
A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

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

1 PART I.

2 SECTION 1. Section 237-2, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§237-2 "Business", "engaging" in business, defined.

5 "Business" as used in this chapter, includes all activities
6 (personal, professional, or corporate), engaged in or caused to
7 be engaged in with the object of gain or economic benefit either
8 direct or indirect, but does not include casual sales.

9 The term "engaging" as used in this chapter with reference
10 to engaging or continuing in business also includes [~~the~~]:

11 (1) The exercise of corporate or franchise powers[-]; or

12 (2) (A) The sale of tangible personal property by a
13 person soliciting business through an independent
14 contractor or other representative if the person
15 enters into an agreement with a resident of this
16 state under which the resident, for a commission
17 or other consideration, directly or indirectly



1 refers potential customers, whether by a link on
2 an internet website or otherwise, to the person,
3 and if the cumulative gross receipts from sales
4 by the person to customers in the state who are
5 referred to the person by such a resident, is at
6 least \$10,000 in the twelve-month period ending
7 on the last day of the most recent calendar
8 quarter before the calendar quarter in which the
9 sale is made.

10 (B) This presumption may be rebutted by proof that
11 the resident with whom the person has an
12 agreement did not engage in any solicitation in
13 the state on behalf of the person that would
14 satisfy the nexus requirement of the United
15 States Constitution during twelve-month period in
16 question. Nothing in this section shall be
17 construed to narrow the scope of the terms
18 "person," "purchasing agent," or "representative"
19 as defined in section 237-1."

20 SECTION 2. The department of taxation shall adopt rules,
21 in accordance with chapter 91, Hawaii Revised Statutes,



1 implementing and providing guidance to taxpayers concerning
2 section 237-2, Hawaii Revised Statutes, as amended by this Act.

3 PART II.

4 SECTION 3. Chapter 231, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§231- Businesses domiciled out-of-state; nexus
8 presumptions. (a) Notwithstanding any law to the contrary, a
9 person or entity conducting business in this State that has its
10 commercial domicile in another state is presumed to be
11 systematically and regularly engaging in business in this State
12 and taxable under title 14 if, during any year:

13 (1) The person or entity engages in or solicits business
14 with twenty or more persons within this State; or
15 (2) The sum of the value of the person or entity's income,
16 gross proceeds, gross rental, or gross rental proceeds
17 attributable to sources in this State equals or
18 exceeds \$100,000.

19 (b) Notwithstanding any requirement under title 14 that a
20 person or entity assess and remit tax on a monthly basis, if a
21 person is taxable in this State by reason of this section, the



1 person or entity may petition the director of taxation to allow
2 the assessment and remitting of tax on a basis other than
3 monthly for good cause. For purposes of this section, good
4 cause includes compliance with the Constitution of the United
5 States and compliance with the Constitution of the State of
6 Hawaii."

7 PART III.

8 SECTION 4. If any provision of this Act, or the
9 application thereof to any person or circumstance is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act, which can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

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, 2009.



H.B. NO. 1405
H.D. 2
S.D. 2
C.D. 1

Report Title:

General Excise Tax; Definition of Engaging in Business; Out-of-State Business; Nexus Standard

Description:

Amends the definition of engaging in business under section 237-2, HRS (general excise tax), to include persons who enter into an agreement with residents of the State where the person pays a commission for referral of potential customers. Creates a nexus standard for taxing out-of-state businesses on their business activities in Hawaii. (CD1)

