

---

---

# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The purpose of this Act is to temporarily  
2 impose the general excise tax at the rate of one per cent on the  
3 sale of certain real property. This provision takes effect on  
4 July 1, 2010 and sunsets on June 30, 2015.

5           The legislature intends to appropriate the revenues  
6 generated under this Act for infrastructure projects necessary  
7 to accommodate land development and population growth resulting  
8 from land use plans and policies approved by pertinent  
9 government agencies.

10           The legislature finds that this Act will result in  
11 employment opportunities, as well as improved infrastructure  
12 necessary for a better quality of life.

13           SECTION 2. 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-       Tax on certain real property sales. (a) Except  
17 as provided under subsections (b) and (c), there is hereby  
18 levied, and shall be assessed and collected annually, a



1 privilege tax against a sole proprietorship, partnership,  
2 corporation, or limited liability entity that, as a business or  
3 part of a business, sells real property owned in fee simple by  
4 the sole proprietorship, partnership, corporation, or limited  
5 liability entity to another person. The tax shall be equal to  
6 one per cent of the gross proceeds received from the sale of the  
7 real property less deductions for any:

8 (1) Commission paid from the gross proceeds by the seller  
9 to a real estate broker or salesperson who is subject  
10 to the tax under section 237-13(6); and

11 (2) Tax paid under chapter 247 on the conveyance of the  
12 real property.

13 (b) Gross proceeds from the casual sale of real property  
14 shall be exempt from the tax under subsection (a). The  
15 exemption shall apply whether the casual sale is made by a  
16 person licensed or unlicensed under this chapter.

17 (c) This section shall not affect the tax imposed under  
18 section 237-13(3)(D) on a person engaged in contracting. The  
19 gross proceeds of sale of a person engaged in the business  
20 activity described under section 237-13(3)(D) shall be subject  
21 to taxation in accordance with and at the rate prescribed under  
22 section 237-13(3)(D).



1        (d) This section shall be repealed on June 30, 2015."

2        SECTION 3. Section 237-1, Hawaii Revised Statutes, is  
3 amended by amending the definition of "casual sale" to read as  
4 follows:

5        "'Casual sale" means an occasional or isolated sale or  
6 transaction involving:

7        (1) Tangible personal property or real property by a  
8 person who is not required to be licensed under this  
9 chapter~~[, or]~~;

10        (2) Tangible personal property which is not ordinarily  
11 sold in the business of a person who is regularly  
12 engaged in business~~[, or]~~;

13        (3) Real property:

14        (A) The seller of which held a home exemption or  
15 homeowner's classification for county real  
16 property tax purpose on the day before the  
17 closing of the sale;

18        (B) The seller of which became the owner of the real  
19 property by devise or bequest; or

20        (C) The seller of which did not receive or derive any  
21 gross income or gross proceeds from leasing the



1           real property within the one-year period  
2           immediately preceding the closing of the sale.

3           This paragraph shall apply to a seller, even if  
4           licensed under this chapter."

5           SECTION 4. Section 237-3, Hawaii Revised Statutes, is  
6 amended by amending subsections (a) and (b) to read as follows:

7           "(a) "Gross income" means the gross receipts, cash or  
8 accrued, of the taxpayer received as compensation for personal  
9 services and the gross receipts of the taxpayer derived from  
10 trade, business, commerce, or sales and the value proceeding or  
11 accruing from the sale of tangible personal property, or  
12 service, or both, and all receipts, actual or accrued as  
13 hereinafter provided, by reason of the investment of the capital  
14 of the business engaged in, including interest, discount,  
15 rentals, royalties, fees, or other emoluments however designated  
16 and without any deductions on account of the cost of property  
17 sold, the cost of materials used, labor cost, taxes, royalties,  
18 interest, or discount paid or any other expenses whatsoever.

19 Every taxpayer shall be presumed to be dealing on a cash basis  
20 unless the taxpayer proves to the satisfaction of the department  
21 of taxation that the taxpayer is dealing on an accrual basis and  
22 the taxpayer's books are so kept, or unless the taxpayer employs



1 or is required to employ the accrual basis for the purposes of  
2 the tax imposed by chapter 235 for any taxable year in which  
3 event the taxpayer shall report the taxpayer's gross income for  
4 the purposes of this chapter on the accrual basis for the same  
5 period.

6 "Gross proceeds of sale" means the value actually  
7 proceeding from the sale of tangible personal property or real  
8 property without any deduction on account of the cost of  
9 property sold or expenses of any kind.

10 (b) The words "gross income" and "gross proceeds of sales"  
11 shall not be construed to include: gross receipts from the sale  
12 of securities as defined in 15 United States Code section 78c or  
13 similar laws of jurisdictions outside the United States,  
14 contracts for the sale of a commodity for future delivery and  
15 other agreements, options, and rights as defined in 7 United  
16 States Code section 2 that are permitted to be traded on a board  
17 of trade designated by the Commodities Futures Trading  
18 Commission under the Commodity Exchange Act, or evidence of  
19 indebtedness [~~or, except as otherwise provided, from the sale of~~  
20 ~~land in fee simple, improved or unimproved,]; dividends as  
21 defined by chapter 235; cash discounts allowed and taken on  
22 sales; the proceeds of sale of goods, wares, or merchandise~~



1 returned by customers when the sale price is refunded either in  
2 cash or by credit; or the sale price of any article accepted as  
3 part payment on any new article sold, if the full sale price of  
4 the new article is included in the "gross income" or "gross  
5 proceeds of sales"; gross receipts from the sale or transfer of  
6 materials or supplies, interest on loans, or the provision of  
7 engineering, construction, maintenance, or managerial services  
8 by one "member" of an "affiliated public service company group"  
9 to another "member" of the same group as such terms are defined  
10 in section 239-2. Accounts found to be worthless and actually  
11 charged off for income tax purposes may be deducted, at  
12 corresponding periods, from gross proceeds of sale, or gross  
13 income, within this chapter, so far as they reflect taxable  
14 sales made, or gross income earned, after July 1, 1935, but  
15 shall be added to gross proceeds of sale or gross income when  
16 and if afterwards collected."

17 SECTION 5. The legislature intends that the revenues  
18 generated under this Act be expended for the improvement or  
19 expansion of infrastructure necessary to accommodate land  
20 development and population growth resulting from land use plans  
21 and policies approved by pertinent government agencies.



1           (1) There is appropriated out of the general revenues of  
2           the State of Hawaii the sum of \$                            or so much  
3           thereof as may be necessary for fiscal year 2010-2011  
4           to fund state highway projects.

5                        The sum appropriated shall be expended by the  
6           department of transportation for the purposes of this  
7           section.

8           (2) There is appropriated out of the general revenues of  
9           the State of Hawaii the sum of \$                            or so much  
10          thereof as may be necessary for fiscal year 2010-2011  
11          as a grant-in-aid to the city and county of Honolulu  
12          for infrastructure projects.

13                       The sum appropriated shall be expended by the  
14          department of budget and finance for the purposes of  
15          this section.

16          (3) There is appropriated out of the general revenues of  
17          the State of Hawaii the sum of \$                            or so much  
18          thereof as may be necessary for fiscal year 2010-2011  
19          as a grant-in-aid to the county of Maui for  
20          infrastructure projects.



1           The sum appropriated shall be expended by the  
2           department of budget and finance for the purposes of  
3           this section.

4           (4) There is appropriated out of the general revenues of  
5           the State of Hawaii the sum of \$                    or so much  
6           thereof as may be necessary for fiscal year 2010-2011  
7           as a grant-in-aid to the county of Hawaii for  
8           infrastructure projects.

9           The sum appropriated shall be expended by the  
10          department of budget and finance for the purposes of  
11          this section.

12          (5) There is appropriated out of the general revenues of  
13          the State of Hawaii the sum of \$                    or so much  
14          thereof as may be necessary for fiscal year 2010-2011  
15          as a grant-in-aid to the county of Kauai for  
16          infrastructure projects.

17          The sum appropriated shall be expended by the  
18          department of budget and finance for the purposes of  
19          this section.

20          (6) There is appropriated out of the general revenues of  
21          the State of Hawaii the sum of \$                    or so much  
22          thereof as may be necessary for fiscal year 2010-2011



1 for deposit into the drinking water treatment  
2 revolving fund.

3 There is appropriated out of the drinking water  
4 treatment revolving fund the sum of \$ or so  
5 much thereof as may be necessary for fiscal year 2010-  
6 2011 to award grants or loans as authorized under  
7 section 340E-35, Hawaii Revised Statutes.

8 The sum appropriated shall be expended by the  
9 department of health for the purposes of this section.

10 (7) There is appropriated out of the general revenues of  
11 the State of Hawaii the sum of \$ or so much  
12 thereof as may be necessary for fiscal year 2010-2011  
13 for deposit into the water pollution control revolving  
14 fund.

15 There is appropriated out of the water pollution  
16 control revolving fund the sum of \$ or so  
17 much thereof as may be necessary for fiscal year 2010-  
18 2011 to award grants or loans as authorized under  
19 section 342D-83, Hawaii Revised Statutes.

20 The sum appropriated shall be expended by the  
21 department of health for the purposes of this section.



1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

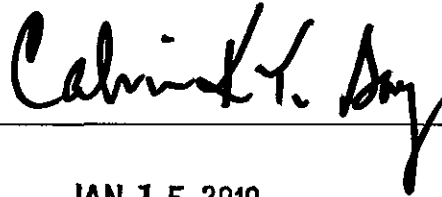
3 SECTION 7. This Act shall take effect on July 1, 2010, and  
4 shall be repealed on June 30, 2015; provided that:

5 (1) Sections 237-1 and 237-3(a) and (b), Hawaii Revised  
6 Statutes, shall be reenacted in the form in which they  
7 read on the day prior to the effective date of this  
8 Act; and

9 (2) Section 2 of this Act shall not be reenacted after  
10 June 30, 2015.

11

INTRODUCED BY:

  
\_\_\_\_\_

JAN 15 2010



**Report Title:**

Real Property Sales; General Excise Tax

**Description:**

Imposes the general excise tax at the rate of 1.0% on the gross proceeds from the sale of real property less deductions for real estate salespersons' commissions and conveyance tax payments. Takes effect on 07/01/10 and sunsets on 06/30/15. Appropriates revenues for state programs and projects to accommodate land development and population growth resulting from land use plans and policies.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

