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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that a healthy  
2 interisland airline industry is vital to the state's economy.  
3 Hawaii's interisland airlines continue to face severe financial  
4 challenges. Fuel costs in particular have skyrocketed and grown  
5 volatile in recent years. In fact, for most airlines, the cost  
6 of fuel has surpassed labor as the highest operating cost  
7 factor.

8           Sales of fuel sold from a foreign-trade zone for use by  
9 airlines traveling out-of-the-state are exempt from general  
10 excise and use taxes. However, interisland flights are not  
11 exempt. To the extent that the Hawaii general excise and use  
12 taxes are being applied to interisland flights, the Federal  
13 Aviation Act, which includes interisland flights in the  
14 definition of "interstate air transportation", is being  
15 violated.

16           The legislature finds that exempting common carriers from  
17 the general excise and use taxes for sales of fuel from a



1 foreign-trade zone for interisland flights would level the  
2 playing field and create a fairer market for all airlines.

3 The purpose of this Act is to exempt common carriers from  
4 the general excise and use taxes for fuel sold from a foreign-  
5 trade zone to common carriers for use in interisland air  
6 transportation.

7 SECTION 2. Chapter 237, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10 "§237- Aviation fuel for air transportation. (a) This  
11 chapter shall not apply to amounts received from the sale of  
12 aviation fuel, as defined in section 243-1, categorized as  
13 privileged foreign merchandise, non-privileged foreign  
14 merchandise, domestic merchandise, or zone-restricted  
15 merchandise that is admitted into a foreign-trade zone and  
16 purchased in a foreign-trade zone and is made directly to or is  
17 used by a common carrier for consumption or use in air  
18 transportation between two points in the State.

19 (b) The amount received from the sale of aviation fuel to  
20 which this chapter does not apply, pursuant to subsection (a),  
21 shall be limited to \$ \_\_\_\_\_ per taxable year.



1        (c) Upon exceeding the amount specified in subsection (b),  
2 the department shall publish a public notice in accordance with  
3 section 1-28.5, notifying the public that the limit established  
4 under subsection (b) has been exceeded and that any aviation  
5 fuel purchased for the remainder of the taxable year shall be  
6 subject to the tax imposed under this chapter.

7        SECTION 3. Section 238-1, Hawaii Revised Statutes, is  
8 amended by amending the definition of "use" to read as follows:

9        "Use" (and any nounal, verbal, adjectival, adverbial, and  
10 other equivalent form of the term) herein used interchangeably  
11 means any use, whether the use is of such nature as to cause the  
12 property, services, or contracting to be appreciably consumed or  
13 not, or the keeping of the property or services for such use or  
14 for sale, the exercise of any right or power over tangible or  
15 intangible personal property incident to the ownership of that  
16 property, and shall include control over tangible or intangible  
17 property by a seller who is licensed or who should be licensed  
18 under chapter 237, who directs the importation of the property  
19 into the State for sale and delivery to a purchaser in the  
20 State, liability and free on board (FOB) to the contrary  
21 notwithstanding, regardless of where title passes, but the term  
22 "use" shall not include:



1           (1) Temporary use of property, not of a perishable or  
2           quickly consumable nature, where the property is  
3           imported into the State for temporary use (not sale)  
4           therein by the person importing the same and is not  
5           intended to be, and is not, kept permanently in the  
6           State. For example, without limiting the generality  
7           of the foregoing language:

8           (A) In the case of a contractor importing permanent  
9           equipment for the performance of a construction  
10          contract, with intent to remove, and who does  
11          remove, the equipment out of the State upon  
12          completing the contract;

13          (B) In the case of moving picture films imported for  
14          use in theaters in the State with intent or under  
15          contract to transport the same out of the State  
16          after completion of such use; and

17          (C) In the case of a transient visitor importing an  
18          automobile or other belongings into the State to  
19          be used by the transient visitor while therein  
20          but which are to be used and are removed upon the  
21          transient visitor's departure from the State;

- 1           (2) Use by the taxpayer of property acquired by the  
2           taxpayer solely by way of gift;
- 3           (3) Use which is limited to the receipt of articles and  
4           the return thereof, to the person from whom acquired,  
5           immediately or within a reasonable time either after  
6           temporary trial or without trial;
- 7           (4) Use of goods imported into the State by the owner of a  
8           vessel or vessels engaged in interstate or foreign  
9           commerce and held for and used only as ship stores for  
10          the vessels;
- 11          (5) The use or keeping for use of household goods,  
12          personal effects, and private automobiles imported  
13          into the State for nonbusiness use by a person who:
- 14           (A) Acquired them in another state, territory,  
15           district, or country;
- 16           (B) At the time of the acquisition was a bona fide  
17           resident of another state, territory, district,  
18           or country;
- 19           (C) Acquired the property for use outside the State;  
20           and
- 21           (D) Made actual and substantial use thereof outside  
22           this State;



1 provided that as to an article acquired less than  
2 three months prior to the time of its importation into  
3 the State it shall be presumed, until and unless  
4 clearly proved to the contrary, that it was acquired  
5 for use in the State and that its use outside the  
6 State was not actual and substantial;

7 (6) The leasing or renting of any aircraft or the keeping  
8 of any aircraft solely for leasing or renting to  
9 lessees or renters using the aircraft for commercial  
10 transportation of passengers and goods or the  
11 acquisition or importation of any such aircraft or  
12 aircraft engines by any lessee or renter engaged in  
13 interstate air transportation. For purposes of this  
14 paragraph, "leasing" includes all forms of lease,  
15 regardless of whether the lease is an operating lease  
16 or financing lease. The definition of "interstate air  
17 transportation" is the same as in [~~49 U.S.C. 40102;~~]  
18 Title 49 United States Code section 40102;

19 (7) The use of oceangoing vehicles for passenger or  
20 passenger and goods transportation from one point to  
21 another within the State as a public utility as  
22 defined in chapter 269;



- 1           (8) The use of material, parts, or tools imported or  
2           purchased by a person licensed under chapter 237 which  
3           are used for aircraft service and maintenance, or the  
4           construction of an aircraft service and maintenance  
5           facility as those terms are defined in section  
6           237-24.9;
- 7           (9) The use of services or contracting imported for resale  
8           where the contracting or services are for resale,  
9           consumption, or use outside the State pursuant to  
10          section 237-29.53(a);
- 11          (10) The use of contracting imported or purchased by a  
12          contractor as defined in section 237-6 who is:  
13           (A) Licensed under chapter 237;  
14           (B) Engaged in business as a contractor; and  
15           (C) Subject to the tax imposed under section 238-2.3;  
16           [and]
- 17          (11) The use of property, services, or contracting imported  
18          by foreign diplomats and consular officials who are  
19          holding cards issued or authorized by the United  
20          States Department of State granting them an exemption  
21          from state taxes[-]; and



1       (12) The use of aviation fuel, as defined in section 243-1,  
2       categorized as privileged foreign merchandise, non-  
3       privileged foreign merchandise, domestic merchandise,  
4       or zone-restricted merchandise that is admitted into a  
5       foreign-trade zone and is used by a common carrier by  
6       air for consumption in air transportation between two  
7       points in the State.

8           With regard to purchases made and distributed under the  
9 authority of chapter 421, a cooperative association shall be  
10 deemed the user thereof."

11           SECTION 4. This Act shall not be construed to imply that  
12 any law prior to the effective date of this Act is inconsistent  
13 with this Act.

14           SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16           SECTION 6. This Act shall take effect on July 1, 2008.





**Report Title:**

Taxes; Intrastate Aviation; Foreign Trade Zone; Exemption

**Description:**

Exempts common carriers from the general excise and use taxes for fuel sold from a foreign-trade zone to common carriers for use in interisland air transportation; limits the amount of aviation fuel that shall be exempt under chapter 237. (SD2)

