions
10 and services.

11 **SA-12 Activity ordered by others.** (a) Where, through the
12 activity of a person taxable under section 237-13(4), a product
13 has been milled, processed, or otherwise manufactured upon the
14 order of another taxpayer who is a manufacturer taxable upon the
15 value of the entire manufactured products, which consists in
16 part of the value of the services taxable under section
17 237-13(4), so much gross income as is derived from the rendering
18 of the services shall be subjected to tax on the person
19 rendering the services at the rate of one-half of one per cent,
20 and the value of the entire product shall be included in the
21 measure of the tax imposed on the other taxpayer as elsewhere
22 provided.



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

13 **SA-13 Sales of telecommunications services through prepaid**
14 **telephone calling service.** (a) For the purposes of this
15 section, "prepaid telephone calling service" means the right to
16 exclusively purchase telecommunications services, paid for in
17 advance, that enables the origination of calls using an access
18 number or authorization code, whether manually or electronically
19 dialed.

20 (b) If the sale or recharge of a prepaid telephone calling
21 service does not take place at the vendor's place of business,
22 it shall be conclusively determined to take place at the



1 customer's shipping address; or if there is no item shipped,
2 then it shall be the customer's billing address.

3 (c) When a person licensed under this chapter sells
4 prepaid telephone calling services to a licensed retail
5 merchant, jobber, or other licensed seller for purposes of
6 resale, the person shall be taxed as a wholesaler selling
7 tangible personal property.

8 (d) For purposes of prepaid telephone calling services
9 only, all such services shall be taxed under this section and
10 shall be in lieu of taxation under chapter 239.

11 **SA-14 Apportionment.** In the case of a tax upon the
12 production of property in the State, the apportionment shall be
13 determined as in the case of the tax on manufacturers provided
14 in section A-6(a)(1).

15 **SA-15 Conformity to constitution.** Section 237-22 shall
16 apply to this chapter.

17 **SA-16 Exemptions.** The exemptions provided in sections
18 237-23, 237-26, 237-27, 237-27.5, 237-29, 237-29.5, and
19 237-29.53 shall apply to this chapter.

20 **SA-17 Amounts not taxable.** This chapter shall not apply
21 to the following amounts:



- 1 (1) The amounts of taxes on cigarettes and tobacco
2 products imposed by chapter 245 on wholesalers or
3 dealers holding licenses under that chapter and
4 selling the products at wholesale;
- 5 (2) The amounts of federal taxes imposed on sugar
6 manufactured in the State, paid by the manufacturer to
7 the federal government;
- 8 (3) Gross income received by any blind, deaf, or totally
9 disabled person engaging, or continuing, in any
10 business, trade, activity, occupation, or calling
11 within the State; a corporation all of whose
12 outstanding shares are owned by an individual or
13 individuals who are blind, deaf, or totally disabled;
14 a general, limited, or limited liability partnership,
15 all of whose partners are blind, deaf, or totally
16 disabled; or a limited liability company, all of whose
17 members are blind, deaf, or totally disabled; and
- 18 (4) Amounts received by a producer of sugarcane from the
19 manufacturer to whom the producer sells the sugarcane,
20 where:
- 21 (A) The producer is an independent cane farmer, so
22 classed by the Secretary of Agriculture under the



1 Sugar Act of 1948 (61 Stat. 922, Chapter 519) as
2 the Act may be amended or supplemented;

3 (B) The value or gross proceeds of sale of the sugar,
4 and other products manufactured from the
5 sugarcane, is included in the measure of the tax
6 levied on the manufacturer under section
7 A-6(a) (1);

8 (C) The producer's gross proceeds of sales are
9 dependent upon the actual value of the products
10 manufactured therefrom or the average value of
11 all similar products manufactured by the
12 manufacturer; and

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

16 **§A-18 Exemption for sale of tangible personal property for**
17 **resale at wholesale.** (a) There shall be exempted from, and
18 excluded from the measure of, the taxes imposed by this chapter
19 all of the gross proceeds or gross income arising from the sale
20 of tangible personal property imported to Hawaii from a foreign
21 or domestic source to a licensed taxpayer for subsequent resale



1 for the purpose of sale at wholesale as defined under section
2 A-2.

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

17 **§A-19 Administrative provisions.** Sections 237-20, 237-21,
18 237-30, 237-31, 237-32, 237-33, 237-33.5, 237-34, 237-35,
19 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-42, 237-43,
20 237-46, 237-47, 237-49, and 237-A to 237-F shall apply to this
21 chapter."



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

4 "CHAPTER

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

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

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

17 (1) If the importer or purchaser is licensed under chapter
18 A and is:

19 (A) A wholesaler or jobber importing or purchasing
20 for purposes of sale or resale; or

21 (B) A manufacturer importing or purchasing material
22 or commodities that are to be incorporated by the



1 manufacturer into a finished or saleable product
2 (including the container or package in which the
3 product is contained) wherein it will remain in a
4 form as to be perceptible to the senses, and the
5 finished or saleable product is to be sold in a
6 manner as to result in a further tax on the
7 activity of the manufacturer as the manufacturer
8 or as a wholesaler, and not as a retailer;

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



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



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

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

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



1 or sale is consummated outside of Hawaii, then
2 one-half of one per cent of the value of the property.

3 **SB-3 Imposition of tax on imported services or**

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

13 (1) If the importer or purchaser is licensed under chapter
14 A and is:

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



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

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



- 1 (2) If the importer or purchaser is a person licensed
- 2 under chapter 237 and is:
- 3 (A) Engaged in a service business or calling in which
- 4 the imported or purchased services or contracting
- 5 become identifiable elements, excluding overhead,
- 6 of the services rendered by the importer or
- 7 purchaser, and the gross income from those
- 8 services when sold by the importer or purchaser
- 9 is subject to the tax imposed under chapter 237;
- 10 (B) A manufacturer importing or purchasing services
- 11 or contracting that become identifiable elements,
- 12 excluding overhead, of the finished or saleable
- 13 manufactured product (including the container or
- 14 package in which the product is contained) and
- 15 the finished or saleable product is to be sold in
- 16 a manner that results in a further tax under
- 17 chapter 237 on the activity of the manufacturer
- 18 as a retailer; or
- 19 (C) A contractor importing or purchasing services or
- 20 contracting that become identifiable elements,
- 21 excluding overhead, of the finished work or
- 22 project required under the contract, and where



1 the gross proceeds derived by the contractor are
2 subject to the tax under section 237-13(2) as a
3 contractor;

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

6 **SB-4 Application of tax, etc.** Section 238-3 shall apply
7 to this chapter.

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

1 **§B-6 Administration.** Sections 238-5, 238-6, 238-7, 238-8,
2 238-9, 238-9.5, 238-10, 238-11, 238-13, 238-14, and 238-16 shall
3 apply to this chapter."

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

7 "CHAPTER

8 INSURANCE PRODUCER'S TAX

9 **§C-1 Definitions.** The definitions contained in sections
10 237-1, 237-2, and 237-3 shall apply to this chapter.

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

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

21 **§C-4 Administrative provisions.** Sections 237-8, 237-9,
22 237-9.5, 237-11, 237-12, 237-30, 237-31, 237-32, 237-33,



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1 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39,
2 237-40, 237-41, 237-42, 237-43, 237-46, 237-47, 237-49, and
3 237-A to 237-F shall apply to this chapter."

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

7 "§46- County compliance with the streamlined sales and
8 use tax agreement. The counties shall not adopt any ordinance
9 or interpret any ordinance in a manner that violates the
10 streamlined sales and use tax agreement established by the
11 Streamlined Sales Tax Governing Board, Incorporated, and adopted
12 pursuant to chapter 255D."

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

16 "§237-A General sourcing rules.

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

19 (A) When the product is received by the purchaser at
20 a business location of the seller, the sale is
21 sourced to that business location;



1 (B) When the product is not received by the purchaser
2 at a business location of the seller, the sale is
3 sourced to the location where receipt by the
4 purchaser (or the purchaser's designated donee),
5 occurs, including the location indicated by
6 instructions for delivery to the purchaser (or
7 designated donee), known to the seller;

8 (C) When subparagraphs (A) and (B) do not apply, the
9 sale is sourced to the location indicated by an
10 address for the purchaser that is available from
11 the business records of the seller that are
12 maintained in the ordinary course of the seller's
13 business when use of this address does not
14 constitute bad faith;

15 (D) When subparagraphs (A), (B), and (C) do not
16 apply, the sale is sourced to the location
17 indicated by an address for the purchaser
18 obtained during the consummation of the sale,
19 including the address of a purchaser's payment
20 instrument, if no other address is available,
21 when use of this address does not constitute bad
22 faith; or



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

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

17 (A) For a lease or rental that requires recurring
18 periodic payments, the first periodic payment is
19 sourced the same as a retail sale in accordance
20 with paragraph (1). Periodic payments made
21 subsequent to the first payment are sourced to
22 the primary property location for each period



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

12 (B) For a lease or rental that does not require
13 recurring periodic payments, the payment is
14 sourced the same as a retail sale in accordance
15 with paragraph (1).

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

20 (3) The lease or rental of motor vehicles, trailers,
21 semi-trailers, or aircraft that do not qualify as



1 transportation equipment, as defined in paragraph (4),
2 shall be sourced as follows:

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

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

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



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

7 (A) Locomotives and rail cars that are utilized for
8 the carriage of persons or property in interstate
9 commerce;

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

14 (i) Registered through the international
15 registration plan; and

16 (ii) Operated under authority of a carrier
17 authorized and certificated by the United
18 States Department of Transportation or
19 another federal authority to engage in the
20 carriage of persons or property in
21 interstate commerce;



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

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

10 §237-B General sourcing definitions. For the purposes of
11 section 237-A(1), the terms "receive" and "receipt" mean:

- 12 (1) Taking possession of tangible personal property;
13 (2) Making first use of services; or
14 (3) Taking possession or making first use of digital
15 goods,

16 whichever comes first.

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

19 §237-C Telecommunications sourcing rule. (a) Except for
20 the defined telecommunications services in subsection (c), the
21 sale of telecommunications service sold on a call-by-call basis
22 shall be sourced to:



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1 (1) Each level of taxing jurisdiction where the call
2 originates and terminates in that jurisdiction; or

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

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

10 (c) The sale of the following telecommunications services
11 shall be sourced to each level of taxing jurisdiction as
12 follows:

13 (1) A sale of mobile telecommunications service other than
14 air-to-ground radiotelephone service and prepaid
15 calling service, is sourced to the customer's place of
16 primary use as required by the Mobile
17 Telecommunications Sourcing Act;

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

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



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

4 (3) A sale of prepaid calling service or a sale of a
5 prepaid wireless calling service is sourced in
6 accordance with section 237-A; provided that in the
7 case of a sale of prepaid wireless calling service,
8 the rule provided in section 237-A(1)(E) shall include
9 as an option the location associated with the mobile
10 telephone number; or

11 (4) A sale of a private communication service is sourced
12 as follows:

13 (A) Service for a separate charge related to a
14 customer channel termination point is sourced to
15 each level of jurisdiction in which the customer
16 channel termination point is located;

17 (B) Service where all customer termination points are
18 located entirely within one jurisdiction or
19 levels of jurisdiction is sourced in the
20 jurisdiction in which the customer channel
21 termination points are located; or



1 (C) Service for segments of a channel between two
2 customer channel termination points located in
3 different jurisdictions and which segment of
4 channel are separately charged is sourced fifty
5 per cent in each level of jurisdiction in which
6 the customer channel termination points are
7 located.

8 Service for segments of a channel located in more than
9 one jurisdiction or levels of jurisdiction and where
10 the segments are not separately billed shall be
11 sourced in each jurisdiction based on the percentage
12 determined by dividing the number of customer channel
13 termination points in the jurisdiction by the total
14 number of customer channel termination points in all
15 jurisdictions.

16 §237-D Telecommunications sourcing definitions. For the
17 purpose of section 237-C, the following definitions shall apply:

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



1 "Call-by-call basis" means any method of charging for
2 telecommunications services where the price is measured by
3 individual calls.

4 "Communications channel" means a physical or virtual path
5 of communications over which signals are transmitted between or
6 among customer channel termination points.

7 "Customer":

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

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



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1 "End user" means the person who utilizes the
2 telecommunications service. In the case of an entity, "end
3 user" means the individual who utilizes the service on behalf of
4 the entity.

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

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

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

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



1 origination or termination of the telecommunications service. A
2 post-paid calling service includes a telecommunications service,
3 except a prepaid wireless calling service, that would be a
4 prepaid calling service except it is not exclusively a
5 telecommunications service.

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

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

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



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

5 "Service address" means:

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

20 §237-E Deduction for bad debts. (a) A seller shall be
21 allowed a deduction from taxable sales for bad debts. A seller
22 may deduct the amount of bad debts from the seller's gross



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

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

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



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

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

12 (c) If a certified service provider assumed filing
13 responsibility under chapter 255D, the certified service
14 provider may claim, on behalf of the seller, any bad debt
15 allowable to the seller and shall credit or refund that amount
16 of bad debt allowed or refunded to the seller.

17 (d) If the books and records of a seller who, under
18 chapter 255D claims a bad debt allowance, support an allocation
19 of the bad debts among member states of that agreement, the
20 seller may allocate the bad debt.

21 (e) As used in this section, "bad debt" means any portion
22 of a debt resulting from a seller's collection of the use tax



1 under chapter 255D on the purchase of tangible personal property
2 or services that is not otherwise deductible or excludable and
3 is eligible to be claimed, or could be eligible to be claimed if
4 the seller kept accounts on an accrual basis, as a deduction
5 pursuant to section 166 (with respect to bad debts) of the
6 Internal Revenue Code of 1986, as amended. A bad debt does not
7 include any of the following:

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

19 §237-F Direct mail sourcing. (a) Notwithstanding the
20 general sourcing provisions of section 237-A, a purchaser of
21 direct mail who is not a holder of a direct pay permit shall
22 provide to the seller, in conjunction with the purchase, either



1 a direct mail form or information to show the jurisdictions to
2 which the direct mail is delivered to recipients.

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

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

17 (b) If the purchaser of direct mail does not have a direct
18 pay permit and does not provide the seller with either a direct
19 mail form or delivery information as required under subsection
20 (a), the seller shall collect the tax. Nothing in this
21 subsection shall limit a purchaser's obligation for sales or use
22 tax to any state to which the direct mail is delivered.



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

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



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

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

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

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

17 "Direct mail":

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



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

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

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

8 "Lease or rental":

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

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

13 (3) Does not include:

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

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



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

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

11 (D) Agreements covering motor vehicles and trailers
12 where the amount of consideration may be
13 increased or decreased by reference to the amount
14 realized upon sale or disposition of the property
15 as defined in section 7701(h)(1) (with respect to
16 motor vehicle operating leases) of the Internal
17 Revenue Code of 1986.

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



1 "Purchase price" applies to the measure subject to use tax
2 and has the same meaning as sales price.

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

8 (1) The seller's cost of the property sold;

9 (2) The cost of the materials used, labor or service cost,
10 losses, all costs of transportation to the seller, all
11 taxes imposed on the seller, and any other expense of
12 the seller;

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

16 (4) Delivery and installation charges; or

17 (5) Installation charges.

18 "Tangible personal property" means personal property that
19 can be seen, weighed, measured, felt, or touched, or that is in
20 any manner perceptible to the senses. Tangible personal
21 property includes gas, steam, and prewritten computer software."



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

4 "§255D-A Relief from certain liability. All sellers and
5 certified service providers as defined in section 255D-2 using
6 databases pursuant to section 255D-D(f) and (g) shall be
7 relieved from liability to the state and local jurisdictions for
8 having charged and collected the incorrect amount of general
9 excise or use tax resulting from the seller or certified service
10 provider relying on erroneous data provided by the State on tax
11 rates, boundaries, or taxing jurisdiction assignments.

12 §255D-B Rounding rule. For the purpose of calculating the
13 amount of the general excise or use tax:

- 14 (1) The tax computation shall be carried to the third
15 decimal place; and
16 (2) The tax shall be rounded to a whole cent using a
17 method that rounds up to the next cent whenever the
18 third decimal place is greater than four.

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



1 §255D-C Amnesty for registration under this chapter. (a)

2 The department shall provide amnesty for uncollected or unpaid
3 general excise tax under chapter 237 or use tax under chapter
4 238, including any county surcharge, to a seller who registers
5 to pay or to collect and remit applicable general excise or use
6 tax on sales made to purchasers in the State in accordance with
7 the terms of the streamlined sales and use tax agreement;
8 provided that the seller was not so registered in the State in
9 the twelve-month period preceding the effective date of the
10 State's participation in the streamlined sales and use tax
11 agreement.

12 (b) The amnesty shall preclude assessment for uncollected
13 or unpaid general excise tax under chapter 237 or use tax under
14 chapter 238 together with penalty or interest for sales made
15 during the period the seller was not registered in the State;
16 provided registration occurs within twelve months of the
17 effective date of the State's participation in the streamlined
18 sales and use tax agreement.

19 (c) The amnesty shall not be available to a seller with
20 respect to any matter or matters for which the seller received
21 notice of the commencement of an audit and the audit is not yet



1 finally resolved including any related administrative and
2 judicial processes.

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

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

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

16 **§255D-D Local rate and boundary changes.** (a) Any rate
17 changes by a local jurisdiction shall be effective only on the
18 first day of a calendar quarter after a minimum of sixty days
19 notice to sellers.

20 (b) Any local tax rate changes relating to purchases from
21 printed catalogs wherein the purchaser computes the tax based
22 upon local tax rates published in the catalog shall be effective



1 only on the first day of a calendar quarter after a minimum of
2 one hundred twenty days notice to sellers.

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

7 (d) The department of taxation shall provide and maintain
8 a database that describes boundary changes for all taxing
9 jurisdictions. The database shall include a description of the
10 change and the effective date of the change for general excise
11 tax under chapter 237 and use tax under chapter 238 purposes.

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





1 The department of taxation shall provide and maintain
 2 a database that assigns each five digit and nine digit zip code
 3 within the state to the proper tax rates and jurisdictions. The
 4 department of taxation shall apply the lowest combined tax rate
 5 imposed in the zip code area if the area includes more than one
 6 tax rate in any level of taxing jurisdictions. If a nine digit
 7 zip code designation is not available for a street address or if
 8 a seller or certified service provider is unable to determine
 9 the nine digit zip code designation of a purchaser after
 10 exercising due diligence to determine the designation, the
 11 seller or certified service provider may apply the rate for the
 12 five digit zip code area. For the purposes of this section,
 13 there is a rebuttable presumption that a seller or certified
 14 service provider has exercised due diligence if the seller has
 15 attempted to determine the nine digit zip code designation by
 16 utilizing software approved by the Streamlined Sales Tax
 17 Governing Board, Incorporated, that makes this designation from
 18 the street address and the five digit zip code of the purchaser.
 19 (g) The State shall participate with other states in the
 20 development of an address-based system for assigning taxing
 21 jurisdictions. The system shall meet the requirements developed
 22 pursuant to the Federal Mobile Telecommunications Sourcing Act

1 (4 U.S.C. Sec. 119(a)). If any state develops an address-based
2 assignment system pursuant to the Mobile Telecommunications
3 Sourcing Act, a seller may use that system in place of the
4 system provided for in subsection (e).

5 **§255D-E Certified service provider; agent of the seller.**

6 (a) A certified service provider is the agent of a seller, with
7 whom the certified service provider has contracted for the
8 collection and remittance of general excise and use taxes. As
9 the seller's agent, the certified service provider is liable for
10 general excise and use tax due to the State on all sales
11 transactions it processes for the seller unless the seller made
12 a material misrepresentation or committed fraud.

13 (b) A seller that uses a certified automated system is
14 responsible and is liable to the State for reporting and
15 remitting tax.

16 **§255D-F Confidentiality of records.** (a) Except as
17 provided in subsection (c), a certified service provider shall
18 not retain or disclose the personally identifiable information
19 of consumers. A certified service provider's system shall be
20 designed and tested to ensure the privacy of consumers by
21 protecting their anonymity.



1 (b) A certified service provider shall provide clear and
2 conspicuous notice of its information practices to consumers,
3 including but not limited to what information it collects, how
4 it collects the information, how it uses the information, how
5 long it retains the information, and whether it discloses the
6 information to member states.

7 (c) A certified service provider's retention or disclosure
8 to member states of personally identifiable information is
9 limited to that required to ensure the validity of exemptions
10 claimed because of a consumer's status or intended use of the
11 goods or services purchased.

12 (d) A certified service provider shall provide the
13 necessary technical, physical, and administrative safeguards to
14 protect personally identifiable information from unauthorized
15 access and disclosure.

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

18 (f) If personally identifiable information is retained by
19 the State for the purpose of subsection (c), in the absence of
20 exigent circumstances, a person shall be afforded reasonable
21 access to their own data, with a right to correct inaccurately
22 recorded data.



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

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

5 (2) Provide records pursuant to chapter 92F, disclosure
6 laws with governmental agencies, or other regulations;

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

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

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

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

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



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

6 (k) As used in this section, "personally identifiable
7 information" means information that identifies a specific
8 person.

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

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

21 (1) Any tax liability of the registered seller for
22 transactions that are subject to general excise or use



1 tax in the State in which the registered seller is the
2 purchaser;

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

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

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

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



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

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

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

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



1 SECTION 9. Chapter 239, Hawaii Revised Statutes, is
2 amended by adding a new section to part II to be appropriately
3 designated and to read as follows:

4 "§239- Treatment of conflicts. In case of conflict
5 between this part and chapter 237, chapter 237 shall control."

6 SECTION 10. Section 237-3, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

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



1 the taxpayer's books are so kept, or unless the taxpayer employs
2 or is required to employ the accrual basis for the purposes of
3 the tax imposed by chapter 235 for any taxable year in which
4 event the taxpayer shall report the taxpayer's gross income for
5 the purposes of this chapter on the accrual basis for the same
6 period.

7 "Gross proceeds of sale" means the [~~value actually~~
8 ~~proceeding from the sale of tangible personal property without~~
9 ~~any deduction on account of the cost of property sold or~~
10 ~~expenses of any kind.~~] sales price."

11 SECTION 11. Section 237-8.6, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) The county surcharge on state tax, upon the adoption
14 of county ordinances and in accordance with the requirements of
15 section 46-16.8, shall be levied, assessed, and collected as
16 provided in this section on all gross proceeds and gross income
17 taxable under this chapter. No county shall set the surcharge
18 on state tax at a rate greater than one-half of one per cent of
19 all gross proceeds and gross income taxable under this chapter.
20 All provisions of this chapter shall apply to the county
21 surcharge on state tax. With respect to the surcharge, the
22 director of taxation shall have all the rights and powers



1 provided under this chapter. No county shall conduct an
2 independent tax audit of sellers registered under the
3 streamlined sales and use tax agreement. In addition, the
4 director of taxation shall have the exclusive rights and power
5 to determine the county or counties in which a person is engaged
6 in business and, in the case of a person engaged in business in
7 more than one county, the director shall determine, through
8 apportionment or other means, that portion of the surcharge on
9 state tax attributable to business conducted in each county."

10 SECTION 12. Section 237-9, Hawaii Revised Statutes, is
11 amended to read as follows:

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



1 this chapter before January 1, 1990, shall pay a one-time
2 license renewal fee of \$20 on or before January 31, 1990, as a
3 condition precedent to engaging or continuing in business. The
4 license shall not be transferable and shall be valid only for
5 the person in whose name it is issued and for the transaction of
6 business at the place designated therein. The license may be
7 inspected and examined, and shall at all times be conspicuously
8 displayed at the place for which it is issued.

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

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



1 license issued under this chapter for cause as provided by rules
2 adopted pursuant to chapter 91.

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

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



1 the marketing arrangement. Under this section, a tax collection
2 agent shall:

3 (1) Notify all of its direct sellers making sales in the
4 State that it has been designated to collect, report,
5 and pay over the tax imposed by this chapter and
6 chapter 238 on their behalf on the business activity
7 conducted through the marketing arrangement;

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

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

21 (e) The director may authorize a person to assume the
22 obligation of self-accruing and remitting tax due on purchases



1 or leases directly to the department under a direct payment
2 authorization, if the following conditions are met:

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

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

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

16 The department may identify items that are not eligible for a
17 direct payment authorization.

18 ~~(e)~~ (f) For the purposes of this section:

19 "Consumer product" shall include tangible consumer products
20 and intangible consumer services.



1 "Direct seller" means any person who is engaged in the
2 trade or business of selling (or soliciting the sale of)
3 consumer products:

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

8 (2) Other than in a permanent retail establishment;
9 provided that:

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

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

20 "Direct seller" includes individuals who realize
21 remuneration dependent on the productivity of other individuals
22 in the marketing arrangement.



1 "Network marketing" or "multi-level marketing" means a
2 marketing arrangement in which consumer products are distributed
3 and sold to or through direct sellers."

4 SECTION 13. Section 237-13, Hawaii Revised Statutes, is
5 amended to read as follows:

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

12 [~~1~~] ~~Tax on manufacturers.~~

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



1 ~~articles, substances, or commodities,~~
2 ~~manufactured, compounded, canned, preserved,~~
3 ~~packed, printed, milled, processed, refined, or~~
4 ~~prepared for sale, as shown by the gross proceeds~~
5 ~~derived from the sale thereof by the manufacturer~~
6 ~~or person compounding, preparing, or printing~~
7 ~~them, multiplied by one half of one per cent.~~

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

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



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

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

18 ~~(ii) If the products have not been sold at the~~
19 ~~time of their entry into interstate or~~
20 ~~foreign commerce, and in cases governed by~~
21 ~~clause (i) in which the products are sold~~
22 ~~under circumstances such that the gross~~



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

18 ~~(iii) At the election of the taxpayer and with the~~
19 ~~approval of the department, the taxpayer may~~
20 ~~make the taxpayer's returns under clause (i)~~
21 ~~even though the products have not been sold~~



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1 ~~at the time of their entry into interstate~~
2 ~~or foreign commerce; and~~

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

9 ~~(2)]~~ (1) Tax on business of selling tangible personal
10 property ~~[+ producing.]~~;

11 (A) Upon every person engaging or continuing in the
12 business of selling any tangible personal
13 property [whatsoever] (not including, however,
14 bonds or other evidence of indebtedness, or
15 stocks), unless subject to chapter A, there is
16 [likewise] hereby levied, and shall be assessed
17 and collected, a tax equivalent to four per cent
18 of the gross proceeds of sales of the business;
19 ~~[provided that insofar as the sale of tangible~~
20 ~~personal property is a wholesale sale under~~
21 ~~section 237-4(a)(8)(B), the sale shall be subject~~
22 ~~to section 237-13.3. Upon every person engaging~~

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~~or continuing within this State in the business of a producer, the tax shall be equal to one half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).]~~

(B) Gross proceeds of sales of tangible property, unless subject to chapter A, in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States ~~[which]~~ that may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross



1 proceeds of sales, the gross proceeds shall be so
2 attributed[~~7~~

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

15 ~~(+D)~~ (C) When a manufacturer or a producer[~~7~~] as
16 defined under section A-3, engaged in [~~such~~] the
17 business of manufacturing or producing in the
18 State, also is engaged in selling the
19 manufacturer's or producer's products in the
20 State at wholesale[~~7~~] and taxed under chapter A,
21 retail, or in any other manner, the tax for the
22 privilege of engaging in the business of selling



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



1 pay the tax imposed in this chapter for the
 2 privilege of producing or selling those
 3 products[+]; and
 4 (D) A taxpayer selling to a federal cost-plus
 5 contractor may make the election provided for by
 6 paragraph [(3)(e)] (2)(C), and in that case the
 7 tax shall be computed pursuant to the election,
 8 notwithstanding this paragraph [or paragraph (1)]
 9 to the contrary[+];
 10 (F) The department, by rule, may require that a
 11 seller take from the purchaser of tangible
 12 personal property a certificate, in a form
 13 prescribed by the department, certifying that the
 14 sale is a sale at wholesale, provided that:
 15 (1) Any purchaser who furnishes a certificate
 16 shall be obligated to pay to the seller,
 17 upon demand, the amount of the additional
 18 tax that is imposed upon the seller whenever
 19 the sale in fact is not at wholesale, and
 20 (2) The absence of a certificate in itself shall
 21 give rise to the presumption that the sale



~~is not at wholesale unless the sales of the
business are exclusively at wholesale.~~

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

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

(B) In computing the tax levied under this paragraph,
there shall be deducted from the gross income of
the taxpayer so much thereof as has been included
in the measure of the tax levied under
subparagraph (A) on:

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

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

(iii) A specialty contractor who is not licensed
by the department of commerce and consumer
affairs pursuant to section 444-9, but who
performs contracting activities on federal



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1 military installations and nowhere else in
2 this State;

3 provided that any person claiming a deduction
4 under this paragraph shall be required to show in
5 the person's return the name and general excise
6 number of the person paying the tax on the amount
7 deducted by the person[-];

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

13 (i) The gross income exempted shall constitute
14 reimbursement of costs incurred for
15 materials, plant, or equipment purchased
16 from a taxpayer licensed under this chapter,
17 not exceeding the gross proceeds of sale of
18 the taxpayer on account of the transaction;
19 and

20 (ii) The taxpayer making the sale shall have
21 certified to the department that the
22 taxpayer is taxable with respect to the



1 gross proceeds of the sale, and that the
 2 taxpayer elects to have the tax on gross
 3 income computed the same as upon a sale to
 4 the state government[-];

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



1 sell or otherwise dispose of the land or
2 improvements. The tax in respect of the
3 improvements shall be measured by the amount of
4 the proceeds of the sale or other disposition
5 that is attributable to the erection,
6 construction, or improvement of [~~such~~] the
7 building or structure, or the making,
8 constructing, or improving of the road, street,
9 sidewalk, sewer, or water system, or other
10 improvements. The measure of tax in respect of
11 the improvements shall not exceed the amount
12 [~~which~~] that would have been taxable had the work
13 been performed by another, subject as in other
14 cases to the deductions allowed by subparagraph
15 (B). Upon the election of the taxpayer, this
16 paragraph may be applied notwithstanding that the
17 improvements were not made by the taxpayer, or
18 were not made as a business or as a part of a
19 business, or were made with the intention of
20 holding the same. However, this paragraph shall
21 not apply in respect of any proceeds that
22 constitute or are in the nature of rent; all



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1 [~~such~~] gross income shall be taxable under
 2 paragraph [~~(9)~~] (6); provided that insofar as
 3 the business of renting or leasing real property
 4 under a lease is taxed under section 237-16.5,
 5 the tax shall be levied by section 237-16.5[~~+~~];

6 [~~(4)~~] (3) Tax upon theaters, amusements, radio broadcasting
 7 stations, etc.

8 [~~(A)~~] Upon every person engaging or continuing within
 9 the State in the business of operating a theater,
 10 opera house, moving picture show, vaudeville,
 11 amusement park, dance hall, skating rink, radio
 12 broadcasting station, or any other place at which
 13 amusements are offered to the public, unless
 14 taxed under section A-6, the tax shall be equal
 15 to four per cent of the gross income of the
 16 business[~~, and in the case of a sale of an~~
 17 ~~amusement at wholesale under section~~
 18 ~~237-4(a)(13), the tax shall be subject to section~~
 19 ~~237-13.3.~~

20 [~~(B)~~] ~~The department may require that the person~~
 21 ~~rendering an amusement at wholesale take from the~~
 22 ~~licensed seller a certificate, in a form~~



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1 ~~prescribed by the department, certifying that the~~
2 ~~sale is a sale at wholesale; provided that:~~

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

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

14 ~~(4)~~ (4) Tax upon sales representatives, etc. Upon every
15 person classified as a representative or purchasing
16 agent under section 237-1, engaging or continuing
17 within the State in the business of performing
18 services for another, other than as an employee, there
19 is likewise hereby levied and shall be assessed and
20 collected a tax equal to four per cent of the
21 commissions and other compensation attributable to the



1 services so rendered by the person[-], unless taxable
2 under chapter A or C;

3 [+6] (5) Tax on service business[-]:

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

17 ~~(B) The department may require that the person~~
18 ~~rendering a service at wholesale take from the~~
19 ~~licensed seller a certificate, in a form~~
20 ~~prescribed by the department, certifying that the~~
21 ~~sale is a sale at wholesale; provided that:~~



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

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

12 ~~(C) Where any person engaging or continuing within~~
13 ~~the State in any service business or calling~~
14 ~~renders those services upon the order of or at~~
15 ~~the request of another taxpayer who is engaged in~~
16 ~~the service business and who, in fact, acts as or~~
17 ~~acts in the nature of an intermediary between the~~
18 ~~person rendering those services and the ultimate~~
19 ~~recipient of the benefits of those services, so~~
20 ~~much of the gross income as is received by the~~
21 ~~person rendering the services shall be subjected~~
22 ~~to the tax at the rate of one half of one per~~



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

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



1 business selling interstate or foreign common
 2 carrier [~~telecommunication~~] telecommunications
 3 services cannot be included in the measure of the
 4 tax, the gross income shall be apportioned as
 5 provided in section 237-21; provided that the
 6 apportionment factor and formula shall be the
 7 same for all persons providing those services in
 8 the State[~~-~~];

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



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



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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 producers. Upon every person engaged~~
12 ~~as a licensed producer pursuant to chapter 431, there~~
13 ~~is hereby levied and shall be assessed and collected a~~
14 ~~tax equal to 0.15 per cent of the commissions due to~~
15 ~~that activity.~~

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



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

13 ~~(9)~~ (6) Tax on other business. Upon every person
 14 engaging or continuing within the State in any
 15 business, trade, activity, occupation, or calling not
 16 included in the preceding paragraphs or any other
 17 provisions of this chapter, there is likewise hereby
 18 levied and shall be assessed and collected, a tax
 19 equal to four per cent of the gross income thereof.
 20 In addition, the rate prescribed by this paragraph
 21 shall apply to a business taxable under one or more of
 22 the preceding paragraphs or other provisions of this



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

6 SECTION 14. Section 237-13.8, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

8 "(c) When a person licensed under this chapter sells
9 prepaid telephone calling services to a licensed retail
10 merchant, jobber, or other licensed seller for purposes of
11 resale, the person shall be taxed as a wholesaler selling
12 tangible personal property[-] under section A-13. All other
13 sales of prepaid telephone calling services shall be taxed as
14 retail sales of tangible personal property."

15 SECTION 15. Section 237-18, Hawaii Revised Statutes,
16 amended to read as follows:

17 **"§237-18 Further provisions as to application of tax. (a)**
18 Where a coin operated device produces gross income which is
19 divided between the owner or operator of the device, on the one
20 hand, and the owner or operator of the premises where the device
21 is located, on the other hand, the tax imposed by this chapter



1 shall apply to each [~~such~~] person with respect to the person's
2 portion of the proceeds, and no more.

3 (b) Where gate receipts or other admissions are divided
4 between the person furnishing or producing a play, concert,
5 lecture, athletic event, or similar spectacle (including any
6 motion picture showing) on the one hand, and a promoter
7 (including any proprietor or other operator of a motion picture
8 house) offering the spectacle to the public, on the other hand,
9 the tax imposed by this chapter, if the promoter is subject to
10 the tax imposed by this chapter, shall apply only to the
11 promoter measured by the whole of the proceeds, and the promoter
12 shall be authorized to deduct and withhold from the portion of
13 the proceeds payable to the person furnishing or producing the
14 spectacle the amount of the tax payable by the person upon such
15 portion. No tax shall apply to a promoter with respect to
16 [~~such~~] the portion of the proceeds as is payable to a person
17 furnishing or producing the spectacle, who is exempted by
18 section 237-23 from taxation upon [~~such~~] the activity.

19 ~~[(c) Where, through the activity of a person taxable under~~
20 ~~section 237-13(6), a product has been milled, processed, or~~
21 ~~otherwise manufactured upon the order of another taxpayer who is~~
22 ~~a manufacturer taxable upon the value of the entire manufactured~~



1 ~~products, which consists in part of the value of the services~~
2 ~~taxable under section 237-13(6), so much gross income as is~~
3 ~~derived from the rendering of the services shall be subjected to~~
4 ~~tax on the person rendering the services at the rate of one-half~~
5 ~~of one per cent, and the value of the entire product shall be~~
6 ~~included in the measure of the tax imposed on the other taxpayer~~
7 ~~as elsewhere provided.~~

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

20 ~~(e)] (c) Where [insurance agents, including general~~
21 ~~agents, subagents, or solicitors, who are not employees and are~~
22 ~~licensed pursuant to chapter 431, or] real estate brokers or~~



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

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

17 As used in this subsection, "tourism related services"
18 means catamaran cruises, canoe rides, dinner cruises, lei
19 greetings, transportation included in a tour package,
20 sightseeing tours not subject to chapter 239, admissions to
21 luaus, dinner shows, extravaganzas, cultural and educational
22 facilities, and other services rendered directly to the customer



1 or tourist, but only if the providers of the services other than
2 air transportation are subject to a four per cent tax under this
3 chapter or chapter 239.

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

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

15 [~~h~~] (f) Where the transportation of passengers or
16 property is furnished through arrangements between motor
17 carriers, and the gross income is divided between the motor
18 carriers, any tax imposed by this chapter shall apply to each
19 motor carrier with respect to each motor carrier's respective
20 portion of the proceeds.

21 As used in this subsection:



1 "Carrier" means a person who engages in transportation, and
2 does not include a person such as a freight forwarder or tour
3 packager who provides transportation by contracting with others,
4 except to the extent that ~~such~~ the person ~~oneself~~ engages in
5 transportation.

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

10 "Motor carrier" means a common carrier or contract carrier
11 transporting persons or property for compensation on the public
12 highways, other than a public utility as defined under section
13 239-2 or taxicab.

14 "Public highways" has the meaning defined by section 264-1
15 including both state and county highways, but operation upon
16 rails shall not be deemed transportation on the public
17 highways."

18 SECTION 16. Section 237-21, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§237-21 Apportionment.** If any person~~[, other than~~
21 ~~persons liable to the tax on manufacturers as provided by~~
22 ~~section 237-13(1),]~~ is engaged in business both within and



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

20 SECTION 17. Section 237-24, Hawaii Revised Statutes, is
 21 amended to read as follows:



1 "§237-24 Amounts not taxable. This chapter shall not
2 apply to the following amounts:

- 3 (1) Amounts received under life insurance policies and
4 contracts paid by reason of the death of the insured;
- 5 (2) Amounts received (other than amounts paid by reason of
6 death of the insured) under life insurance, endowment,
7 or annuity contracts, either during the term or at
8 maturity or upon surrender of the contract;
- 9 (3) Amounts received under any accident insurance or
10 health insurance policy or contract or under workers'
11 compensation acts or employers' liability acts, as
12 compensation for personal injuries, death, or
13 sickness, including also the amount of any damages or
14 other compensation received, whether as a result of
15 action or by private agreement between the parties on
16 account of the personal injuries, death, or sickness;
- 17 (4) The value of all property of every kind and sort
18 acquired by gift, bequest, or devise, and the value of
19 all property acquired by descent or inheritance;
- 20 (5) Amounts received by any person as compensatory damages
21 for any tort injury to the person, or to the person's
22 character reputation, or received as compensatory



1 damages for any tort injury to or destruction of
2 property, whether as the result of action or by
3 private agreement between the parties (provided that
4 amounts received as punitive damages for tort injury
5 or breach of contract injury shall be included in
6 gross income);

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

9 (7) Amounts received as alimony and other similar payments
10 and settlements;

11 (8) Amounts collected by distributors as fuel taxes on
12 "liquid fuel" imposed by chapter 243, and the amounts
13 collected by [~~such~~] distributors as a fuel tax imposed
14 by any Act of the Congress of the United States;

15 (9) Taxes on liquor imposed by chapter 244D on dealers
16 holding permits under that chapter;

17 [~~(10)~~] ~~The amounts of taxes on cigarettes and tobacco~~
18 ~~products imposed by chapter 245 on wholesalers or~~
19 ~~dealers holding licenses under that chapter and~~
20 ~~selling the products at wholesale;~~



1 ~~(11)~~ (10) Federal excise taxes imposed on articles sold at
2 retail and collected from the purchasers thereof and
3 paid to the federal government by the retailer;

4 ~~[(12)]~~ ~~The amounts of federal taxes under chapter 37 of the~~
5 ~~Internal Revenue Code, or similar federal taxes,~~
6 ~~imposed on sugar manufactured in the State, paid by~~
7 ~~the manufacturer to the federal government;~~

8 ~~(13)]~~ (11) ~~[An amount up to, but not in excess of, \$2,000 a~~
9 ~~year of gross income]~~ Amounts received by any blind,
10 deaf, or totally disabled person engaging, or
11 continuing, in any business, trade, activity,
12 occupation, or calling within the State; a corporation
13 all of whose outstanding shares are owned by an
14 individual or individuals who are blind, deaf, or
15 totally disabled; a general, limited, or limited
16 liability partnership, all of whose partners are
17 blind, deaf, or totally disabled; or a limited
18 liability company, all of whose members are blind,
19 deaf, or totally disabled;

20 ~~[(14)]~~ ~~Amounts received by a producer of sugarcane from the~~
21 ~~manufacturer to whom the producer sells the sugarcane,~~
22 ~~where:~~



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

5 ~~(B) The value or gross proceeds of sale of the sugar,~~
6 ~~and other products manufactured from the~~
7 ~~sugarcane, is included in the measure of the tax~~
8 ~~levied on the manufacturer under section~~
9 ~~237-13(1) or (2);~~

10 ~~(C) The producer's gross proceeds of sales are~~
11 ~~dependent upon the actual value of the products~~
12 ~~manufactured therefrom or the average value of~~
13 ~~all similar products manufactured by the~~
14 ~~manufacturer; and~~

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

18 ~~(15)]~~ (12) Money paid by the State or eleemosynary child-
19 placing organizations to foster parents for their care
20 of children in foster homes; and

21 ~~(16)]~~ (13) Amounts received by a cooperative housing
22 corporation from its shareholders in reimbursement of



1 funds paid by [~~such~~] the corporation for lease rental,
2 real property taxes, and other expenses of operating
3 and maintaining the cooperative land and improvements;
4 provided that [~~such-a~~] the cooperative corporation is
5 a corporation:

6 (A) Having one and only one class of stock
7 outstanding;

8 (B) Each of the stockholders of which is entitled
9 solely by reason of the stockholder's ownership
10 of stock in the corporation, to occupy for
11 dwelling purposes a house, or an apartment in a
12 building owned or leased by the corporation; and

13 (C) No stockholder of which is entitled (either
14 conditionally or unconditionally) to receive any
15 distribution not out of earnings and profits of
16 the corporation except in a complete or partial
17 liquidation of the corporation."

18 SECTION 18. Section 237-24.3, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§237-24.3 Additional amounts not taxable.** In addition to
21 the amounts not taxable under section 237-24, this chapter shall
22 not apply to:



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

10 (2) Amounts received from sales of:

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

13 (B) Cigarettes and tobacco products as defined in
 14 chapter 245; and

15 (C) Agricultural, meat, or fish products;
 16 to any person or common carrier in interstate or
 17 foreign commerce, or both, whether ocean-going or air,
 18 for consumption out-of-state on the shipper's vessels
 19 or airplanes;

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



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- 1 (A) An association of apartment owners of a
- 2 condominium property regime established in
- 3 accordance with chapter 514B; or
- 4 (B) A nonprofit homeowners or community association
- 5 incorporated in accordance with chapter 414D or
- 6 any predecessor thereto and existing pursuant to
- 7 covenants running with the land,
- 8 in reimbursement of sums paid for common expenses;
- 9 (4) Amounts received or accrued from:
 - 10 (A) The loading or unloading of cargo from ships,
 - 11 barges, vessels, or aircraft, whether or not the
 - 12 ships, barges, vessels, or aircraft travel
 - 13 between the State and other states or countries
 - 14 or between the islands of the State;
 - 15 (B) Tugboat services including pilotage fees
 - 16 performed within the State, and the towage of
 - 17 ships, barges, or vessels in and out of state
 - 18 harbors, or from one pier to another; and
 - 19 (C) The transportation of pilots or governmental
 - 20 officials to ships, barges, or vessels offshore;
 - 21 rigging gear; checking freight and similar



1 services; standby charges; and use of moorings
2 and running mooring lines;

3 (5) Amounts received by an employee benefit plan by way of
4 contributions, dividends, interest, and other income;
5 and amounts received by a nonprofit organization or
6 office, as payments for costs and expenses incurred
7 for the administration of an employee benefit plan;
8 provided that this exemption shall not apply to any
9 gross rental income or gross rental proceeds received
10 after June 30, 1994, as income from investments in
11 real property in this State; and provided further that
12 gross rental income or gross rental proceeds from
13 investments in real property received by an employee
14 benefit plan after June 30, 1994, under written
15 contracts executed prior to July 1, 1994, shall not be
16 taxed until the contracts are renegotiated, renewed,
17 or extended, or until after December 31, 1998,
18 whichever is earlier. For the purposes of this
19 paragraph, "employee benefit plan" means any plan as
20 defined in section 1002(3) of title 29 of the United
21 States Code, as amended;



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

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

16 (A) "Prescription drugs" are those drugs defined
 17 under section 328-1 and dispensed by filling or
 18 refilling a written or oral prescription by a
 19 practitioner licensed under law to administer the
 20 drug and sold by a licensed pharmacist under
 21 section 328-16 or practitioners licensed to
 22 administer drugs; and



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

- 17 (i) Artificially replace a missing portion of
18 the body;
19 (ii) Prevent or correct physical deformity or
20 malfunction; or
21 (iii) Support a weak or deformed portion of the
22 body.



A prosthetic device does not include corrective eyeglasses, contact lenses, hearing aids, and dental prosthesis;

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

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

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

(A) A labor organization; or

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



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

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

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

18 SECTION 19. Section 237-31, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§237-31 **Remittances.** All remittances of taxes imposed by
21 this chapter shall be made by money, bank draft, check,
22 cashier's check, money order, or certificate of deposit to the



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1 office of the department of taxation to which the return was
2 transmitted. The department shall issue its receipts therefor
3 to the taxpayer and shall pay the moneys into the state treasury
4 as a state realization, to be kept and accounted for as provided
5 by law; provided that:

6 (1) The sum from all general excise tax revenues realized
7 by the State that represents the difference between
8 \$45,000,000 and the proceeds from the sale of any
9 general obligation bonds authorized for that fiscal
10 year for the purposes of the state educational
11 facilities improvement special fund shall be deposited
12 in the state treasury in each fiscal year to the
13 credit of the state educational facilities improvement
14 special fund;

15 (2) A sum, not to exceed \$5,000,000, from all general
16 excise tax revenues realized by the State shall be
17 deposited in the state treasury in each fiscal year to
18 the credit of the compound interest bond reserve
19 fund[; and

20 ~~(3) A sum, not to exceed the amount necessary to meet the~~
21 ~~obligations of the integrated tax information~~
22 ~~management systems performance-based contract may be~~



~~retained and deposited in the state treasury to the credit of the integrated tax information management systems special fund. The sum retained by the director of taxation for deposit to the integrated tax information management systems special fund for each fiscal year shall be limited to amounts appropriated by the legislature. This paragraph shall be repealed on July 1, 2005.]; and~~

(3) A sum equal to _____ per cent of all tax revenues realized by the State under chapters A, B, and C, respectively, shall be deposited in the state treasury in each fiscal year to the credit of the department of education and the University of Hawaii, on an equal basis; provided that any moneys received under this section shall augment and not replace existing operating or capital improvement budgets; provided further that beginning on July 1, _____, all revenues realized by the State under chapters A, B, and C shall be deposited in the state treasury."

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

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

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



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

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



1 SECTION 21. Section 238-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§238-2 Imposition of tax on tangible personal property;
4 exemptions. There is hereby levied an excise tax on the use in
5 this State of tangible personal property [~~which~~] that is
6 imported by a taxpayer in this State whether owned, purchased
7 from an unlicensed seller, or however acquired for use in this
8 State[~~]~~, unless subject to tax or exempt from tax under
9 chapter B. The tax imposed by this chapter shall accrue when
10 the property is acquired by the importer or purchaser and
11 becomes subject to the taxing jurisdiction of the State. The
12 [~~rates~~] rate of the tax hereby imposed [~~and the exemptions~~
13 ~~thereof are as follows:~~

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

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

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



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

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

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



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



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

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

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



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

2 and

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

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

10 SECTION 22. Section 238-2.3, Hawaii Revised Statutes, is
11 amended to read as follows:

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



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

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

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

20 ~~there shall be no tax imposed on the value of the~~
21 ~~imported or purchased services or contracting;~~
22 ~~provided that if the manufacturer is also engaged in~~



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

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

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

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



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

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

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

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



1 SECTION 23. Section 238-2.6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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



1 SECTION 24. Act 3, Special Session Laws of Hawaii 2005, is
2 amended by amending section 5 to read as follows:

3 "SECTION 5. (a) No later than August 1, 2005, the
4 department of taxation, together with [~~three~~] four designees
5 selected by the president of the senate and [~~three~~] four
6 designees selected by the speaker of the house of
7 representatives shall:

8 (1) Identify issues that need to be resolved to effectuate
9 the orderly enactment and operation of a streamlined
10 sales and use tax that is based on the Streamlined
11 Sales Tax Project's model Agreement and Act, including
12 issues of conformance with the State's existing
13 general excise tax law and other laws as may be
14 required; and

15 (2) Conduct informational briefings for the legislature on
16 the department's efforts to comply with the purposes
17 of this Act.

18 (b) No later than twenty days prior to the convening of
19 the 2006 regular session, the department of taxation shall
20 submit proposed legislation to the legislature for its enactment
21 prior to January 1, 2007, that provides for:



1 (1) Any further amendments requested by the Streamlined
 2 Sales Tax Project to address issues such as sourcing
 3 and rounding and to enhance the operation of a
 4 streamlined sales and use tax in accordance with the
 5 Streamlined Sales Tax Project's model Agreement and
 6 Act; and

7 (2) Any additional conforming amendments to the State's
 8 existing general excise tax law and other laws as may
 9 be required."

10 SECTION 25. Section 237-4, Hawaii Revised Statutes, is
 11 repealed.

12 ~~["§237-4 "Wholesaler", "jobber", defined. (a)~~
 13 ~~"Wholesaler" or "jobber" applies only to a person making sales~~
 14 ~~at wholesale. Only the following are sales at wholesale:~~

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

17 ~~(2) Sales to a licensed manufacturer of materials or~~
 18 ~~commodities that are to be incorporated by the~~
 19 ~~manufacturer into a finished or saleable product~~
 20 ~~(including the container or package in which the~~
 21 ~~product is contained) during the course of its~~
 22 ~~preservation, manufacture, or processing, including~~



1 ~~preparation for market, and that will remain in such~~
2 ~~finished or saleable product in such form as to be~~
3 ~~perceptible to the senses, which finished or saleable~~
4 ~~product is to be sold and not otherwise used by the~~
5 ~~manufacturer;~~

6 ~~(3) Sales to a licensed producer or cooperative~~
7 ~~association of materials or commodities that are to be~~
8 ~~incorporated by the producer or by the cooperative~~
9 ~~association into a finished or saleable product that~~
10 ~~is to be sold and not otherwise used by the producer~~
11 ~~or cooperative association, including specifically~~
12 ~~materials or commodities expended as essential to the~~
13 ~~planting, growth, nurturing, and production of~~
14 ~~commodities that are sold by the producer or by the~~
15 ~~cooperative association;~~

16 ~~(4) Sales to a licensed contractor, of materials or~~
17 ~~commodities that are to be incorporated by the~~
18 ~~contractor into the finished work or project required~~
19 ~~by the contract and that will remain in such finished~~
20 ~~work or project in such form as to be perceptible to~~
21 ~~the senses;~~



1 ~~(5) Sales to a licensed producer, or to a cooperative~~
2 ~~association described in section 237-23(a)(7) for sale~~
3 ~~to a licensed producer, or to a licensed person~~
4 ~~operating a feed lot, of poultry or animal feed,~~
5 ~~hatching eggs, semen, replacement stock, breeding~~
6 ~~services for the purpose of raising or producing~~
7 ~~animal or poultry products for disposition as~~
8 ~~described in section 237-5 or for incorporation into a~~
9 ~~manufactured product as described in paragraph (2) or~~
10 ~~for the purpose of breeding, hatching, milking, or egg~~
11 ~~laying other than for the customer's own consumption~~
12 ~~of the meat, poultry, eggs, or milk so produced;~~
13 ~~provided that in the case of a feed lot operator, only~~
14 ~~the segregated cost of the feed furnished by the feed~~
15 ~~lot operator as part of the feed lot operator's~~
16 ~~service to a licensed producer of poultry or animals~~
17 ~~to be butchered or to a cooperative association~~
18 ~~described in section 237-23(a)(7) of such licensed~~
19 ~~producers shall be deemed to be a sale at wholesale;~~
20 ~~and provided further that any amount derived from the~~
21 ~~furnishing of feed lot services, other than the~~
22 ~~segregated cost of feed, shall be deemed taxable at~~



1 ~~the service business rate. This paragraph shall not~~
 2 ~~apply to the sale of feed for poultry or animals to be~~
 3 ~~used for hauling, transportation, or sports purposes;~~
 4 ~~(6) Sales to a licensed producer, or to a cooperative~~
 5 ~~association described in section 237-23(a)(7) for sale~~
 6 ~~to the producer, of seed or seedstock for producing~~
 7 ~~agricultural and aquacultural products, or bait for~~
 8 ~~catching fish (including the catching of bait for~~
 9 ~~catching fish), which agricultural and aquacultural~~
 10 ~~products or fish are to be disposed of as described in~~
 11 ~~section 237-5 or to be incorporated in a manufactured~~
 12 ~~product as described in paragraph (2);~~
 13 ~~(7) Sales to a licensed producer, or to a cooperative~~
 14 ~~association described in section 237-23(a)(7) for sale~~
 15 ~~to such producer; of polypropylene shade cloth; of~~
 16 ~~polyfilm; of polyethylene film; of cartons and such~~
 17 ~~other containers, wrappers, and sacks, and binders to~~
 18 ~~be used for packaging eggs, vegetables, fruits, and~~
 19 ~~other agricultural and aquacultural products; of~~
 20 ~~seedlings and cuttings for producing nursery plants or~~
 21 ~~aquacultural products; or of chick containers; which~~
 22 ~~cartons and such other containers, wrappers, and~~



1 ~~sacks, binders, seedlings, cuttings, and containers~~
2 ~~are to be used as described in section 237-5, or to be~~
3 ~~incorporated in a manufactured product as described in~~
4 ~~paragraph (2);~~

5 ~~(8) Sales of tangible personal property:~~

6 ~~(A) To a licensed seller engaged in a service~~
7 ~~business or calling; provided that:~~

8 ~~(i) The property is not consumed or incidental~~
9 ~~to the performance of the services;~~

10 ~~(ii) There is a resale of the article at the~~
11 ~~retail rate of four per cent; and~~

12 ~~(iii) The resale of the article is separately~~
13 ~~charged or billed by the person rendering~~
14 ~~the services;~~

15 ~~(B) Where:~~

16 ~~(i) Tangible personal property is sold upon the~~
17 ~~order or request of a licensed seller for~~
18 ~~the purpose of rendering a service in the~~
19 ~~course of the person's service business or~~
20 ~~calling, or upon the order or request of a~~
21 ~~person subject to tax under section 237D-2~~



1 ~~for the purpose of furnishing transient~~
2 ~~accommodations;~~

3 ~~(ii) The tangible personal property becomes or is~~
4 ~~used as an identifiable element of the~~
5 ~~service rendered; and~~

6 ~~(iii) The cost of the tangible personal property~~
7 ~~does not constitute overhead to the licensed~~
8 ~~seller;~~

9 ~~the sale shall be subject to section 237-13.3; or~~

10 ~~(C) Where the taxpayer is subject to both~~
11 ~~subparagraphs (A) and (B), then the taxpayer~~
12 ~~shall be taxed under subparagraph (A).~~

13 ~~Subparagraphs (A) and (C) shall be repealed on~~
14 ~~January 1, 2006;~~

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

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

21 ~~(A) Either:~~



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



1 ~~for the purpose of furnishing transient~~
2 ~~accommodations;~~

3 ~~(B) The benefit of the service passes to the customer~~
4 ~~of the licensed seller, licensed contractor, or~~
5 ~~person furnishing transient accommodations as an~~
6 ~~identifiable element of the other service or~~
7 ~~property to be sold, the contracting, or the~~
8 ~~furnishing of transient accommodations;~~

9 ~~(C) The cost of the service does not constitute~~
10 ~~overhead to the licensed seller, licensed~~
11 ~~contractor, or person furnishing transient~~
12 ~~accommodations;~~

13 ~~(D) The gross income of the licensed seller is not~~
14 ~~divided between the licensed seller and another~~
15 ~~licensed seller, contractor, or person furnishing~~
16 ~~transient accommodations for imposition of the~~
17 ~~tax under this chapter;~~

18 ~~(E) The gross income of the licensed seller is not~~
19 ~~subject to a deduction under this chapter or~~
20 ~~chapter 237D; and~~

21 ~~(F) The resale of the service, tangible personal~~
22 ~~property, contracting, or transient~~



1 ~~accommodations is subject to the tax imposed~~
2 ~~under this chapter at the highest tax rate.~~

3 ~~Sales subject to this paragraph shall be subject to~~
4 ~~section 237-13.3,~~

5 ~~(11) Sales to a licensed retail merchant, jobber, or other~~
6 ~~licensed seller of bulk condiments or prepackaged~~
7 ~~single-serving packets of condiments that are provided~~
8 ~~to customers by the licensed retail merchant, jobber,~~
9 ~~or other licensed seller,~~

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



- 1 ~~(13) Sales of amusements subject to taxation under section~~
- 2 ~~237-13(4) to a licensed seller engaging in a business~~
- 3 ~~or calling whenever:~~
- 4 ~~(A) Either:~~
- 5 ~~(i) In the context of an amusement-to-service~~
- 6 ~~transaction, an amusement is rendered upon~~
- 7 ~~the order or request of a licensed seller~~
- 8 ~~for the purpose of rendering another service~~
- 9 ~~in the course of the seller's service~~
- 10 ~~business or calling;~~
- 11 ~~(ii) In the context of an amusement-to-tangible~~
- 12 ~~personal property transaction, an amusement~~
- 13 ~~is rendered upon the order or request of a~~
- 14 ~~licensed seller for the purpose of selling~~
- 15 ~~tangible personal property; or~~
- 16 ~~(iii) In the context of an amusement-to-amusement~~
- 17 ~~transaction, an amusement is rendered upon~~
- 18 ~~the order or request of a licensed seller~~
- 19 ~~for the purpose of rendering another~~
- 20 ~~amusement in the course of the person's~~
- 21 ~~amusement business;~~

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- 1 ~~(B) The benefit of the amusement passes to the~~
2 ~~customer of the licensed seller as an~~
3 ~~identifiable element of the other service,~~
4 ~~tangible personal property to be sold, or~~
5 ~~amusement;~~
- 6 ~~(C) The cost of the amusement does not constitute~~
7 ~~overhead to the licensed seller;~~
- 8 ~~(D) The gross income of the licensed seller is not~~
9 ~~divided between the licensed seller and another~~
10 ~~licensed seller, person furnishing transient~~
11 ~~accommodations, or person rendering an amusement~~
12 ~~for imposition of the tax under chapter 237;~~
- 13 ~~(E) The gross income of the licensed seller is not~~
14 ~~subject to a deduction under this chapter; and~~
- 15 ~~(F) The resale of the service, tangible personal~~
16 ~~property, or amusement is subject to the tax~~
17 ~~imposed under this chapter at the highest rate.~~
- 18 ~~As used in this paragraph, "amusement" means~~
19 ~~entertainment provided as part of a show for which~~
20 ~~there is an admission charge. Sales subject to this~~
21 ~~paragraph shall be subject to section 237-13.3; and~~



1 ~~(14) Sales by a printer to a publisher of magazines or~~
2 ~~similar printed materials containing advertisements,~~
3 ~~when the publisher is under contract with the~~
4 ~~advertisers to distribute a minimum number of~~
5 ~~magazines or similar printed materials to the public~~
6 ~~or defined segment of the public, whether or not there~~
7 ~~is a charge to the persons who actually receive the~~
8 ~~magazines or similar printed materials.~~

9 ~~(b) If the use tax law is finally held by a court of~~
10 ~~competent jurisdiction to be unconstitutional or invalid insofar~~
11 ~~as it purports to tax the use or consumption of tangible~~
12 ~~personal property imported into the State in interstate or~~
13 ~~foreign commerce or both, wholesalers and jobbers shall be taxed~~
14 ~~thereafter under this chapter in accordance with the following~~
15 ~~definition (which shall supersede the preceding paragraph~~
16 ~~otherwise defining "wholesaler" or "jobber"): "Wholesaler" or~~
17 ~~"jobber" means a person, or a definitely organized division~~
18 ~~thereof, definitely organized to render and rendering a general~~
19 ~~distribution service that buys and maintains at the person's~~
20 ~~place of business a stock or lines of merchandise that the~~
21 ~~person distributes; and that the person, through salespersons,~~
22 ~~advertising, or sales promotion devices, sells to licensed~~



1 ~~retailers, to institutional or licensed commercial or industrial~~
2 ~~users, in wholesale quantities and at wholesale rates. A~~
3 ~~corporation deemed not to be carrying on a trade or business in~~
4 ~~this State under section 235-6 shall nevertheless be deemed to~~
5 ~~be a wholesaler and shall be subject to the tax imposed by this~~
6 ~~chapter."]~~

7 SECTION 26. Section 237-5, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§237-5 "Producer" defined. "Producer" means any person~~
10 ~~engaged in the business of raising and producing agricultural~~
11 ~~products in their natural state, or in producing natural~~
12 ~~resource products, or engaged in the business of fishing or~~
13 ~~aquaculture, for sale, or for shipment or transportation out of~~
14 ~~the State, of the agricultural or aquaculture products in their~~
15 ~~natural or processed state, or butchered and dressed, or the~~
16 ~~natural resource products, or fish.~~

17 ~~As used in this section "agricultural products" include~~
18 ~~floricultural, horticultural, viticultural, forestry, nut,~~
19 ~~coffee, dairy, livestock, poultry, bee, animal, and any other~~
20 ~~farm, agronomic, or plantation products."]~~

21 SECTION 27. Section 237-13.3, Hawaii Revised Statutes, is
22 repealed.



1 ~~["§237-13.3 Application of sections 237-4(a)(8),~~
2 ~~237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and~~
3 ~~237-13(6)(A). (a) Sections 237-4(a)(8), 237-4(a)(10),~~
4 ~~237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to~~
5 ~~the contrary notwithstanding, instead of the tax levied under~~
6 ~~section 237-13(2)(A) on wholesale sales subject to section~~
7 ~~237-4(a)(8)(B), under section 237-13(4)(A) on a wholesaler~~
8 ~~subject to section 237-4(a)(13), and under section 237-13(6)(A)~~
9 ~~on a wholesaler subject to section 237-4(a)(10) at one half of~~
10 ~~one per cent, during the period January 1, 2000, to December 31,~~
11 ~~2005, the tax shall be as follows:~~

- 12 ~~(1) In calendar year 2000, 3.5 per cent;~~
13 ~~(2) In calendar year 2001, 3.0 per cent;~~
14 ~~(3) In calendar year 2002, 2.5 per cent;~~
15 ~~(4) In calendar year 2003, 2.0 per cent;~~
16 ~~(5) In calendar year 2004, 1.5 per cent;~~
17 ~~(6) In calendar year 2005, 1.0 per cent; and~~
18 ~~(7) In calendar year 2006 and thereafter, the tax shall be~~
19 ~~0.5 per cent.~~

20 ~~(b) The department shall have the authority to implement~~
21 ~~the tax rate changes in subsection (a) by prescribing tax forms~~
22 ~~and instructions that require tax reporting and payment by~~



1 ~~deduction, allocation, or any other method to determine tax~~
2 ~~liability with due regard to the tax rate changes."]~~

3 SECTION 28. Section 237-13.5, Hawaii Revised Statutes, is
4 repealed.

5 [~~"§237-13.5 Assessment on generated electricity. Any~~
6 ~~other provision of the law to the contrary notwithstanding, the~~
7 ~~levy and assessment of the general excise tax on the gross~~
8 ~~proceeds from the sale of electric power to a public utility~~
9 ~~company for resale to the public, shall be made only as a tax on~~
10 ~~the business of a producer, at the rate assessed producers,~~
11 ~~under section 237-13(2)(A)."~~]

12 SECTION 29. Section 237-15, Hawaii Revised Statutes, is
13 repealed.

14 [~~"§237-15 Technicians. When technicians supply dentists~~
15 ~~or physicians with dentures, orthodontic devices, braces, and~~
16 ~~similar items which have been prepared by the technician in~~
17 ~~accordance with specifications furnished by the dentist or~~
18 ~~physician, and such items are to be used by the dentist or~~
19 ~~physician in the dentist's or physician's professional practice~~
20 ~~for a particular patient who is to pay the dentist or physician~~
21 ~~for the same as a part of the dentist's or physician's~~
22 ~~professional services, the technician shall be taxed as though~~



1 ~~the technician were a manufacturer selling a product to a~~
2 ~~licensed retailer, rather than at the rate of four per cent~~
3 ~~which is generally applied to professions and services."]~~

4 SECTION 30. Section 237-17, Hawaii Revised Statutes, is
5 repealed.

6 ["~~§237-17 Persons with impaired sight, hearing, or who are~~
7 ~~totally disabled.~~ Anything in section 237-13 to the contrary
8 notwithstanding, the privilege tax levied, assessed, and
9 collected on account of the business or other activities of
10 individuals who are blind, deaf, or totally disabled,
11 corporations all of whose outstanding shares are owned by
12 individuals who are blind, deaf, or totally disabled, general,
13 limited, or limited liability partnerships, all of whose
14 partners are blind, deaf, or totally disabled, or limited
15 liability companies, all of whose members are blind, deaf, or
16 totally disabled, shall not exceed one-half of one per cent of
17 the proceeds, sales, income, or other receipts subject to tax.
18 For the purpose of this chapter "blind", "deaf", or "totally
19 disabled" is defined as in section 235-1. The impairment of
20 sight or hearing, or the disability, shall be certified to as
21 provided in section 235-1."]



1 SECTION 31. Section 237-29.55, Hawaii Revised Statutes, is

2 repealed.

3 ~~["§237-29.55] Exemption for sale of tangible personal~~

4 ~~property for resale at wholesale. (a) There shall be exempted~~

5 ~~from, and excluded from the measure of, the taxes imposed by~~

6 ~~this chapter all of the gross proceeds or gross income arising~~

7 ~~from the sale of tangible personal property imported to Hawaii~~

8 ~~from a foreign or domestic source to a licensed taxpayer for~~

9 ~~subsequent resale for the purpose of wholesale as defined under~~

10 ~~section 237-4.~~

11 ~~(b) The department, by rule, may provide that a seller may~~

12 ~~take from the purchaser of imported tangible personal property,~~

13 ~~a certificate, in a form that the department shall prescribe,~~

14 ~~certifying that the purchaser of the imported tangible personal~~

15 ~~property shall resell the imported tangible personal property at~~

16 ~~wholesale as defined under section 237-4. Any purchaser who~~

17 ~~furnishes a certificate shall be obligated to pay to the seller,~~

18 ~~upon demand, if the sale in fact is not a sale for the purpose~~

19 ~~of resale at wholesale, the amount of the additional tax which~~

20 ~~by reason thereof is imposed upon the seller. The absence of a~~

21 ~~certificate, unless the sales of the business are exclusively a~~

22 ~~sale for the purpose of resale at wholesale, in itself, shall~~



1 ~~give rise to the presumption that the sale is not a sale for the~~
2 ~~purpose of resale at wholesale."]~~

3 SECTION 32. Section 238-4, Hawaii Revised Statutes, is
4 repealed.

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

18 SECTION 33. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ _____, or so
20 much thereof as may be necessary for fiscal year 2008-2009, for
21 technical assistance and briefings to enable the auditor to
22 carry out its responsibilities under this Act.



1 Technical assistance may include analysis of the fiscal and
2 legal impacts of proposed conformance with the existing general
3 excise tax law and other laws and any other issues that might
4 result from the implementation of a streamlined sales and use
5 tax under the streamlined sales and use tax agreement. Funds
6 may also be expended for preparation of proposed legislation by
7 contracting with a legal professional with a background and
8 practice in taxation.

9 The president of the senate and the speaker of the house of
10 representatives shall appoint two legislators each (two senators
11 selected by the president of the senate and two representatives
12 selected by the speaker of the house of representatives) and one
13 public member each which shall comprise a committee, the purpose
14 of which is to hold meetings necessary to carry out this Act and
15 to serve as part of the State's official delegation to the
16 streamlined sales and use tax agreement governing board when
17 establishing the State's criteria for compliance with the
18 Streamlined Sales and Use Tax Agreement. The director of
19 taxation, or a representative thereof, shall be an ex officio
20 member. The members of the committee may elect a chair or co-
21 chairs. Duties of the appointees shall include attending
22 meetings of the governing board, technical reviews of Hawaii



1 legislation and state tax operations, and working with the
2 department of taxation for a period of six to eight months to
3 ensure that all appropriate steps are taken in order to have
4 Hawaii certified as a state in full compliance with the
5 Streamlined Sales and Use Tax Agreement.

6 The sum appropriated shall be expended by the office of the
7 auditor for the purposes of this Act. The office of the auditor
8 shall secure the services necessary to support the project in as
9 expeditious a manner as possible and without regard to chapter
10 103D, Hawaii Revised Statutes. The legislative reference bureau
11 shall assist the auditor or contractor in drafting any
12 appropriate legislation.

13 SECTION 34. Notwithstanding the provisions of any law
14 making it unlawful for any person, officer, or employee of the
15 State to make known information imparted by any tax return or
16 permit any tax return to be seen or examined by any person, it
17 shall be lawful to permit a private contractor contracted under
18 section 33 of this Act to inspect any tax return of any
19 taxpayer, or to furnish to the private contractor an abstract of
20 the return or supply the private contractor with information
21 concerning any item contained in the return or disclosed by the
22 report of any investigation of the return or of the subject



1 matter of the return only for the purposes of conforming the
2 State's general excise and use taxes to be operative with the
3 Streamlined Sales Tax Project's Model Agreement and Act.

4 SECTION 35. In codifying the new chapters and sections
5 added to the Hawaii Revised Statutes by this Act, the revisor of
6 statutes shall substitute appropriate section numbers for the
7 letters used in designating the new chapters and sections in
8 this Act.

9 SECTION 36. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 37. This Act shall take effect on January 1, 2010,
12 provided that sections 33 and 34 shall take effect on July 1,
13 2008.



Report Title:

Streamlined Sales and Use Tax Amendments

Description:

Adopts amendments to Hawaii tax laws to implement the streamlined sales and use tax agreement. (SD1)

