

JAN 24 2007

A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

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

1 SECTION 1. Section 237-4, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

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

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



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



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

20 (6) Sales to a licensed producer, or to a cooperative
21 association described in section 237-23(a)(7) for sale
22 to the producer, of seed or seedstock for producing



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

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

21 (8) Sales of tangible personal property:



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



1 (iii) The cost of the tangible personal property
2 does not constitute overhead to the licensed
3 seller;

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

5 (C) Where the taxpayer is subject to both
6 subparagraphs (A) and (B), then the taxpayer
7 shall be taxed under subparagraph (A).

8 Subparagraphs (A) and (C) shall be repealed on
9 January 1, 2006;

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

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

16 (A) Either:

17 (i) In the context of a service-to-service
18 transaction, a service is rendered upon the
19 order or request of a licensed seller for
20 the purpose of rendering another service in
21 the course of the seller's service business
22 or calling[+], including a dealer's



1 furnishing of goods or services to the
2 purchaser of tangible personal property to
3 fulfill a warranty obligation of the
4 manufacturer of the property;

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

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

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



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



1 Sales subject to this paragraph shall be subject to
2 section 237-13.3;

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

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



- 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



Report Title:

General Excise Tax; Service-to-Service Transactions

Description:

Clarifies that the reduced general excise tax rate of 0.5 per cent on business-to-business services applies to dealers furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property.

