
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
5 become volatile in recent years. In fact, for most airlines,
6 the cost of fuel has surpassed labor as the highest operating
7 cost 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 application of the Hawaii general excise and use
12 tax to interisland flights violates the Federal Aviation Act,
13 which includes interisland flights in the definition of
14 "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 interstate 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 between islands, as
12 included in the definition of interstate air transportation as
13 that term is defined in Title 49 United States Code Section
14 40102(25)."

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

18 "§237- Aviation fuel for air transportation. This
19 chapter shall not apply to amounts received from the sales of
20 aviation fuel, as defined in section 243-1, categorized as
21 privileged foreign merchandise, nonprivileged foreign
22 merchandise, domestic merchandise, or zone-restricted



1 merchandise, which is admitted into a foreign-trade zone and
2 purchased in a foreign-trade zone and is made directly to or is
3 used by a common carrier for consumption or use in air
4 transportation between two points in the State including
5 interisland air transportation."

6 SECTION 4. Section 238-1, Hawaii Revised Statutes, is
7 amended by amending the definition of "use" to read as follows:
8 "Use" (and any nounal, verbal, adjectival, adverbial, and
9 other equivalent form of the term) herein used interchangeably
10 means any use, whether the use is of such nature as to cause the
11 property, services, or contracting to be appreciably consumed or
12 not, or the keeping of the property or services for such use or
13 for sale, the exercise of any right or power over tangible or
14 intangible personal property incident to the ownership of that
15 property, and shall include control over tangible or intangible
16 property by a seller who is licensed or who should be licensed
17 under chapter 237, who directs the importation of the property
18 into the State for sale and delivery to a purchaser in the
19 State, liability and free on board (FOB) to the contrary
20 notwithstanding, regardless of where title passes, but the term
21 "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 (7) The use of oceangoing vehicles for passenger or
19 passenger and goods transportation from one point to
20 another within the State as a public utility as
21 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 237-
6 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,
3 nonprivileged foreign merchandise, domestic
4 merchandise, or zone-restricted merchandise, which is
5 admitted into a foreign-trade zone and is used by a
6 common carrier by air for consumption in air
7 transportation between two points in the State
8 including interisland air transportation.

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

12 SECTION 5. This Act shall not be construed to imply that
13 any law prior to the effective date of this Act is inconsistent
14 with this Act.

15 SECTION 6. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 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. (SB2913 SD2)

