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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 inter-  
2 island airline industry is vital to the State's economy.  
3 Hawaii's inter-island 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. The extent that the Hawaii general excise and use taxes  
12 are being applied to interisland flights, violates the Federal  
13 Aviation Act, which included interisland flights in the  
14 definition of "interstate air transportation".

15           The legislature finds that exempting common carriers from  
16 the general excise and use taxes for sales of fuel from a  
17 foreign trade zone for interisland flights would level the  
18 playing field and create a fairer market for all airlines.



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

5           SECTION 2. Section 212-8, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "**§212-8 Exemption from taxes.** (a) Notwithstanding any  
8 law to the contrary, sales of all products [~~which are~~]  
9 categorized as privileged foreign merchandise, nonprivileged  
10 foreign merchandise, domestic merchandise, or zone-restricted  
11 merchandise, and [~~which are~~] admitted into a foreign-trade zone,  
12 as more specifically set forth in the Act of Congress, and any  
13 rules and regulations promulgated thereunder, made directly to  
14 any common carrier in interisland or foreign commerce, or both,  
15 whether ocean-going or air, for consumption out-of-state by the  
16 crew or passengers on the shipper's vessels or airplanes, or for  
17 use out-of-state by the vessels or airplanes, shall be exempt  
18 from those taxes imposed under chapters 237, 238, 243, 244D, and  
19 245.

20           (b) Notwithstanding any law to the contrary, sales of  
21 aviation fuel categorized as privileged foreign merchandise,  
22 nonprivileged foreign merchandise, domestic merchandise, or



1 zone-restricted merchandise, that is admitted into a foreign-  
2 trade zone, as more specifically set forth by an Act of Congress  
3 and any rules and regulations thereunder, made directly to or  
4 used by any common carrier for consumption or use in interisland  
5 air transportation shall be exempt from taxes imposed under  
6 chapters 237 and 238.

7 As used in this subsection:

8 "Aviation fuel" shall have the same meaning as defined in  
9 section 243-1.

10 "Interisland air transportation" means the transportation  
11 of passengers or property by aircraft as defined in Title 49  
12 United States Code Section 40102(25)."

13 SECTION 3. Chapter 237, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

16 "§237- Aviation fuel for air transportation. This  
17 chapter shall not apply to amounts received from the sales of  
18 aviation fuel, as defined in section 243-1, categorized as  
19 privileged foreign merchandise, non-privileged foreign  
20 merchandise, domestic merchandise, or zone-restricted  
21 merchandise, which is admitted into a foreign-trade zone and  
22 purchased in a foreign-trade zone and is made directly to or is



1 used by a common carrier for consumption or use in air  
2 transportation between two points in the State."

3 SECTION 4. Section 238-1, Hawaii Revised Statutes, is  
4 amended by amending the definition of "use" to read as follows:

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

- 19 (1) Temporary use of property, not of a perishable or  
20 quickly consumable nature, where the property is  
21 imported into the State for temporary use (not sale)  
22 therein by the person importing the same and is not



1 intended to be, and is not, kept permanently in the  
2 State. For example, without limiting the generality  
3 of the foregoing language:

4 (A) In the case of a contractor importing permanent  
5 equipment for the performance of a construction  
6 contract, with intent to remove, and who does  
7 remove, the equipment out of the State upon  
8 completing the contract;

9 (B) In the case of moving picture films imported for  
10 use in theaters in the State with intent or under  
11 contract to transport the same out of the State  
12 after completion of such use; and

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

18 (2) Use by the taxpayer of property acquired by the  
19 taxpayer solely by way of gift;

20 (3) Use which is limited to the receipt of articles and  
21 the return thereof, to the person from whom acquired,



1 immediately or within a reasonable time either after  
2 temporary trial or without trial;

3 (4) Use of goods imported into the State by the owner of a  
4 vessel or vessels engaged in interstate or foreign  
5 commerce and held for and used only as ship stores for  
6 the vessels;

7 (5) The use or keeping for use of household goods,  
8 personal effects, and private automobiles imported  
9 into the State for nonbusiness use by a person who:

10 (A) Acquired them in another state, territory,  
11 district, or country;

12 (B) At the time of the acquisition was a bona fide  
13 resident of another state, territory, district,  
14 or country;

15 (C) Acquired the property for use outside the State;  
16 and

17 (D) Made actual and substantial use thereof outside  
18 this State;

19 provided that as to an article acquired less than  
20 three months prior to the time of its importation into  
21 the State it shall be presumed, until and unless  
22 clearly proved to the contrary, that it was acquired



- 1           for use in the State and that its use outside the  
2           State was not actual and substantial;
- 3       (6) The leasing or renting of any aircraft or the keeping  
4           of any aircraft solely for leasing or renting to  
5           lessees or renters using the aircraft for commercial  
6           transportation of passengers and goods or the  
7           acquisition or importation of any such aircraft or  
8           aircraft engines by any lessee or renter engaged in  
9           interstate air transportation. For purposes of this  
10          paragraph, "leasing" includes all forms of lease,  
11          regardless of whether the lease is an operating lease  
12          or financing lease. The definition of "interstate air  
13          transportation" is the same as in 49 U.S.C. 40102;
- 14       (7) The use of oceangoing vehicles for passenger or  
15          passenger and goods transportation from one point to  
16          another within the State as a public utility as  
17          defined in chapter 269;
- 18       (8) The use of material, parts, or tools imported or  
19          purchased by a person licensed under chapter 237 which  
20          are used for aircraft service and maintenance, or the  
21          construction of an aircraft service and maintenance



1 facility as those terms are defined in section 237-  
2 24.9;

3 (9) The use of services or contracting imported for resale  
4 where the contracting or services are for resale,  
5 consumption, or use outside the State pursuant to  
6 section 237-29.53(a);

7 (10) The use of contracting imported or purchased by a  
8 contractor as defined in section 237-6 who is:

9 (A) Licensed under chapter 237;

10 (B) Engaged in business as a contractor; and

11 (C) Subject to the tax imposed under section 238-2.3;

12 [and]

13 (11) The use of property, services, or contracting imported  
14 by foreign diplomats and consular officials who are  
15 holding cards issued or authorized by the United  
16 States Department of State granting them an exemption  
17 from state taxes[-]; and

18 (12) The use of aviation fuel, as defined in section 243-1,  
19 categorized as privileged foreign merchandise,  
20 non-privileged foreign merchandise, domestic  
21 merchandise, or zone-restricted merchandise, which is  
22 admitted into a foreign-trade zone and is used by a





1           common carrier by air for consumption in air  
2           transportation between two points in the State.

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

6           SECTION 5. This Act shall not be construed to imply that  
7 any law prior to the effective date of this Act is inconsistent  
8 with this Act.

9           SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11          SECTION 7. This Act shall take effect on July 1, 2008.



**Report Title:**

Taxes; Interisland Aviation; Foreign Trade Zone; Exemptions

**Description:**

Exempts from general excise and use taxes the fuel sold from a foreign-trade zone for interisland air transportation by common carriers. (SD1)

