
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 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§237-A Tax on certain real property sales. (a) Except
9 as provided under subsections (b) and (c), there is hereby
10 levied, and shall be assessed and collected annually, a
11 privilege tax against a sole proprietorship, partnership,
12 corporation, or limited liability entity that, as a business or
13 part of a business, sells real property owned in fee simple by
14 the sole proprietorship, partnership, corporation, or limited
15 liability entity to another person. The tax shall be equal to
16 one per cent of the gross proceeds received from the sale of the
17 real property less deductions for any:



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

4 (2) Tax paid under chapter 247 on the conveyance of the
5 real property.

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

10 (c) This section shall not affect the tax imposed under
11 section 237-13(3)(D) on a person engaged in contracting. The
12 gross proceeds of sale of a person engaged in the business
13 activity described under section 237-13(3)(D) shall be subject
14 to taxation in accordance with and at the rate prescribed under
15 section 237-13(3)(D).

16 (d) This section shall be repealed on June 30, 2015."

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

20 "Casual sale" means an occasional or isolated sale or
21 transaction involving:



1 (1) Tangible personal property or real property by a
2 person who is not required to be licensed under this
3 chapter [~~7-08~~];

4 (2) Tangible personal property which is not ordinarily
5 sold in the business of a person who is regularly
6 engaged in business [~~7~~]; or

7 (3) Real property:

8 (A) The seller of which held a home exemption or
9 homeowner's classification for county real
10 property tax purpose on the day before the
11 closing of the sale;

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

14 (C) The seller of which did not receive or derive any
15 gross income or gross proceeds from leasing the
16 real property within the one-year period
17 immediately preceding the closing of the sale.

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

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



1 (a) "Gross income" means the gross receipts, cash or
2 accrued, of the taxpayer received as compensation for personal
3 services and the gross receipts of the taxpayer derived from
4 trade, business, commerce, or sales and the value proceeding or
5 accruing from the sale of tangible personal property, or
6 service, or both, and all receipts, actual or accrued as
7 hereinafter provided, by reason of the investment of the capital
8 of the business engaged in, including interest, discount,
9 rentals, royalties, fees, or other emoluments however designated
10 and without any deductions on account of the cost of property
11 sold, the cost of materials used, labor cost, taxes, royalties,
12 interest, or discount paid or any other expenses whatsoever.
13 Every taxpayer shall be presumed to be dealing on a cash basis
14 unless the taxpayer proves to the satisfaction of the department
15 of taxation that the taxpayer is dealing on an accrual basis and
16 the taxpayer's books are so kept, or unless the taxpayer employs
17 or is required to employ the accrual basis for the purposes of
18 the tax imposed by chapter 235 for any taxable year in which
19 event the taxpayer shall report the taxpayer's gross income for
20 the purposes of this chapter on the accrual basis for the same
21 period.



1 "Gross proceeds of sale" means the value actually
2 proceeding from the sale of tangible personal property or real
3 property without any deduction on account of the cost of
4 property sold or expenses of any kind.

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



1 materials or supplies, interest on loans, or the provision of
2 engineering, construction, maintenance, or managerial services
3 by one "member" of an "affiliated public service company group"
4 to another "member" of the same group as such terms are defined
5 in section 239-2. Accounts found to be worthless and actually
6 charged off for income tax purposes may be deducted, at
7 corresponding periods, from gross proceeds of sale, or gross
8 income, within this chapter, so far as they reflect taxable
9 sales made, or gross income earned, after July 1, 1935, but
10 shall be added to gross proceeds of sale or gross income when
11 and if afterwards collected."

12 SECTION 5. In codifying the new sections added by section
13 2 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

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

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

20 (1) Sections 237-1 and 237-3(a) and (b), Hawaii Revised
21 Statutes, shall be reenacted in the form in which they



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1 read on the day prior to the effective date of this
2 Act; and
3 (2) Section 237-A, Hawaii Revised Statutes, shall not be
4 reenacted after June 30, 2015.

5

INTRODUCED BY:

Cabira K. Day

JAN 27 2010



Report Title:

Real Property Sales; General Excise Taxation

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.

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