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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 purpose of this Act is to increase the  
2 "wholesale" rates under the general excise, use, and public  
3 service company taxes from one-half per cent to one per cent.

4           SECTION 2. Section 237-8.6, Hawaii Revised Statutes, is  
5 amended by amending subsection (d) to read as follows:

6           "(d) No county surcharge on state tax shall be established  
7 on any:

- 8           (1) Gross income or gross proceeds taxable under this  
9 chapter at the [~~one-half~~] one per cent tax rate;  
10           (2) Gross income or gross proceeds taxable under this  
11 chapter at the 0.15 per cent tax rate; or  
12           (3) Transactions, amounts, persons, gross income, or gross  
13 proceeds exempt from tax under this chapter."

14           SECTION 3. Section 237-13, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "**§237-13 Imposition of tax.** There is hereby levied and  
17 shall be assessed and collected annually privilege taxes against  
18 persons on account of their business and other activities in the



1 State measured by the application of rates against values of  
2 products, gross proceeds of sales, or gross income, whichever is  
3 specified, as follows:

4 (1) Tax on manufacturers.

5 (A) Upon every person engaging or continuing within  
6 the State in the business of manufacturing,  
7 including compounding, canning, preserving,  
8 packing, printing, publishing, milling,  
9 processing, refining, or preparing for sale,  
10 profit, or commercial use, either directly or  
11 through the activity of others, in whole or in  
12 part, any article or articles, substance or  
13 substances, commodity or commodities, the amount  
14 of the tax to be equal to the value of the  
15 articles, substances, or commodities,  
16 manufactured, compounded, canned, preserved,  
17 packed, printed, milled, processed, refined, or  
18 prepared for sale, as shown by the gross proceeds  
19 derived from the sale thereof by the manufacturer  
20 or person compounding, preparing, or printing  
21 them, multiplied by [~~one-half of~~] one per cent.



1           (B) The measure of the tax on manufacturers is the  
2           value of the entire product for sale, regardless  
3           of the place of sale or the fact that deliveries  
4           may be made to points outside the State.

5           (C) If any person liable for the tax on manufacturers  
6           ships or transports the person's product, or any  
7           part thereof, out of the State, whether in a  
8           finished or unfinished condition, or sells the  
9           same for delivery to points outside the State  
10          (for example, consigned to a mainland purchaser  
11          via common carrier f.o.b. Honolulu), the value of  
12          the products in the condition or form in which  
13          they exist immediately before entering interstate  
14          or foreign commerce, determined as hereinafter  
15          provided, shall be the basis for the assessment  
16          of the tax imposed by this paragraph. This tax  
17          shall be due and payable as of the date of entry  
18          of the products into interstate or foreign  
19          commerce, whether the products are then sold or  
20          not. The department shall determine the basis  
21          for assessment, as provided by this paragraph, as  
22          follows:



1 (i) If the products at the time of their entry  
2 into interstate or foreign commerce already  
3 have been sold, the gross proceeds of sale,  
4 less the transportation expenses, if any,  
5 incurred in realizing the gross proceeds for  
6 transportation from the time of entry of the  
7 products into interstate or foreign  
8 commerce, including insurance and storage in  
9 transit, shall be the measure of the value  
10 of the products;

11 (ii) If the products have not been sold at the  
12 time of their entry into interstate or  
13 foreign commerce, and in cases governed by  
14 clause (i) in which the products are sold  
15 under circumstances such that the gross  
16 proceeds of sale are not indicative of the  
17 true value of the products, the value of the  
18 products constituting the basis for  
19 assessment shall correspond as nearly as  
20 possible to the gross proceeds of sales for  
21 delivery outside the State, adjusted as  
22 provided in clause (i), or if sufficient



1 data are not available, sales in the State,  
2 of similar products of like quality and  
3 character and in similar quantities, made by  
4 the taxpayer (unless not indicative of the  
5 true value) or by others. Sales outside the  
6 State, adjusted as provided in clause (i),  
7 may be considered when they constitute the  
8 best available data. The department shall  
9 prescribe uniform and equitable rules for  
10 ascertaining the values;

11 (iii) At the election of the taxpayer and with the  
12 approval of the department, the taxpayer may  
13 make the taxpayer's returns under clause (i)  
14 even though the products have not been sold  
15 at the time of their entry into interstate  
16 or foreign commerce; and

17 (iv) In all cases in which products leave the  
18 State in an unfinished condition, the basis  
19 for assessment shall be adjusted so as to  
20 deduct the portion of the value as is  
21 attributable to the finishing of the goods  
22 outside the State.



1           (2) Tax on business of selling tangible personal property;  
2           producing.

3           (A) Upon every person engaging or continuing in the  
4           business of selling any tangible personal  
5           property whatsoever (not including, however,  
6           bonds or other evidence of indebtedness, or  
7           stocks), there is likewise hereby levied, and  
8           shall be assessed and collected, a tax equivalent  
9           to four per cent of the gross proceeds of sales  
10          of the business; provided that insofar as the  
11          sale of tangible personal property is a wholesale  
12          sale under section [†]237-4(a)(8)[†], the sale  
13          shall be subject to section 237-13.3. Upon every  
14          person engaging or continuing within this State  
15          in the business of a producer, the tax shall be  
16          equal to [~~one-half of~~] one per cent of the gross  
17          proceeds of sales of the business, or the value  
18          of the products, for sale, if sold for delivery  
19          outside the State or shipped or transported out  
20          of the State, and the value of the products shall  
21          be determined in the same manner as the value of



1 manufactured products covered in the cases under  
2 paragraph (1)(C).

3 (B) Gross proceeds of sales of tangible property in  
4 interstate and foreign commerce shall constitute  
5 a part of the measure of the tax imposed on  
6 persons in the business of selling tangible  
7 personal property, to the extent, under the  
8 conditions, and in accordance with the provisions  
9 of the Constitution of the United States and the  
10 Acts of the Congress of the United States which  
11 may be now in force or may be hereafter adopted,  
12 and whenever there occurs in the State an  
13 activity to which, under the Constitution and  
14 Acts of Congress, there may be attributed gross  
15 proceeds of sales, the gross proceeds shall be so  
16 attributed.

17 (C) No manufacturer or producer, engaged in such  
18 business in the State and selling the  
19 manufacturer's or producer's products for  
20 delivery outside of the State (for example,  
21 consigned to a mainland purchaser via common  
22 carrier f.o.b. Honolulu), shall be required to



1 pay the tax imposed in this chapter for the  
2 privilege of so selling the products, and the  
3 value or gross proceeds of sales of the products  
4 shall be included only in determining the measure  
5 of the tax imposed upon the manufacturer or  
6 producer.

7 (D) When a manufacturer or producer, engaged in such  
8 business in the State, also is engaged in selling  
9 the manufacturer's or producer's products in the  
10 State at wholesale, retail, or in any other  
11 manner, the tax for the privilege of engaging in  
12 the business of selling the products in the State  
13 shall apply to the manufacturer or producer as  
14 well as the tax for the privilege of  
15 manufacturing or producing in the State, and the  
16 manufacturer or producer shall make the returns  
17 of the gross proceeds of the wholesale, retail,  
18 or other sales required for the privilege of  
19 selling in the State, as well as making the  
20 returns of the value or gross proceeds of sales  
21 of the products required for the privilege of  
22 manufacturing or producing in the State. The





1 manufacturer or producer shall pay the tax  
2 imposed in this chapter for the privilege of  
3 selling its products in the State, and the value  
4 or gross proceeds of sales of the products, thus  
5 subjected to tax, may be deducted insofar as  
6 duplicated as to the same products by the measure  
7 of the tax upon the manufacturer or producer for  
8 the privilege of manufacturing or producing in  
9 the State; provided that no producer of  
10 agricultural products who sells the products to a  
11 purchaser who will process the products outside  
12 the State shall be required to pay the tax  
13 imposed in this chapter for the privilege of  
14 producing or selling those products.

15 (E) A taxpayer selling to a federal cost-plus  
16 contractor may make the election provided for by  
17 paragraph (3) (C), and in that case the tax shall  
18 be computed pursuant to the election,  
19 notwithstanding this paragraph or paragraph (1)  
20 to the contrary.

21 (F) The department, by rule, may require that a  
22 seller take from the purchaser of tangible



1 personal property a certificate, in a form  
2 prescribed by the department, certifying that the  
3 sale is a sale at wholesale; provided that:

4 (i) Any purchaser who furnishes a certificate  
5 shall be obligated to pay to the seller,  
6 upon demand, the amount of the additional  
7 tax that is imposed upon the seller whenever  
8 the sale in fact is not at wholesale; and

9 (ii) The absence of a certificate in itself shall  
10 give rise to the presumption that the sale  
11 is not at wholesale unless the sales of the  
12 business are exclusively at wholesale.

13 (3) Tax upon contractors.

14 (A) Upon every person engaging or continuing within  
15 the State in the business of contracting, the tax  
16 shall be equal to four per cent of the gross  
17 income of the business.

18 (B) In computing the tax levied under this paragraph,  
19 there shall be deducted from the gross income of  
20 the taxpayer so much thereof as has been included  
21 in the measure of the tax levied under

22 subparagraph (A), on:



- 1 (i) Another taxpayer who is a contractor, as
- 2 defined in section 237-6;
- 3 (ii) A specialty contractor, duly licensed by the
- 4 department of commerce and consumer affairs
- 5 pursuant to section 444-9, in respect of the
- 6 specialty contractor's business; or
- 7 (iii) A specialty contractor who is not licensed
- 8 by the department of commerce and consumer
- 9 affairs pursuant to section 444-9, but who
- 10 performs contracting activities on federal
- 11 military installations and nowhere else in
- 12 this State;

13 provided that any person claiming a deduction  
14 under this paragraph shall be required to show in  
15 the person's return the name and general excise  
16 number of the person paying the tax on the amount  
17 deducted by the person.

18 (C) In computing the tax levied under this paragraph  
19 against any federal cost-plus contractor, there  
20 shall be excluded from the gross income of the  
21 contractor so much thereof as fulfills the  
22 following requirements:



1 (i) The gross income exempted shall constitute  
2 reimbursement of costs incurred for  
3 materials, plant, or equipment purchased  
4 from a taxpayer licensed under this chapter,  
5 not exceeding the gross proceeds of sale of  
6 the taxpayer on account of the transaction;  
7 and

8 (ii) The taxpayer making the sale shall have  
9 certified to the department that the  
10 taxpayer is taxable with respect to the  
11 gross proceeds of the sale, and that the  
12 taxpayer elects to have the tax on gross  
13 income computed the same as upon a sale to  
14 the state government.

15 (D) A person who, as a business or as a part of a  
16 business in which the person is engaged, erects,  
17 constructs, or improves any building or  
18 structure, of any kind or description, or makes,  
19 constructs, or improves any road, street,  
20 sidewalk, sewer, or water system, or other  
21 improvements on land held by the person (whether  
22 held as a leasehold, fee simple, or otherwise),



1           upon the sale or other disposition of the land or  
2           improvements, even if the work was not done  
3           pursuant to a contract, shall be liable to the  
4           same tax as if engaged in the business of  
5           contracting, unless the person shows that at the  
6           time the person was engaged in making the  
7           improvements the person intended, and for the  
8           period of at least one year after completion of  
9           the building, structure, or other improvements  
10          the person continued to intend to hold and not  
11          sell or otherwise dispose of the land or  
12          improvements. The tax in respect of the  
13          improvements shall be measured by the amount of  
14          the proceeds of the sale or other disposition  
15          that is attributable to the erection,  
16          construction, or improvement of such building or  
17          structure, or the making, constructing, or  
18          improving of the road, street, sidewalk, sewer,  
19          or water system, or other improvements. The  
20          measure of tax in respect of the improvements  
21          shall not exceed the amount which would have been  
22          taxable had the work been performed by another,



1 subject as in other cases to the deductions  
2 allowed by subparagraph (B). Upon the election  
3 of the taxpayer, this paragraph may be applied  
4 notwithstanding that the improvements were not  
5 made by the taxpayer, or were not made as a  
6 business or as a part of a business, or were made  
7 with the intention of holding the same. However,  
8 this paragraph shall not apply in respect of any  
9 proceeds that constitute or are in the nature of  
10 rent; all such gross income shall be taxable  
11 under paragraph (9); provided that insofar as the  
12 business of renting or leasing real property  
13 under a lease is taxed under section 237-16.5,  
14 the tax shall be levied by section 237-16.5.

15 (4) Tax upon theaters, amusements, radio broadcasting  
16 stations, etc.

17 (A) Upon every person engaging or continuing within  
18 the State in the business of operating a theater,  
19 opera house, moving picture show, vaudeville,  
20 amusement park, dance hall, skating rink, radio  
21 broadcasting station, or any other place at which  
22 amusements are offered to the public, the tax



1 shall be equal to four per cent of the gross  
2 income of the business, and in the case of a sale  
3 of an amusement at wholesale under section 237-  
4 4(a)(13), the tax shall be subject to section  
5 237-13.3.

6 (B) The department may require that the person  
7 rendering an amusement at wholesale take from the  
8 licensed seller a certificate, in a form  
9 prescribed by the department, certifying that the  
10 sale is a sale at wholesale; provided that:

11 (i) Any licensed seller who furnishes a  
12 certificate shall be obligated to pay to the  
13 person rendering the amusement, upon demand,  
14 the amount of additional tax that is imposed  
15 upon the seller whenever the sale is not at  
16 wholesale; and

17 (ii) The absence of a certificate in itself shall  
18 give rise to the presumption that the sale  
19 is not at wholesale unless the person  
20 rendering the sale is exclusively rendering  
21 the amusement at wholesale.



1 (5) Tax upon sales representatives, etc. Upon every  
2 person classified as a representative or purchasing  
3 agent under section 237-1, engaging or continuing  
4 within the State in the business of performing  
5 services for another, other than as an employee, there  
6 is likewise hereby levied and shall be assessed and  
7 collected a tax equal to four per cent of the  
8 commissions and other compensation attributable to the  
9 services so rendered by the person.

10 (6) Tax on service business.

11 (A) Upon every person engaging or continuing within  
12 the State in any service business or calling  
13 including professional services not otherwise  
14 specifically taxed under this chapter, there is  
15 likewise hereby levied and shall be assessed and  
16 collected a tax equal to four per cent of the  
17 gross income of the business, and in the case of  
18 a wholesaler under section 237-4(a)(10), the tax  
19 shall be equal to ~~one-half of~~ one per cent of  
20 the gross income of the business.

21 Notwithstanding the foregoing, a wholesaler under





1 section 237-4(a)(10) shall be subject to section  
2 237-13.3.

3 (B) The department may require that the person  
4 rendering a service at wholesale take from the  
5 licensed seller a certificate, in a form  
6 prescribed by the department, certifying that the  
7 sale is a sale at wholesale; provided that:

8 (i) Any licensed seller who furnishes a  
9 certificate shall be obligated to pay to the  
10 person rendering the service, upon demand,  
11 the amount of additional tax that is imposed  
12 upon the seller whenever the sale is not at  
13 wholesale; and

14 (ii) The absence of a certificate in itself shall  
15 give rise to the presumption that the sale  
16 is not at wholesale unless the person  
17 rendering the sale is exclusively rendering  
18 services at wholesale.

19 (C) Where any person is engaged in the business of  
20 selling interstate or foreign common carrier  
21 telecommunication services within and without the  
22 State, other than as a home service provider, the



1 tax shall be imposed on that portion of gross  
2 income received by a person from service which is  
3 originated or terminated in this State and is  
4 charged to a telephone number, customer, or  
5 account in this State notwithstanding any other  
6 state law (except for the exemption under section  
7 237-23(a)(1)) to the contrary. If, under the  
8 Constitution and laws of the United States, the  
9 entire gross income as determined under this  
10 paragraph of a business selling interstate or  
11 foreign common carrier telecommunication services  
12 cannot be included in the measure of the tax, the  
13 gross income shall be apportioned as provided in  
14 section 237-21; provided that the apportionment  
15 factor and formula shall be the same for all  
16 persons providing those services in the State.

17 (D) Where any person is engaged in the business of a  
18 home service provider, the tax shall be imposed  
19 on the gross income received or derived from  
20 providing interstate or foreign mobile  
21 telecommunications services to a customer with a  
22 place of primary use in this State when such



1 services originate in one state and terminate in  
2 another state, territory, or foreign country;  
3 provided that all charges for mobile  
4 telecommunications services which are billed by  
5 or for the home service provider are deemed to be  
6 provided by the home service provider at the  
7 customer's place of primary use, regardless of  
8 where the mobile telecommunications originate,  
9 terminate, or pass through; provided further that  
10 the income from charges specifically derived from  
11 interstate or foreign mobile telecommunications  
12 services, as determined by books and records that  
13 are kept in the regular course of business by the  
14 home service provider in accordance with section  
15 239-24, shall be apportioned under any  
16 apportionment factor or formula adopted under  
17 subparagraph (C). Gross income shall not  
18 include:  
19 (i) Gross receipts from mobile  
20 telecommunications services provided to a  
21 customer with a place of primary use outside  
22 this State;



- 1           (ii) Gross receipts from mobile
- 2                   telecommunications services that are subject
- 3                   to the tax imposed by chapter 239;
- 4           (iii) Gross receipts from mobile
- 5                   telecommunications services taxed under
- 6                   section 237-13.8; and
- 7           (iv) Gross receipts of a home service provider
- 8                   acting as a serving carrier providing mobile
- 9                   telecommunications services to another home
- 10                  service provider's customer.

11           For the purposes of this paragraph, "charges for

12           mobile telecommunications services", "customer",

13           "home service provider", "mobile

14           telecommunications services", "place of primary

15           use", and "serving carrier" have the same meaning

16           as in section 239-22.

17           (7) Tax on insurance producers. Upon every person engaged

18           as a licensed producer pursuant to chapter 431, there

19           is hereby levied and shall be assessed and collected a

20           tax equal to 0.15 per cent of the commissions due to

21           that activity.

- 1           (8) Tax on receipts of sugar benefit payments. Upon the  
2           amounts received from the United States government by  
3           any producer of sugar (or the producer's legal  
4           representative or heirs), as defined under and by  
5           virtue of the Sugar Act of 1948, as amended, or other  
6           Acts of the Congress of the United States relating  
7           thereto, there is hereby levied a tax of [~~one-half of~~]  
8           one per cent of the gross amount received; provided  
9           that the tax levied hereunder on any amount so  
10          received and actually disbursed to another by a  
11          producer in the form of a benefit payment shall be  
12          paid by the person or persons to whom the amount is  
13          actually disbursed, and the producer actually making a  
14          benefit payment to another shall be entitled to claim  
15          on the producer's return a deduction from the gross  
16          amount taxable hereunder in the sum of the amount so  
17          disbursed. The amounts taxed under this paragraph  
18          shall not be taxable under any other paragraph,  
19          subsection, or section of this chapter.
- 20          (9) Tax on other business. Upon every person engaging or  
21          continuing within the State in any business, trade,  
22          activity, occupation, or calling not included in the



1 preceding paragraphs or any other provisions of this  
2 chapter, there is likewise hereby levied and shall be  
3 assessed and collected, a tax equal to four per cent  
4 of the gross income thereof. In addition, the rate  
5 prescribed by this paragraph shall apply to a business  
6 taxable under one or more of the preceding paragraphs  
7 or other provisions of this chapter, as to any gross  
8 income thereof not taxed thereunder as gross income or  
9 gross proceeds of sales or by taxing an equivalent  
10 value of products, unless specifically exempted."

11 SECTION 4. Section 237-13.3, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13 "(a) Sections 237-4(a)(8), 237-4(a)(10), 237-4(a)(13),  
14 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to the contrary  
15 notwithstanding, instead of the tax levied under section 237-  
16 13(2)(A) on wholesale sales subject to section 237-4(a)(8)(B),  
17 under section 237-13(4)(A) on a wholesaler subject to section  
18 237-4(a)(13), and under section 237-13(6)(A) on a wholesaler  
19 subject to section 237-4(a)(10) at [~~one-half of~~] one per cent,  
20 during the period January 1, 2000, to December 31, 2005, the tax  
21 shall be as follows:

22 (1) In calendar year 2000, 3.5 per cent;



- 1           (2) In calendar year 2001, 3.0 per cent;  
2           (3) In calendar year 2002, 2.5 per cent;  
3           (4) In calendar year 2003, 2.0 per cent;  
4           (5) In calendar year 2004, 1.5 per cent;  
5           (6) In calendar year 2005, 1.0 per cent; and  
6           (7) In calendar year 2006 and thereafter, the tax shall be  
7           0.5 per cent[-]; except for the period from July 1,  
8           2010, to June 30, 2015, when the rate shall be 1.0 per  
9           cent."

10           SECTION 5. Section 237-18, Hawaii Revised Statutes, is  
11 amended by amending subsection (c) to read as follows:

12           "(c) Where, through the activity of a person taxable under  
13 section 237-13(6), a product has been milled, processed, or  
14 otherwise manufactured upon the order of another taxpayer who is  
15 a manufacturer taxable upon the value of the entire manufactured  
16 products, which consists in part of the value of the services  
17 taxable under section 237-13(6), so much gross income as is  
18 derived from the rendering of the services shall be subjected to  
19 tax on the person rendering the services at the rate of [~~one-~~  
20 ~~half-of~~] one per cent, and the value of the entire product shall  
21 be included in the measure of the tax imposed on the other  
22 taxpayer as elsewhere provided."



1 SECTION 6. Section 238-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§238-2 **Imposition of tax on tangible personal property;**  
4 **exemptions.** There is hereby levied an excise tax on the use in  
5 this State of tangible personal property which is imported by a  
6 taxpayer in this State whether owned, purchased from an  
7 unlicensed seller, or however acquired for use in this State.  
8 The tax imposed by this chapter shall accrue when the property  
9 is acquired by the importer or purchaser and becomes subject to  
10 the taxing jurisdiction of the State. The rates of the tax  
11 hereby imposed and the exemptions thereof are as follows:

12 (1) If the importer or purchaser is licensed under chapter  
13 237 and is:

14 (A) A wholesaler or jobber importing or purchasing  
15 for purposes of sale or resale; or

16 (B) A manufacturer importing or purchasing material  
17 or commodities which are to be incorporated by  
18 the manufacturer into a finished or saleable  
19 product (including the container or package in  
20 which the product is contained) wherein it will  
21 remain in such form as to be perceptible to the  
22 senses, and which finished or saleable product is





1           to be sold in such manner as to result in a  
2           further tax on the activity of the manufacturer  
3           as the manufacturer or as a wholesaler, and not  
4           as a retailer,

5           there shall be no tax; provided that if the  
6           wholesaler, jobber, or manufacturer is also engaged in  
7           business as a retailer (so classed under chapter 237),  
8           paragraph (2) shall apply to the wholesaler, jobber,  
9           or manufacturer, but the director of taxation shall  
10          refund to the wholesaler, jobber, or manufacturer, in  
11          the manner provided under section 231-23(c) such  
12          amount of tax as the wholesaler, jobber, or  
13          manufacturer shall, to the satisfaction of the  
14          director, establish to have been paid by the  
15          wholesaler, jobber, or manufacturer to the director  
16          with respect to property which has been used by the  
17          wholesaler, jobber, or manufacturer for the purposes  
18          stated in this paragraph;

- 19          (2) If the importer or purchaser is licensed under chapter  
20          237 and is:



- 1 (A) A retailer or other person importing or  
2 purchasing for purposes of sale or resale, not  
3 exempted by paragraph (1);
- 4 (B) A manufacturer importing or purchasing material  
5 or commodities which are to be incorporated by  
6 the manufacturer into a finished or saleable  
7 product (including the container or package in  
8 which the product is contained) wherein it will  
9 remain in such form as to be perceptible to the  
10 senses, and which finished or saleable product is  
11 to be sold at retail in this State, in such  
12 manner as to result in a further tax on the  
13 activity of the manufacturer in selling such  
14 products at retail;
- 15 (C) A contractor importing or purchasing material or  
16 commodities which are to be incorporated by the  
17 contractor into the finished work or project  
18 required by the contract and which will remain in  
19 such finished work or project in such form as to  
20 be perceptible to the senses;
- 21 (D) A person engaged in a service business or calling  
22 as defined in section 237-7, or a person



1           furnishing transient accommodations subject to  
2           the tax imposed by section 237D-2, in which the  
3           import or purchase of tangible personal property  
4           would have qualified as a sale at wholesale as  
5           defined in section 237-4(a)(8) had the seller of  
6           the property been subject to the tax in chapter  
7           237; or

8           (E) A publisher of magazines or similar printed  
9           materials containing advertisements, when the  
10          publisher is under contract with the advertisers  
11          to distribute a minimum number of magazines or  
12          similar printed materials to the public or  
13          defined segment of the public, whether or not  
14          there is a charge to the persons who actually  
15          receive the magazines or similar printed  
16          materials,

17          the tax shall be [~~one-half of~~] one per cent of the  
18          purchase price of the property, if the purchase and  
19          sale are consummated in Hawaii; or, if there is no  
20          purchase price applicable thereto, or if the purchase  
21          or sale is consummated outside of Hawaii, then [~~one-~~



1           ~~half of]~~ one per cent of the value of such property;  
2           and

3           (3) In all other cases, four per cent of the value of the  
4           property.

5           For purposes of this section, tangible personal property is  
6 property that is imported by the taxpayer for use in this State,  
7 notwithstanding the fact that title to the property, or the risk  
8 of loss to the property, passes to the purchaser of the property  
9 at a location outside this State."

10           SECTION 7. Section 238-2.3, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "**§238-2.3 Imposition of tax on imported services or**  
13 **contracting; exemptions.** There is hereby levied an excise tax  
14 on the value of services or contracting as defined in section  
15 237-6 that are performed by an unlicensed seller at a point  
16 outside the State and imported or purchased for use in this  
17 State. The tax imposed by this chapter shall accrue when the  
18 service or contracting as defined in section 237-6 is received  
19 by the importer or purchaser and becomes subject to the taxing  
20 jurisdiction of the State. The rates of the tax hereby imposed  
21 and the exemptions from the tax are as follows:



1 (1) If the importer or purchaser is licensed under chapter  
2 237 and is:

3 (A) Engaged in a service business or calling in which  
4 the imported or purchased services or contracting  
5 become identifiable elements, excluding overhead,  
6 of the services rendered by the importer or  
7 purchaser, and the gross income of the importer  
8 or purchaser is subject to the tax imposed under  
9 chapter 237 on services at the rate of [~~one-half~~  
10 ~~of~~] one per cent or the rate of tax imposed under  
11 section 237-13.3; or

12 (B) A manufacturer importing or purchasing services  
13 or contracting that become identifiable elements,  
14 excluding overhead, of a finished or saleable  
15 product (including the container or package in  
16 which the product is contained) and the finished  
17 or saleable product is to be sold in a manner  
18 that results in a further tax on the manufacturer  
19 as a wholesaler, and not a retailer;

20 there shall be no tax imposed on the value of the  
21 imported or purchased services or contracting;

22 provided that if the manufacturer is also engaged in



1 business as a retailer as classified under chapter  
2 237, paragraph (2) shall apply to the manufacturer,  
3 but the director of taxation shall refund to the  
4 manufacturer, in the manner provided under section  
5 231-23(c), that amount of tax that the manufacturer,  
6 to the satisfaction of the director, shall establish  
7 to have been paid by the manufacturer to the director  
8 with respect to services that have been used by the  
9 manufacturer for the purposes stated in this  
10 paragraph.

11 (2) If the importer or purchaser is a person licensed  
12 under chapter 237 and is:

13 (A) Engaged in a service business or calling in which  
14 the imported or purchased services or contracting  
15 become identifiable elements, excluding overhead,  
16 of the services rendered by the importer or  
17 purchaser, and the gross income from those  
18 services when sold by the importer or purchaser  
19 is subject to the tax imposed under chapter 237  
20 at the highest rate;

21 (B) A manufacturer importing or purchasing services  
22 or contracting that become identifiable elements,



1           excluding overhead, of the finished or saleable  
2           manufactured product (including the container or  
3           package in which the product is contained) and  
4           the finished or saleable product is to be sold in  
5           a manner that results in a further tax under  
6           chapter 237 on the activity of the manufacturer  
7           as a retailer; or

8           (C) A contractor importing or purchasing services or  
9           contracting that become identifiable elements,  
10          excluding overhead, of the finished work or  
11          project required, under the contract, and where  
12          the gross proceeds derived by the contractor are  
13          subject to the tax under section 237-13(3) as a  
14          contractor,

15          the tax shall be [~~one-half of~~] one per cent of the  
16          value of the imported or purchased services or  
17          contracting; and

18          (3) In all other cases, the importer or purchaser is  
19          subject to the tax at the rate of four per cent on the  
20          value of the imported or purchased services or  
21          contracting."



1 SECTION 8. Section 238-2.6, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3 "(c) No county surcharge on state tax shall be established  
4 upon any use taxable under this chapter at the [~~one-half~~] one  
5 per cent tax rate or upon any use that is not subject to  
6 taxation or that is exempt from taxation under this chapter."

7 SECTION 9. Section 239-5, Hawaii Revised Statutes, is  
8 amended by amending subsection (c) to read as follows:

9 "(c) Notwithstanding subsection (a), the rate of tax upon  
10 the portion of the gross income of:

11 (1) A public utility that consists of the receipts from  
12 the sale of its products or services to another public  
13 utility that resells such products or services shall  
14 be [~~one-half of~~] one per cent; or

15 (2) A public utility engaged in the business of selling  
16 telecommunication services to a person defined in  
17 section 237-13(6) (C) who resells such products or  
18 services, shall be as follows:

19 (A) In calendar year 2000, 5.5 per cent;

20 (B) In calendar year 2001, 5.0 per cent;

21 (C) In calendar year 2002, 4.5 per cent;

22 (D) In calendar year 2003, 4.0 per cent;





- 1 (E) In calendar year 2004, 3.5 per cent;
- 2 (F) In calendar year 2005, 3.0 per cent;
- 3 (G) In calendar year 2006, 2.5 per cent; and
- 4 (H) In calendar year 2007, and thereafter, 0.5 per
- 5 cent; except for the period from July 1, 2010, to
- 6 June 30, 2015, when the rate shall be 1.0 per
- 7 cent;

8 provided that the resale of the products, services, or

9 telecommunication services is subject to taxation under this

10 section or subject to taxation at the highest rate under section

11 237-13(6); and provided further that the public utility's

12 exemption from real property taxes imposed by chapter 246 shall

13 be reduced by the proportion that its public utility gross

14 income described herein bears to its total public utility gross

15 income. Whenever the public utility has other public utility

16 gross income, the gross income from the sale of its products or

17 services to another public utility or a person subject to

18 section 237-13(6) (C) shall be included in applying subsection

19 (a) in determining the rate of tax upon the other public utility

20 gross income. The department shall have the authority to

21 implement the tax rate changes in paragraph (2) by prescribing

22 tax forms and instructions that require tax reporting and



1 payment by deduction, allocation, or any other method to  
2 determine tax liability with due regard to the tax rate  
3 changes."

4 SECTION 10. Section 239-6, Hawaii Revised Statutes, is  
5 amended by amending subsection (d) to read as follows:

6 "(d) Notwithstanding subsections (a), (b), and (c), the  
7 rate of tax upon the portion of the gross income of a motor  
8 carrier which consists of the receipts from the sale of its  
9 products or services to a contractor shall be as follows:

- 10 (1) In calendar year 2000, 3.5 per cent;  
11 (2) In calendar year 2001, 3.0 per cent;  
12 (3) In calendar year 2002, 2.5 per cent;  
13 (4) In calendar year 2003, 2.0 per cent;  
14 (5) In calendar year 2004, 1.5 per cent;  
15 (6) In calendar year 2005, 1.0 per cent; and  
16 (7) In calendar year 2006, and thereafter, 0.5 per cent;  
17 except for the period from July 1, 2010, to June 30,  
18 2015, when the rate shall be 1.0 per cent;

19 provided that there is a resale of the products or services and  
20 the resale by the contractor is subject to taxation at the  
21 highest rate under section 237-13; the gross income of the motor  
22 carrier is not divided as provided in the definition of "gross



1 income" in section 239-2 for the tax imposed under this chapter  
2 or chapter 237; and the gross income of the motor carrier from  
3 the sale of its products or services to the contractor is not  
4 subject to a deduction under chapter 237 by the contractor; and  
5 in the case of services provided by the motor carrier, the  
6 benefit of the service passes to the customer of the contractor  
7 as an identifiable element of the contracting or service  
8 provided by the contractor and does not constitute overhead as  
9 defined in section 237-1.

10 The department shall have the authority to implement the  
11 tax rate changes in paragraphs (1) through (7) by prescribing  
12 tax forms and instructions that require tax reporting and  
13 payment by deduction, allocation, or any other method to  
14 determine tax liability with due regard to the tax rate changes.

15 For purposes of this subsection, "contractor" has the same  
16 meaning as defined in section 237-6."

17 SECTION 11. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 12. This Act shall take effect on July 1, 2010,  
20 and shall be repealed on June 30, 2015; provided that sections  
21 237-8.6, 237-13, 237-13.3, 237-18, 238-2, 238-2.3, 238-2.6,  
22 239-5, and 239-6, Hawaii Revised Statutes, shall be reenacted in



# H.B. NO. 2880

1 the form in which they read on the day before the effective date  
2 of this Act.

3

INTRODUCED BY:

Calvin K. Day

JAN 27 2010



**Report Title:**

General Excise, Use, Public Service Company Taxes; Wholesale Rates

**Description:**

Increases the "wholesale" rates under the general excise, use, and public service company taxes to one per cent from one-half per cent. Effective 7/1/10; repealed 6/30/15.

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

