

JAN 22 2010

S.B. NO. 2405

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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 adopt changes to  
2 Hawaii's tax law that will allow Hawaii to participate in the  
3 national streamlined sales and use tax agreement. This  
4 agreement simplifies state tax systems, removes burdens to  
5 interstate commerce that are defined in the United States  
6 Supreme Court decision in *Quill Corp. v. North Dakota*, 504 U.S.  
7 298 (1992), and "levels the playing field" between local and  
8 out-of-state retailers. At its core, the Streamlined Sales Tax  
9 Project uses technology to accurately identify tax rates,  
10 collect taxes, and remit state tax revenues. Since 2005, out-  
11 of-state retailers have voluntarily collected and remitted over  
12 \$350,000,000 in taxes to participating states that would have  
13 otherwise likely gone uncollected by the states.

14           Hawaii's use tax, chapter 238, Hawaii Revised Statutes, has  
15 been on the books for over forty years and is similar to use tax  
16 laws in forty-five other states. Most Hawaii consumers do not  
17 realize that they owe the State a four per cent tax on their



1 out-of-state purchases via catalog, direct mail, or the  
2 internet, and it's virtually impossible for the department of  
3 taxation to calculate and collect what individual taxpayers owe  
4 on those purchases.

5 In 2003, the State of Hawaii became a participant in the  
6 national Streamlined Sales Tax Project by enacting the Hawaii  
7 Simplified Sales and Use Tax Administration Act (Act 173,  
8 Session Laws of Hawaii 2003).

9 In 2005, to advance the State's efforts to comply with the  
10 terms and conditions of the conforming legislation reflected in  
11 the Streamlined Sales Tax Project's model agreement and act, the  
12 legislature enacted Act 3, Special Session Laws of Hawaii 2005.  
13 Act 3 also established a technical advisory group to assist the  
14 department of taxation in identifying and resolving issues  
15 necessary for Streamlined Sales Tax Project compliance. A joint  
16 house-senate legislative oversight committee was formed to  
17 provide additional tax policy support and guidance.

18 During the 2006-2008 legislative sessions, legislation was  
19 introduced to implement conforming amendments to Hawaii's tax  
20 laws to implement the streamlined sales and use tax agreement in  
21 Hawaii. In 2009, the legislature adopted streamlined sales and  
22 use tax legislation that was subsequently vetoed by the



1 administration (Governor's Message 835, July 15, 2009). The  
2 2010 legislation is a culmination of prior efforts to adopt  
3 conforming legislation for the State to participate in and  
4 become a full member of the Streamlined Sales Tax Project. This  
5 Act will finally allow the State to begin collecting use taxes  
6 that currently exist under chapter 238, Hawaii Revised Statutes,  
7 which are presently going uncollected on the majority of out-of-  
8 state purchases.

9 To participate and become a full member in the streamlined  
10 sales and use tax agreement, Hawaii must amend its tax law to be  
11 in conformity with the streamlined sales and use tax agreement.  
12 The State must also adopt a single rate of general excise tax,  
13 Hawaii's substitute for a sales tax, to conform to the  
14 streamlined sales and use tax agreement. In accordance with  
15 advice received from the Streamlined Sales Tax Governing Board  
16 and COST, a national organization representing businesses, this  
17 was accomplished by:

- 18 (1) Moving the one-half of one per cent tax rate for  
19 wholesale transactions to a new chapter;
- 20 (2) Adding a new chapter on the taxation of imports of  
21 property, services, and contracting;





1        §A-2 "Wholesaler" and "jobber" defined. (a) "Wholesaler"  
2 or "jobber" applies only to a person making sales at wholesale.  
3 Only the following are sales at wholesale:

4        (1) Sales to a licensed retail merchant, jobber, or other  
5 licensed seller for purposes of resale;

6        (2) Sales to a licensed manufacturer of materials or  
7 commodities that are to be incorporated by the  
8 manufacturer into a finished or saleable product  
9 (including the container or package in which the  
10 product is contained) during the course of its  
11 preservation, manufacture, or processing, including  
12 preparation for market, and that will remain in a  
13 finished or saleable product in a form as to be  
14 perceptible to the senses, which finished or saleable  
15 product is to be sold and not otherwise used by the  
16 manufacturer;

17        (3) Sales to a licensed producer or cooperative  
18 association of materials or commodities that are to be  
19 incorporated by the producer or by the cooperative  
20 association into a finished or saleable product that  
21 is to be sold and not otherwise used by the producer  
22 or cooperative association, including specifically



1 materials or commodities expended as essential to the  
2 planting, growth, nurturing, and production of  
3 commodities that are sold by the producer or by the  
4 cooperative association;

5 (4) Sales to a licensed contractor of materials or  
6 commodities that are to be incorporated by the  
7 contractor into the finished work or project required  
8 by the contract and that will remain in a finished  
9 work or project in a form as to be perceptible to the  
10 senses;

11 (5) Sales to a licensed producer, or to a cooperative  
12 association described in section 237-23(a)(7) for sale  
13 to a licensed producer, or to a licensed person  
14 operating a feed lot, of poultry or animal feed,  
15 hatching eggs, semen, replacement stock, breeding  
16 services for the purpose of raising or producing  
17 animal or poultry products for disposition as  
18 described in section A-3 or for incorporation into a  
19 manufactured product as described in paragraph (2) or  
20 for the purpose of breeding, hatching, milking, or egg  
21 laying other than for the customer's own consumption  
22 of the meat, poultry, eggs, or milk so produced;



1 provided that in the case of a feed lot operator, only  
2 the segregated cost of the feed furnished by the feed  
3 lot operator as part of the feed lot operator's  
4 service to a licensed producer of poultry or animals  
5 to be butchered or to a cooperative association  
6 described in section 237-23(a)(7) of these licensed  
7 producers shall be deemed to be a sale at wholesale;  
8 and provided further that any amount derived from the  
9 furnishing of feed lot services, other than the  
10 segregated cost of feed, shall be deemed taxable at  
11 the service business rate specified in section  
12 A-6(a)(4). This paragraph shall not apply to the sale  
13 of feed for poultry or animals to be used for hauling,  
14 transportation, or sports purposes;

- 15 (6) Sales to a licensed producer, or to a cooperative  
16 association described in section 237-23(a)(7) for sale  
17 to the producer, of seed or seedstock for producing  
18 agricultural and aquacultural products, or bait for  
19 catching fish (including the catching of bait for  
20 catching fish), which agricultural and aquacultural  
21 products or fish are to be disposed of as described in



1 section A-3 or to be incorporated in a manufactured  
2 product as described in paragraph (2);

3 (7) Sales to a licensed producer, or to a cooperative  
4 association described in section 237-23(a)(7) for sale  
5 to a licensed producer; of polypropylene shade cloth;  
6 of polyfilm; of polyethylene film; of cartons and  
7 other containers, wrappers, and sacks, and binders to  
8 be used for packaging eggs, vegetables, fruits, and  
9 other agricultural and aquacultural products; of  
10 seedlings and cuttings for producing nursery plants or  
11 aquacultural products; or of chick containers; which  
12 cartons and other containers, wrappers, and sacks,  
13 binders, seedlings, cuttings, and containers are to be  
14 used as described in section A-3, or to be  
15 incorporated in a manufactured product as described in  
16 paragraph (2);

17 (8) Sales of tangible personal property where:

18 (A) Tangible personal property is sold upon the order  
19 or request of a licensed seller for the purpose  
20 of rendering a service in the course of the  
21 person's service business or calling, or upon the  
22 order or request of a person subject to tax under





1 section 237D-2 for the purpose of furnishing  
2 transient accommodations;

3 (B) The tangible personal property becomes or is used  
4 as an identifiable element of the service  
5 rendered; and

6 (C) The cost of the tangible personal property does  
7 not constitute overhead to the licensed seller;

8 (9) Sales to a licensed leasing company of capital goods  
9 that have a depreciable life, are purchased by the  
10 leasing company for lease to its customers, and are  
11 thereafter leased as a service to others;

12 (10) Sales of services to a licensed seller engaging in a  
13 business or calling whenever:

14 (A) Either:

15 (i) In the context of a service-to-service  
16 transaction, a service is rendered upon the  
17 order or request of a licensed seller for  
18 the purpose of rendering another service in  
19 the course of the seller's service business  
20 or calling;

21 (ii) In the context of a service-to-tangible  
22 personal property transaction, a service is



1 rendered upon the order or request of a  
2 licensed seller for the purpose of  
3 manufacturing, producing, or preparing  
4 tangible personal property to be sold;

5 (iii) In the context of a service-to-contracting  
6 transaction, a service is rendered upon the  
7 order or request of a licensed contractor as  
8 defined in section 237-6 for the purpose of  
9 assisting that licensed contractor; or

10 (iv) In the context of a service-to-transient  
11 accommodations rental transaction, a service  
12 is rendered upon the order or request of a  
13 person subject to tax under section 237D-2  
14 for the purpose of furnishing transient  
15 accommodations;

16 (B) The benefit of the service passes to the customer  
17 of the licensed seller, licensed contractor, or  
18 person furnishing transient accommodations as an  
19 identifiable element of the other service or  
20 property to be sold, the contracting, or the  
21 furnishing of transient accommodations;



- 1 (C) The cost of the service does not constitute
- 2 overhead to the licensed seller, licensed
- 3 contractor, or person furnishing transient
- 4 accommodations;
- 5 (D) The gross income of the licensed seller is not
- 6 divided between the licensed seller and another
- 7 licensed seller, contractor, or person furnishing
- 8 transient accommodations for imposition of the
- 9 tax under this chapter or chapter 237;
- 10 (E) The gross income of the licensed seller is not
- 11 subject to a deduction under this chapter,
- 12 chapter 237, or chapter 237D; and
- 13 (F) The resale of the service, tangible personal
- 14 property, contracting, or transient
- 15 accommodations is subject to the tax imposed
- 16 under this chapter or chapter 237 at the highest
- 17 rate;
- 18 (11) Sales to a licensed retail merchant, jobber, or other
- 19 licensed seller of bulk condiments or prepackaged
- 20 single-serving packets of condiments that are provided
- 21 to customers by the licensed retail merchant, jobber,
- 22 or other licensed seller;



1           (12) Sales to a licensed retail merchant, jobber, or other  
2           licensed seller of tangible personal property that  
3           will be incorporated or processed by the licensed  
4           retail merchant, jobber, or other licensed seller into  
5           a finished or saleable product during the course of  
6           its preparation for market (including disposable,  
7           nonreturnable containers, packages, or wrappers, in  
8           which the product is contained and that are generally  
9           known and most commonly used to contain food or  
10          beverage for transfer or delivery), and which finished  
11          or saleable product is to be sold and not otherwise  
12          used by the licensed retail merchant, jobber, or other  
13          licensed seller;

14          (13) Sales of amusements subject to taxation under section  
15          A-6(a)(3) to a licensed seller engaging in a business  
16          or calling whenever:

17           (A) Either:

18               (i) In the context of an amusement-to-service  
19               transaction, an amusement is rendered upon  
20               the order or request of a licensed seller  
21               for the purpose of rendering another service



- 1 in the course of the seller's service  
2 business or calling;
- 3 (ii) In the context of an amusement-to-tangible  
4 personal property transaction, an amusement  
5 is rendered upon the order or request of a  
6 licensed seller for the purpose of selling  
7 tangible personal property; or
- 8 (iii) In the context of an amusement-to-amusement  
9 transaction, an amusement is rendered upon  
10 the order or request of a licensed seller  
11 for the purpose of rendering another  
12 amusement in the course of the person's  
13 amusement business;
- 14 (B) The benefit of the amusement passes to the  
15 customer of the licensed seller as an  
16 identifiable element of the other service,  
17 tangible personal property to be sold, or  
18 amusement;
- 19 (C) The cost of the amusement does not constitute  
20 overhead to the licensed seller;
- 21 (D) The gross income of the licensed seller is not  
22 divided between the licensed seller and another



1 licensed seller, person furnishing transient  
2 accommodations, or person rendering an amusement  
3 for imposition of the tax under chapter 237;

4 (E) The gross income of the licensed seller is not  
5 subject to a deduction under this chapter or  
6 chapter 237; and

7 (F) The resale of the service, tangible personal  
8 property, or amusement is subject to the tax  
9 imposed under this chapter or chapter 237.

10 As used in this paragraph, "amusement" means  
11 entertainment provided as part of a show for which  
12 there is an admission charge; and

13 (14) Sales by a printer to a publisher of magazines or  
14 similar printed materials containing advertisements,  
15 when the publisher is under contract with the  
16 advertisers to distribute a minimum number of  
17 magazines or similar printed materials to the public  
18 or defined segment of the public, whether or not there  
19 is a charge to the persons who actually receive the  
20 magazines or similar printed materials.

21 (b) If the use tax law under chapter B is finally held by  
22 a court of competent jurisdiction to be unconstitutional or



1 invalid insofar as it purports to tax the use or consumption of  
2 tangible personal property imported into the State in interstate  
3 or foreign commerce, or both, wholesalers and jobbers shall be  
4 taxed thereafter under this chapter in accordance with the  
5 following definition (which shall supersede the definitions for  
6 "wholesaler" or "jobber" in subsection (a)): "Wholesaler" or  
7 "jobber" means a person, or an organized division thereof,  
8 definitely organized to render and rendering a general  
9 distribution service that buys and maintains at the person's  
10 place of business a stock or lines of merchandise that the  
11 person distributes; and that the person, through salespersons,  
12 advertising, or sales promotion devices, sells to licensed  
13 retailers, to institutional, or licensed commercial or  
14 industrial users, in wholesale quantities and at wholesale  
15 rates. A corporation deemed not to be carrying on a trade or  
16 business in this State under section 235-6 shall nevertheless be  
17 deemed to be a wholesaler and shall be subject to the tax  
18 imposed by this chapter.

19       **§A-3 "Producer" defined.** (a) "Producer" means any person  
20 engaged in the business of raising and producing agricultural  
21 products in their natural state, or in producing natural  
22 resource products, or engaged in the business of fishing or



1 aquaculture, for sale, or for shipment or transportation out of  
2 the State, of the agricultural or aquaculture products in their  
3 natural or processed state, or butchered and dressed, or the  
4 natural resource products, or fish.

5 (b) As used in this section, "agricultural products"  
6 include floricultural, horticultural, viticultural, forestry,  
7 nut, coffee, dairy, livestock, poultry, bee, animal, and any  
8 other farm, agronomic, or plantation products.

9 **§A-4 Definitions; "contractor", "service business or**  
10 **calling".** The definitions contained in sections 237-6 and 237-7  
11 shall be applicable for this chapter.

12 **§A-5 Licensing; tax year.** Sections 237-9, 237-9.5,  
13 237-11, and 237-12 shall be applicable for this chapter.

14 **§A-6 Imposition of tax.** (a) There is hereby levied and  
15 shall be assessed and collected annually privilege taxes against  
16 persons on account of their business and other activities in the  
17 State measured by the application of rates against values of  
18 products, gross proceeds of sales, or gross income, whichever is  
19 specified, as follows:

20 (1) Tax on manufacturers:

21 (A) Upon every person engaging or continuing within  
22 the State in the business of manufacturing,





1 including compounding, canning, preserving,  
2 packing, printing, publishing, milling,  
3 processing, refining, or preparing for sale,  
4 profit, or commercial use, either directly or  
5 through the activity of others, in whole or in  
6 part, any article or articles, substance or  
7 substances, commodity or commodities, the amount  
8 of the tax to be equal to the value of the  
9 articles, substances, or commodities,  
10 manufactured, compounded, canned, preserved,  
11 packed, printed, milled, processed, refined, or  
12 prepared for sale, as shown by the gross proceeds  
13 derived from the sale thereof by the manufacturer  
14 or person compounding, preparing, or printing  
15 them, multiplied by one-half of one per cent;

16 (B) The measure of the tax on manufacturers is the  
17 value of the entire product for sale, regardless  
18 of the place of sale or the fact that deliveries  
19 may be made to points outside the State;

20 (C) If any person liable for the tax on manufacturers  
21 ships or transports the person's product, or any  
22 part thereof, out of the State, whether in a



1 finished or unfinished condition, or sells the  
2 same for delivery to points outside the State  
3 (for example, consigned to a mainland purchaser  
4 via common carrier f.o.b. Honolulu), the value of  
5 the products in the condition or form in which  
6 they exist immediately before entering interstate  
7 or foreign commerce, determined as hereinafter  
8 provided, shall be the basis for the assessment  
9 of the tax imposed by this paragraph. This tax  
10 shall be due and payable as of the date of entry  
11 of the products into interstate or foreign  
12 commerce, whether the products are then sold or  
13 not. The department shall determine the basis  
14 for assessment, as provided by this paragraph, as  
15 follows:

- 16 (i) If the products at the time of their entry  
17 into interstate or foreign commerce already  
18 have been sold, the gross proceeds of sale,  
19 less the transportation expenses, if any,  
20 incurred in realizing the gross proceeds for  
21 transportation from the time of entry of the  
22 products into interstate or foreign



1 commerce, including insurance and storage in  
2 transit, shall be the measure of the value  
3 of the products;

4 (ii) If the products have not been sold at the  
5 time of their entry into interstate or  
6 foreign commerce, and in cases governed by  
7 clause (i) in which the products are sold  
8 under circumstances such that the gross  
9 proceeds of sale are not indicative of the  
10 true value of the products, the value of the  
11 products constituting the basis for  
12 assessment shall correspond as nearly as  
13 possible to the gross proceeds of sales for  
14 delivery outside the State, adjusted as  
15 provided in clause (i) or, if sufficient  
16 data is not available, sales in the State of  
17 similar products of like quality and  
18 character and in similar quantities, made by  
19 the taxpayer (unless not indicative of the  
20 true value), or by others. Sales outside  
21 the State, adjusted as provided in clause  
22 (i), may be considered when they constitute



1 the best available data. The department  
2 shall prescribe uniform and equitable rules  
3 for ascertaining the values;

4 (iii) At the election of the taxpayer and with the  
5 approval of the department, the taxpayer may  
6 make the taxpayer's returns under clause (i)  
7 even though the products have not been sold  
8 at the time of their entry into interstate  
9 or foreign commerce; and

10 (iv) In all cases in which products leave the  
11 State in an unfinished condition, the basis  
12 for assessment shall be adjusted so as to  
13 deduct the portion of the value as is  
14 attributable to the finishing of the goods  
15 outside the State;

16 (2) Tax on producers. Upon every person engaging or  
17 continuing within this State in the business of a  
18 producer, the tax shall be equal to one-half of one  
19 per cent of the gross proceeds of sales of the  
20 business, or the value of the products, for sale, if  
21 sold for delivery outside the State or shipped or  
22 transported out of the State, and the value of the



1 products shall be determined in the same manner as the  
2 value of manufactured products covered in the cases  
3 under paragraph (1)(C). No manufacturer or producer,  
4 engaged in the business of manufacturing or producing  
5 in the State and selling the manufacturer's or  
6 producer's products for delivery outside of the State  
7 (for example, consigned to a mainland purchaser via  
8 common carrier f.o.b. Honolulu), shall be required to  
9 pay the tax imposed in this chapter for the privilege  
10 of so selling the products, and the value or gross  
11 proceeds of sales of the products shall be included  
12 only in determining the measure of the tax imposed  
13 upon the manufacturer or producer;

- 14 (3) Tax upon theaters, amusements, radio broadcasting  
15 stations, etc. Upon every person engaging or  
16 continuing within the State in the business of  
17 operating a theater, opera house, moving picture show,  
18 vaudeville, amusement park, dance hall, skating rink,  
19 radio broadcasting station, or any other place at  
20 which amusements are offered to the public, at  
21 wholesale, the tax shall be one-half of one per cent  
22 of the gross proceeds of the business;



1 (4) Tax on service business. Upon every person engaging  
2 or continuing within the State in any service business  
3 or calling including professional services not  
4 otherwise specifically taxed under this chapter, as a  
5 wholesaler under section A-2, the tax shall be equal  
6 to one-half of one per cent of the gross proceeds of  
7 the business;

8 (5) Tax on sales by wholesalers:

9 (A) Upon every person who is engaged in the business  
10 of a wholesaler or jobber under section A-2 or  
11 selling any tangible personal property whatsoever  
12 (not including, however, bonds or other evidences  
13 of indebtedness, or stocks), there is hereby  
14 levied, and shall be assessed and collected, a  
15 tax equivalent to one-half of one per cent of the  
16 gross proceeds of sales of the business as a  
17 wholesaler or jobber as defined in section A-2;  
18 and

19 (B) Gross proceeds of sales of tangible property in  
20 interstate and foreign commerce shall constitute  
21 a part of the measure of the tax imposed on  
22 persons in the business of selling tangible



1           personal property as a wholesaler, to the extent,  
2           under the conditions, and in accordance with the  
3           provisions of the Constitution of the United  
4           States and the Acts of Congress of the United  
5           States that may be now in force or may be  
6           hereafter adopted, and whenever there occurs in  
7           the State an activity to which, under the  
8           Constitution and Acts of Congress, there may be  
9           attributed gross proceeds of sales, the gross  
10          proceeds shall be so attributed.

11           (b) When a manufacturer or producer, engaged in business  
12          in the State, also is engaged in selling the manufacturer's or  
13          producer's products in the State at wholesale taxed under this  
14          chapter, retail under chapter 237, or in any other manner, the  
15          tax for the privilege of engaging in the business of selling the  
16          products in the State shall apply to the manufacturer or  
17          producer as well as the tax for the privilege of manufacturing  
18          or producing in the State, and the manufacturer or producer  
19          shall make the returns of the gross proceeds of the wholesale,  
20          retail under chapter 237, or other sales required for the  
21          privilege of selling in the State, as well as making the returns  
22          of the value or gross proceeds of sales of the products required



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

13 **§A-7 Resale certificates.** (a) The department, by rule,  
14 may require that a seller take from the purchaser of tangible  
15 personal property a certificate, in a form prescribed by the  
16 department, certifying that the sale is a sale at wholesale;  
17 provided that:

18 (1) Any purchaser who furnishes a certificate shall be  
19 obligated to pay to the seller, upon demand, the  
20 amount of the additional tax that is imposed upon the  
21 seller whenever the sale in fact is not at wholesale;  
22 and





1           (2) The absence of a certificate in itself shall give rise  
2           to the presumption that the sale is not at wholesale  
3           unless the sales of the business are exclusively at  
4           wholesale.

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

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

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

18           (c) The department may require that the person rendering a  
19           service at wholesale take from the licensed seller a  
20           certificate, in a form prescribed by the department, certifying  
21           that the sale is a sale at wholesale; provided that:



1           (1) Any licensed seller who furnishes a certificate shall  
2           be obligated to pay to the person rendering the  
3           service, upon demand, the amount of additional tax  
4           that is imposed upon the seller whenever the sale is  
5           not at wholesale; and

6           (2) The absence of a certificate in itself shall give rise  
7           to the presumption that the sale is not at wholesale,  
8           unless the person rendering the sale is exclusively  
9           rendering services at wholesale.

10           **SA-8 Tax on receipts of sugar benefit payments.** Upon the  
11 amounts received from the United States government by any  
12 producer of sugar (or the producer's legal representative or  
13 heirs), as defined under and by virtue of the Sugar Act of 1948,  
14 as amended, or other Acts of the Congress of the United States  
15 relating thereto, there is hereby levied a tax of one-half of  
16 one per cent of the gross amount received; provided that the tax  
17 levied hereunder on any amount so received and actually  
18 disbursed to another by a producer in the form of a benefit  
19 payment shall be paid by the person or persons to whom the  
20 amount is actually disbursed, and the producer actually making a  
21 benefit payment to another shall be entitled to claim on the  
22 producer's return a deduction from the gross amount taxable



1 hereunder in the sum of the amount so disbursed. The amounts  
2 taxed under this section shall not be taxable under any other  
3 paragraph, subsection, or section of this chapter or chapter  
4 237.

5       **SA-9 Segregation of gross income, etc., on records and in**  
6 **returns.** The imposition of taxes and the application of tax  
7 rates do not depend upon the business in which the taxpayer is  
8 primarily engaged. One business may be subject to two or more  
9 tax rates under this chapter and chapter 237. If a business is  
10 within the purview of two or more of the paragraphs of section  
11 237-13 or other provisions of this chapter or chapter 237, all  
12 of them apply, each provision being applicable to the  
13 appropriate item of gross income, gross proceeds of sales, or  
14 value of products. However, any person engaging or continuing  
15 in a business having gross income, gross proceeds of sales, and  
16 value of products, or any of these as the case may be, taxable  
17 at different rates, shall be subject to taxation upon the  
18 aggregate amount of the gross income, gross proceeds of sales,  
19 and value of products of the business at the highest rate  
20 applicable to any part of the aggregate, unless the person shall  
21 segregate the parts taxable at different rates upon the person's



1 records and in the person's returns, and shall sustain the  
2 burden of proving that the segregation was correctly made.

3       **SA-10 Assessment on generated electricity.** Any other  
4 provision of law to the contrary notwithstanding, the levy and  
5 assessment of tax on the gross proceeds from the sale of  
6 electric power to a public utility company for resale to the  
7 public, shall be made only as a tax on business of a producer,  
8 at the rate assessed producers under section A-6(a)(2).

9       **SA-11 Technicians.** When technicians supply dentists or  
10 physicians with dentures, orthodontic devices, braces, and  
11 similar items which have been prepared by the technician in  
12 accordance with specifications furnished by the dentist or  
13 physician, and these items are to be used by the dentist or  
14 physician in the dentist's or physician's professional practice  
15 for a particular patient who is to pay the dentist or physician  
16 for the same as a part of the dentist's or physician's  
17 professional services, the technician shall be taxed as though  
18 the technician were a manufacturer selling a product under  
19 A-6(a)(1) to a licensed retailer, rather than pursuant to  
20 chapter 237, at the rate of four per cent that is generally  
21 applied to professions and services.



1           **SA-12 Activity ordered by others.** (a) Where, through the  
2 activity of a person taxable under section 237-13(5), a product  
3 has been milled, processed, or otherwise manufactured upon the  
4 order of another taxpayer who is a manufacturer taxable upon the  
5 value of the entire manufactured products, which consists in  
6 part of the value of the services taxable under section  
7 237-13(5), so much gross income as is derived from the rendering  
8 of the services shall be subjected to tax on the person  
9 rendering the services at the rate of one-half of one per cent,  
10 and the value of the entire product shall be included in the  
11 measure of the tax imposed on the other taxpayer as elsewhere  
12 provided.

13           (b) Where, through the activity of a person taxable under  
14 section 237-13(5), there have been rendered to a cane planter  
15 services consisting in the harvesting or hauling of the cane, or  
16 consisting in road maintenance, under a contract between the  
17 person rendering the services and the cane planter, covering the  
18 services and also the milling of the sugar, the services of  
19 harvesting and hauling the cane and road maintenance shall be  
20 treated the same as the service of milling the cane, as provided  
21 by subsection (a), and the value of the entire product,  
22 manufactured or sold for the cane planter under the contract,



1 shall be included in the measure of the tax imposed on the  
2 persons as elsewhere provided.

3       **§A-13 Sales of telecommunications services through prepaid**  
4 **telephone calling service.** (a) For the purposes of this  
5 section, "prepaid telephone calling service" means the right to  
6 exclusively purchase telecommunications services, paid for in  
7 advance, that enables the origination of calls using an access  
8 number or authorization code, whether manually or electronically  
9 dialed.

10       (b) If the sale or recharge of a prepaid telephone calling  
11 service does not take place at the vendor's place of business,  
12 it shall be conclusively determined to take place at the  
13 customer's shipping address; or if there is no item shipped,  
14 then it shall be the customer's billing address.

15       (c) When a person licensed under this chapter sells  
16 prepaid telephone calling services to a licensed retail  
17 merchant, jobber, or other licensed seller for purposes of  
18 resale, the person shall be taxed as a wholesaler selling  
19 tangible personal property.

20       (d) For purposes of prepaid telephone calling services  
21 only, all such services shall be taxed under this section and  
22 shall be in lieu of taxation under chapter 239.



1           **§A-14 Apportionment.** In the case of a tax upon the  
2 production of property in the State, the apportionment shall be  
3 determined as in the case of the tax on manufacturers provided  
4 in section A-6(a)(1).

5           **§A-15 Conformity to constitution.** Section 237-22 shall  
6 apply to this chapter.

7           **§A-16 Exemptions.** The exemptions provided in sections  
8 237-23, 237-26, 237-27, 237-27.5, 237-29, 237-29.5, and  
9 237-29.53 shall apply to this chapter.

10           **§A-17 Amounts not taxable.** This chapter shall not apply  
11 to the following amounts:

- 12           (1) The amounts of taxes on cigarettes and tobacco  
13 products imposed by chapter 245 on wholesalers or  
14 dealers holding licenses under that chapter and  
15 selling the products at wholesale;
- 16           (2) The amounts of federal taxes imposed on sugar  
17 manufactured in the State, paid by the manufacturer to  
18 the federal government;
- 19           (3) Gross income received by any blind, deaf, or totally  
20 disabled person engaging, or continuing, in any  
21 business, trade, activity, occupation, or calling  
22 within the State; a corporation all of whose



1 outstanding shares are owned by an individual or  
2 individuals who are blind, deaf, or totally disabled;  
3 a general, limited, or limited liability partnership,  
4 all of whose partners are blind, deaf, or totally  
5 disabled; or a limited liability company, all of whose  
6 members are blind, deaf, or totally disabled; and

7 (4) Amounts received by a producer of sugarcane from the  
8 manufacturer to whom the producer sells the sugarcane,  
9 where:

10 (A) The producer is an independent cane farmer, so  
11 classed by the Secretary of Agriculture under the  
12 Sugar Act of 1948 (61 Stat. 922, Chapter 519) as  
13 the Act may be amended or supplemented;

14 (B) The value or gross proceeds of sale of the sugar,  
15 and other products manufactured from the  
16 sugarcane, is included in the measure of the tax  
17 levied on the manufacturer under section  
18 A-6(a)(1);

19 (C) The producer's gross proceeds of sales are  
20 dependent upon the actual value of the products  
21 manufactured therefrom or the average value of





1           all similar products manufactured by the  
2           manufacturer; and  
3           (D) The producer's gross proceeds of sales are  
4           reduced by reason of the tax on the value or sale  
5           of the manufactured products.

6           **SA-18 Exemption for sale of tangible personal property for**  
7 **resale at wholesale.** (a) There shall be exempted from, and  
8 excluded from the measure of, the taxes imposed by this chapter  
9 all of the gross proceeds or gross income arising from the sale  
10 of tangible personal property imported to Hawaii from a foreign  
11 or domestic source to a licensed taxpayer for subsequent resale  
12 for the purpose of sale at wholesale as defined under section  
13 A-2.

14           (b) The department, by rule, may provide that a seller may  
15 take from the purchaser of imported tangible personal property,  
16 a certificate in a form that the department shall prescribe,  
17 certifying that the purchaser of the imported tangible personal  
18 property shall resell the imported tangible personal property at  
19 wholesale as defined under section A-2. Any purchaser who  
20 furnishes a certificate shall be obligated to pay to the seller,  
21 upon demand, if the sale in fact is not a sale for the purpose  
22 of resale at wholesale, the amount of the additional tax that is



1 imposed upon the seller. The absence of a certificate, unless  
2 the sales of the business are exclusively a sale for the purpose  
3 of resale at wholesale, in itself, shall give rise to the  
4 presumption that the sale is not a sale for the purpose of  
5 resale at wholesale.

6 **§A-19 Administrative provisions.** Sections 237-8, 237-20,  
7 237-21, 237-30, 237-31, 237-32, 237-33, 237-33.5, 237-34,  
8 237-35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-42,  
9 237-43, 237-46, 237-47, 237-49, and 237-A to 237-F shall apply  
10 to this chapter."

11 SECTION 3. The Hawaii Revised Statutes is amended by  
12 adding a new chapter to be appropriately designated and to read  
13 as follows:

14 **"CHAPTER**

15 **TAX ON IMPORT OF GOODS, SERVICES, AND CONTRACTING FOR RESALE**

16 **§B-1 Definitions.** Definitions contained in section 238-1  
17 shall apply to this chapter.

18 **§B-2 Imposition of tax on tangible personal property;**  
19 **exemptions.** There is hereby levied an excise tax on the use in  
20 this State of tangible personal property which is imported by a  
21 taxpayer in this State whether owned, purchased from an  
22 unlicensed seller, or however acquired for use in this State.



# S.B. NO. 2405

1 The tax imposed by this chapter shall accrue when the property  
2 is acquired by the importer or purchaser and becomes subject to  
3 the taxing jurisdiction of the State. The rate of the tax  
4 hereby imposed and the exemptions thereof are as follows:

5 (1) If the importer or purchaser is licensed under chapter  
6 A and is:

7 (A) A wholesaler or jobber importing or purchasing  
8 for purposes of sale or resale; or

9 (B) A manufacturer importing or purchasing material  
10 or commodities that are to be incorporated by the  
11 manufacturer into a finished or saleable product  
12 (including the container or package in which the  
13 product is contained) wherein it will remain in a  
14 form as to be perceptible to the senses, and the  
15 finished or saleable product is to be sold in a  
16 manner as to result in a further tax on the  
17 activity of the manufacturer as the manufacturer  
18 or as a wholesaler, and not as a retailer;

19 there shall be no tax; provided that if the  
20 wholesaler, jobber, or manufacturer is also engaged in  
21 business as a retailer (so classed under chapter 237),  
22 paragraph (2) shall apply to the wholesaler, jobber,



1 or manufacturer, but the director of taxation shall  
2 refund to the wholesaler, jobber, or manufacturer, in  
3 the manner provided under section 231-23(c) the amount  
4 of tax as the wholesaler, jobber, or manufacturer  
5 shall establish, to the satisfaction of the director,  
6 to have been paid by the wholesaler, jobber, or  
7 manufacturer to the director with respect to property  
8 that has been used by the wholesaler, jobber, or  
9 manufacturer for the purposes stated in this  
10 paragraph; and

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

13 (A) A retailer or other person importing or  
14 purchasing for purposes of sale or resale, not  
15 exempted by paragraph (1);

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



1 retail in this State, in a manner as to result in  
2 a further tax on the activity of the manufacturer  
3 in selling the products at retail;

4 (C) A contractor importing or purchasing material or  
5 commodities that are to be incorporated by the  
6 contractor into the finished work or project  
7 required by the contract and that will remain in  
8 the finished work or project in a form as to be  
9 perceptible to the senses;

10 (D) A person engaged in a service business or calling  
11 as defined in section 237-7, or a person  
12 furnishing transient accommodations subject to  
13 the tax imposed by section 237D-2, in which the  
14 import or purchase of tangible personal property  
15 would have qualified as a sale at wholesale as  
16 defined in section A-2(a)(8) had the seller of  
17 the property been subject to the tax in chapter  
18 237; or

19 (E) A publisher of magazines or similar printed  
20 materials containing advertisements, when the  
21 publisher is under contract with the advertisers  
22 to distribute a minimum number of magazines or



1 similar printed materials to the public or  
2 defined segment of the public, whether or not  
3 there is a charge to the persons who actually  
4 receive the magazines or similar printed  
5 materials,

6 the tax shall be one-half of one per cent of the  
7 purchase price of the property, if the purchase and  
8 sale are consummated in Hawaii; or, if there is no  
9 purchase price applicable thereto, or if the purchase  
10 or sale is consummated outside of Hawaii, then one-  
11 half of one per cent of the value of the property.

12 **SB-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 rate 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 A 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 A on services at the rate of one-half of  
10 one per cent; or
- 11 (B) A manufacturer importing or purchasing services  
12 or contracting that become identifiable elements,  
13 excluding overhead, of a finished or saleable  
14 product (including the container or package in  
15 which the product is contained) and the finished  
16 or saleable product is to be sold in a manner  
17 that results in a further tax under chapter A on  
18 the manufacturer as a wholesaler, and not a  
19 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) of this section shall apply to the  
3 manufacturer, but the director of taxation shall  
4 refund to the manufacturer, in the manner provided  
5 under section 231-23(c), that amount of tax that the  
6 manufacturer, to the satisfaction of the director,  
7 shall establish to have been paid by the manufacturer  
8 to the director with respect to services that have  
9 been used by the manufacturer for the purposes stated  
10 in this paragraph; and

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 (B) A manufacturer importing or purchasing services  
21 or contracting that become identifiable elements,  
22 excluding overhead, of the finished or saleable





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

7 (C) A contractor importing or purchasing services or  
8 contracting that become identifiable elements,  
9 excluding overhead, of the finished work or  
10 project required under the contract, and where  
11 the gross proceeds derived by the contractor are  
12 subject to the tax under section 237-13(2) as a  
13 contractor;

14 the tax shall be one-half of one per cent of the value  
15 of the imported or purchased services or contracting.

16 **§B-4 Application of tax, etc.** Section 238-3 shall apply  
17 to this chapter.

18 **§B-5 Certain property used by producers.** If a licensed  
19 producer, or a cooperative association acting under the  
20 authority of chapter 421, in order to sell to the producer, or a  
21 licensed person, imports into the State or acquires in the State  
22 commodities, materials, items, services, or living things



1 enumerated in section A-2(a)(3) and (a)(5) to (a)(7), then  
2 section A-2 shall apply. If section A-2 applies and the  
3 producer is engaged in the sale of the producer's products at  
4 retail or in any manner other than at wholesale, then the tax  
5 upon use of property in the State imposed by section 238-2 shall  
6 apply the same as in the case of a purchaser who is a licensed  
7 retailer. In other cases no tax shall be imposed under this  
8 chapter.

9 **§B-6 Administration.** Sections 238-5, 238-6, 238-7, 238-8,  
10 238-9, 238-9.5, 238-10, 238-11, 238-13, 238-14, and 238-16 shall  
11 apply to this chapter."

12 SECTION 4. The Hawaii Revised Statutes is amended by  
13 adding a new chapter to be appropriately designated and to read  
14 as follows:

15 "CHAPTER

16 INSURANCE PRODUCER'S TAX

17 **§C-1 Definitions.** The definitions contained in sections  
18 237-1, 237-2, and 237-3 shall apply to this chapter.

19 **§C-2 Tax on insurance producers.** Upon every person  
20 engaged as a licensed producer pursuant to chapter 431, there is  
21 hereby levied and shall be assessed and collected a tax equal to  
22 0.15 per cent of the commissions due to that activity.



1           **§C-3 Apportionment.** Where insurance producers, who are  
2 not employees and are licensed pursuant to chapter 431, produce  
3 commissions that are divided between the insurance producers,  
4 the tax levied under section C-2 as to insurance producers shall  
5 apply to each producer with respect to the producer's portion of  
6 the commissions, and no more.

7           **§C-4 Administrative provisions.** Sections 237-8, 237-9,  
8 237-9.5, 237-11, 237-12, 237-30, 237-31, 237-32, 237-33,  
9 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39,  
10 237-40, 237-41, 237-42, 237-43, 237-46, 237-47, 237-49, and  
11 237-A to 237-F shall apply to this chapter."

12           SECTION 5. Chapter 46, Hawaii Revised Statutes, is amended  
13 by adding a new section to be appropriately designated and to  
14 read as follows:

15           "§46-     County compliance with the streamlined sales and  
16 use tax agreement. The counties shall not adopt any ordinance  
17 or interpret any ordinance in a manner that violates the  
18 streamlined sales and use tax agreement established by the  
19 Streamlined Sales Tax Governing Board, Incorporated, and adopted  
20 pursuant to chapter 255D."



1 SECTION 6. Chapter 237, Hawaii Revised Statutes, is  
2 amended by adding six new sections to be appropriately  
3 designated and to read as follows:

4 "§237-A General sourcing rules.

5 (1) The retail sale, excluding lease or rental, of a  
6 product shall be sourced as follows:

7 (A) When the product is received by the purchaser at  
8 a business location of the seller, the sale is  
9 sourced to that business location;

10 (B) When the product is not received by the purchaser  
11 at a business location of the seller, the sale is  
12 sourced to the location where receipt by the  
13 purchaser (or the purchaser's designated donee)  
14 occurs, including the location indicated by  
15 instructions for delivery to the purchaser (or  
16 designated donee), known to the seller;

17 (C) When subparagraph (A) or (B) do not apply, the  
18 sale is sourced to the location indicated by an  
19 address for the purchaser that is available from  
20 the business records of the seller that are  
21 maintained in the ordinary course of the seller's



1 business when use of this address does not  
2 constitute bad faith;

3 (D) When subparagraph (A), (B), or (C) do not apply,  
4 the sale is sourced to the location indicated by  
5 an address for the purchaser obtained during the  
6 consummation of the sale, including the address  
7 of a purchaser's payment instrument, if no other  
8 address is available, when use of this address  
9 does not constitute bad faith; or

10 (E) When none of the previous rules of subparagraph  
11 (A), (B), (C), or (D) apply, including the  
12 circumstance in which the seller is without  
13 sufficient information to apply the previous  
14 rules, then the location shall be determined by  
15 the address from which tangible personal property  
16 was shipped, from which the digital good or the  
17 computer software delivered electronically was  
18 first available for transmission by the seller,  
19 or from which the service was provided  
20 (disregarding for these purposes any location  
21 that merely provided the digital transfer of the  
22 product sold);



1       (2) The lease or rental of tangible personal property,  
2       other than property identified in paragraph (3) or  
3       (4), shall be sourced as follows:

4       (A) For a lease or rental that requires recurring  
5       periodic payments, the first periodic payment is  
6       sourced the same as a retail sale in accordance  
7       with paragraph (1). Periodic payments made  
8       subsequent to the first payment are sourced to  
9       the primary property location for each period  
10       covered by the payment. The primary property  
11       location shall be as indicated by an address for  
12       the property provided by the lessee that is  
13       available to the lessor from its records  
14       maintained in the ordinary course of business,  
15       when use of this address does not constitute bad  
16       faith. The property location shall not be  
17       altered by intermittent use at different  
18       locations, such as use of business property that  
19       accompanies employees on business trips and  
20       service calls; or

21       (B) For a lease or rental that does not require  
22       recurring periodic payments, the payment is



1           sourced the same as a retail sale in accordance  
2           with paragraph (1).

3           This paragraph does not affect the imposition or  
4           computation of general excise or use tax on leases or  
5           rentals based on a lump sum or accelerated basis, or  
6           on the acquisition of property for lease;

7           (3) The lease or rental of motor vehicles, trailers,  
8           semi-trailers, or aircraft that do not qualify as  
9           transportation equipment, as defined in paragraph (4),  
10           shall be sourced as follows:

11           (A) For a lease or rental that requires recurring  
12           periodic payments, each periodic payment is  
13           sourced to the primary property location. The  
14           primary property location shall be as indicated  
15           by an address for the property provided by the  
16           lessee that is available to the lessor from its  
17           records maintained in the ordinary course of  
18           business, when use of this address does not  
19           constitute bad faith. This location shall not be  
20           altered by intermittent use at different  
21           locations; or



1           (B) For a lease or rental that does not require  
2           recurring periodic payments, the payment is  
3           sourced the same as a retail sale in accordance  
4           with paragraph (1).

5           This paragraph does not affect the imposition or  
6           computation of general excise or use tax on leases or  
7           rentals based on a lump sum or accelerated basis, or  
8           on the acquisition of property for lease; and

9           (4) The retail sale, including lease or rental, of  
10           transportation equipment shall be sourced the same as  
11           a retail sale in accordance with paragraph (1),  
12           notwithstanding the exclusion of lease or rental in  
13           paragraph (1). "Transportation equipment" means any  
14           of the following:

15           (A) Locomotives and rail cars that are utilized for  
16           the carriage of persons or property in interstate  
17           commerce;

18           (B) Trucks and truck-tractors with a gross vehicle  
19           weight rating of ten thousand one pounds or  
20           greater, trailers, semi-trailers, or passenger  
21           buses that are:





- 1            (i) Registered through the international
- 2            registration plan; and
- 3            (ii) Operated under authority of a carrier
- 4            authorized and certificated by the United
- 5            States Department of Transportation or
- 6            another federal authority to engage in the
- 7            carriage of persons or property in
- 8            interstate commerce;
- 9            (C) Aircraft that are operated by air carriers
- 10           authorized and certificated by the United States
- 11           Department of Transportation or another federal
- 12           or a foreign authority to engage in the carriage
- 13           of persons or property in interstate or foreign
- 14           commerce; and
- 15           (D) Containers designed for use on and component
- 16           parts attached or secured on the items set forth
- 17           in subparagraphs (A) to (C).

18           §237-B General sourcing definitions. For the purposes of  
19           section 237-A(1), the terms "receive" and "receipt" mean:

- 20           (1) Taking possession of tangible personal property;
- 21           (2) Making first use of services; or

1       (3) Taking possession or making first use of digital  
2           goods,  
3 whichever comes first.

4       The terms "receive" and "receipt" do not include possession  
5 by a shipping company on behalf of the purchaser.

6       §237-C Telecommunications sourcing rule. (a) Except for  
7 the defined telecommunications services in subsection (c), the  
8 sale of telecommunications service sold on a call-by-call basis  
9 shall be sourced to:

- 10       (1) Each level of taxing jurisdiction where the call  
11           originates and terminates in that jurisdiction; or  
12       (2) Each level of taxing jurisdiction where the call  
13           either originates or terminates and in which the  
14           service address is also located.

15       (b) Except for the defined telecommunications services in  
16 subsection (c), a sale of telecommunications service sold on a  
17 basis other than a call-by-call basis, is sourced to the  
18 customer's place of primary use.

19       (c) The sale of the following telecommunications services  
20 shall be sourced to each level of taxing jurisdiction as  
21 follows:



- 1        (1) A sale of mobile telecommunications service other than  
2        air-to-ground radiotelephone service and prepaid  
3        calling service, is sourced to the customer's place of  
4        primary use as required by the Mobile  
5        Telecommunications Sourcing Act;
- 6        (2) A sale of post-paid calling service is sourced to the  
7        origination point of the telecommunications signal as  
8        first identified by either:
- 9            (A) The seller's telecommunications system; or  
10          (B) Information received by the seller from its  
11          service provider, where the system used to  
12          transport such signals is not that of the seller;
- 13        (3) A sale of prepaid calling service or a sale of a  
14        prepaid wireless calling service is sourced in  
15        accordance with section 237-A; provided that in the  
16        case of a sale of prepaid wireless calling service,  
17        section 237-A(1)(E) shall apply in addition to an  
18        option to use the location associated with the mobile  
19        telephone number; or
- 20        (4) A sale of a private communication service is sourced  
21        as follows:



1           (A) Service for a separate charge related to a  
2           customer channel termination point is sourced to  
3           each level of jurisdiction in which the customer  
4           channel termination point is located;

5           (B) Service where all customer termination points are  
6           located entirely within one jurisdiction or  
7           levels of jurisdiction is sourced in the  
8           jurisdiction in which the customer channel  
9           termination points are located; or

10          (C) Service for segments of a channel between two  
11          customer channel termination points located in  
12          different jurisdictions and which segment of a  
13          channel are separately charged is sourced fifty  
14          per cent in each level of jurisdiction in which  
15          the customer channel termination points are  
16          located.

17          Service for segments of a channel located in more than  
18          one jurisdiction or levels of jurisdiction and where  
19          the segments are not separately billed shall be  
20          sourced in each jurisdiction based on the percentage  
21          determined by dividing the number of customer channel  
22          termination points in the jurisdiction by the total



1           number of customer channel termination points in all  
2           jurisdictions.

3           §237-D Telecommunications sourcing definitions. For the  
4 purpose of section 237-C, the following definitions shall apply:

5           "Air-to-ground radiotelephone service" means a radio  
6 service, as that term is defined in 47 C.F.R. 22.99, in which  
7 common carriers are authorized to offer and provide radio  
8 telecommunications service for hire to subscribers in aircraft.

9           "Call-by-call basis" means any method of charging for  
10 telecommunications services where the price is measured by  
11 individual calls.

12           "Communications channel" means a physical or virtual path  
13 of communications over which signals are transmitted between or  
14 among customer channel termination points.

15           "Customer":

16           (1) Means the person or entity that contracts with the  
17 seller of telecommunications services. If the end  
18 user of telecommunications services is not the  
19 contracting party, the end user of the  
20 telecommunications service is the customer of the  
21 telecommunications service, but this sentence only



1 applies for the purpose of sourcing sales of  
2 telecommunications services under section 237-C; and

3 (2) Does not include a reseller of telecommunications  
4 service or for mobile telecommunications service of a  
5 serving carrier under an agreement to serve the  
6 customer outside the home service provider's licensed  
7 service area.

8 "Customer channel termination point" means the location  
9 where the customer either inputs or receives the communications.

10 "End user" means the person who utilizes the  
11 telecommunications service. In the case of an entity, "end  
12 user" means the individual who utilizes the service on behalf of  
13 the entity.

14 "Home service provider" has the same meaning as that term  
15 is defined in section 124(5) of Public Law 106-252 (Mobile  
16 Telecommunications Sourcing Act).

17 "Mobile telecommunications service" has the same meaning as  
18 that term is defined in section 124(7) of Public Law 106-252  
19 (Mobile Telecommunications Sourcing Act).

20 "Place of primary use" means the street address  
21 representative of where the customer's use of the  
22 telecommunications service primarily occurs, which shall be the



1 residential street address or the primary business street  
2 address of the customer. In the case of mobile  
3 telecommunications services, "place of primary use" shall be  
4 within the licensed service area of the home service provider.

5 "Post-paid calling service" means the telecommunications  
6 service obtained by making a payment on a call-by-call basis  
7 either through the use of a credit card or payment mechanism  
8 such as a bank card, travel card, or debit card, or by charge  
9 made to a telephone number that is not associated with the  
10 origination or termination of the telecommunications service. A  
11 post-paid calling service includes a telecommunications service,  
12 except a prepaid wireless calling service, that would be a  
13 prepaid calling service except it is not exclusively a  
14 telecommunications service.

15 "Prepaid calling service" means the right to access  
16 exclusively telecommunications services that must be paid in  
17 advance and that enables the origination of calls using an  
18 access number or authorization code, whether manually or  
19 electronically dialed, and is sold in predetermined units or  
20 dollars of which the number declines with use in a known amount.

21 "Prepaid wireless calling service" means a  
22 telecommunications service that provides the right to utilize



1 mobile wireless service as well as other non-telecommunications  
2 services, including the download of digital products delivered  
3 electronically, content and ancillary services, which must be  
4 paid for in advance and is sold in predetermined units or  
5 dollars of which the number declines with use in a known amount.

6 "Private communication service" means a telecommunications  
7 service that entitles the customer to exclusive or priority use  
8 of a communications channel or group of channels between or  
9 among termination points, regardless of the manner in which the  
10 channel or channels are connected, and includes switching  
11 capacity, extension lines, stations, and any other associated  
12 services that are provided in connection with the use of the  
13 channel or channels.

14 "Service address" means:

15 (1) The location of the telecommunications equipment to  
16 which a customer's call is charged and from which the  
17 call originates or terminates, regardless of where the  
18 call is billed or paid;

19 (2) If the location in paragraph (1) is not known, service  
20 address means the origination point of the signal of  
21 the telecommunications service first identified by  
22 either the seller's telecommunications system or in





1 information received by the seller from its service  
2 provider, where the system used to transport the  
3 signals is not that of the seller; or

4 (3) If the location in paragraphs (1) and (2) are not  
5 known, service address means the location of the  
6 customer's place of primary use.

7 §237-E Deduction for bad debts. (a) A seller shall be  
8 allowed a deduction from taxable sales for bad debts. A seller  
9 may deduct the amount of bad debts from the seller's gross  
10 sales, rentals, or services used for the computation of the tax.  
11 The amount of gross sales, rentals, or services deducted shall  
12 be charged off as uncollectible on the books and records of the  
13 seller at the time the debt becomes worthless and deducted on  
14 the return for the period during which the bad debt is written  
15 off as uncollectible in the claimant's books and records and  
16 shall be eligible to be deducted for income tax purposes.

17 For the purposes of this section, a claimant who is not  
18 required to file a federal income tax return may deduct a bad  
19 debt on a return filed for the period in which the bad debt  
20 becomes worthless and is written off as uncollectible in the  
21 claimant's books and records and would be eligible for a bad



1 debt deduction for federal income tax purposes if the claimant  
2 was required to file a federal income tax return.

3 If a consumer or other person pays all or part of a bad  
4 debt with respect to which a seller claimed a deduction under  
5 this section, the seller is liable for the amount of taxes  
6 deducted in connection with that portion of the debt for which  
7 payment is received and shall remit these taxes in the seller's  
8 next payment to the department. Any payments made on a bad debt  
9 shall be applied proportionally first to the taxable price of  
10 the property and the tax on the property and second to any  
11 interest, service, or other charge.

12 (b) Any claim for a bad debt deduction under this section  
13 shall be supported by evidence required by the department. The  
14 department shall review any change in the rate of taxation  
15 applicable to any taxable sales, rentals, or services by a  
16 seller claiming a deduction pursuant to this section and shall  
17 ensure that the deduction on any bad debt does not result in the  
18 seller claiming the deduction recovering any more or less than  
19 the taxes imposed on the sale, rental, or service that  
20 constitutes the bad debt.

21 (c) If a certified service provider assumed filing  
22 responsibility under chapter 255D, the certified service



1 provider may claim, on behalf of the seller, any bad debt  
2 allowable to the seller and shall credit or refund that amount  
3 of bad debt allowed or refunded to the seller.

4 (d) If the books and records of a seller who, under  
5 chapter 255D claims a bad debt allowance, support an allocation  
6 of the bad debts among member states of that agreement, the  
7 seller may allocate the bad debt.

8 (e) As used in this section, "bad debt" means any portion  
9 of a debt resulting from a seller's collection of the use tax  
10 under chapter 255D on the purchase of tangible personal property  
11 or services that is not otherwise deductible or excludable and  
12 is eligible to be claimed, or could be eligible to be claimed if  
13 the seller kept accounts on an accrual basis, as a deduction  
14 pursuant to section 166 (with respect to bad debts) of the  
15 Internal Revenue Code. A bad debt does not include any of the  
16 following:

17 (1) Interest, finance charge, or use tax on the purchase  
18 price;

19 (2) Uncollectible amounts on property that remains in the  
20 possession of the seller until the full purchase price  
21 is paid;



1       (3) Expenses incurred in attempting to collect any account  
2       receivable or any portion of the debt recovered;

3       (4) Any accounts receivable that have been sold to and  
4       remain in the possession of a third party for  
5       collection; or

6       (5) Repossessed property.

7       §237-F Direct mail sourcing. (a) Notwithstanding the  
8       general sourcing provisions of section 237-A, a purchaser of  
9       direct mail who is not a holder of a direct pay permit shall  
10      provide to the seller, in conjunction with the purchase, either  
11      a direct mail form or information to show the jurisdictions to  
12      which the direct mail is delivered to recipients.

13      Upon receipt of the direct mail form, the seller shall be  
14      relieved of all obligations to collect, pay, or remit the  
15      applicable tax and the purchaser shall be obligated to pay or  
16      remit the applicable tax on a direct pay basis. A direct mail  
17      form shall remain in effect for all future sales of direct mail  
18      by the seller to the purchaser until it is revoked in writing.

19      Upon receipt of information from the purchaser showing the  
20      jurisdictions to which the direct mail is delivered to  
21      recipients, the seller shall collect the tax according to the  
22      delivery information provided by the purchaser. In the absence



1 of bad faith, the seller shall be relieved of any further  
2 obligation to collect tax on any transaction for which the  
3 seller has collected tax pursuant to the delivery information  
4 provided by the purchaser.

5 (b) If the purchaser of direct mail does not have a direct  
6 pay permit and does not provide the seller with either a direct  
7 mail form or delivery information as required under subsection  
8 (a), the seller shall collect the tax. Nothing in this  
9 subsection shall limit a purchaser's obligation for sales or use  
10 tax to any state to which the direct mail is delivered.

11 (c) If a purchaser of direct mail provides the seller with  
12 documentation of direct pay authority, the purchaser shall not  
13 be required to provide a direct mail form or delivery  
14 information to the seller.

15 Receipts from sales of direct mail for distribution to  
16 out-of-state recipients and receipts from sales of direct-mail  
17 processing services in connection with distribution of direct  
18 mail to out-of-state recipients shall be exempt from taxation  
19 under this chapter. The exemption provided by this section  
20 shall apply to receipts from charges for the printing or  
21 production of direct mail, whether prepared in or shipped into  
22 Hawaii, after preparation, and stored for subsequent shipment to



1 out-of-state customers. The direct mail processing services  
2 exemption provided under this section shall apply to receipts  
3 from charges for all direct mail processing services for  
4 distribution to out-of-state recipients, including but not  
5 limited to preparing and maintaining mailing lists, addressing,  
6 separating, folding, inserting, sorting, and packaging direct  
7 mail materials, and transporting the direct mail to the point of  
8 shipment by the mail service or other carrier."

9 SECTION 7. Section 237-1, Hawaii Revised Statutes, is  
10 amended by adding seven new definitions to be appropriately  
11 inserted and to read as follows:

12 "Delivery charges" means charges by the seller for  
13 preparation and delivery to a location designated by the  
14 purchaser of personal property or services, including but not  
15 limited to transportation, shipping, postage, handling, crating,  
16 and packing. If a shipment includes both exempt and taxable  
17 property, the seller shall allocate the delivery charge by  
18 using:

19 (1) A percentage based on the total sales price of the  
20 taxable property compared to the total sales price of  
21 all property in the shipment; or



1        (2) A percentage based on the total weight of the taxable  
2                    property compared to the total weight of all property  
3                    in the shipment.

4        "Department" means the department of taxation.

5        "Direct mail":

6        (1) Means printed material delivered or distributed by  
7                    United States mail or other delivery service to a mass  
8                    audience or to addresses on a mailing list provided by  
9                    the purchaser, or at the direction of the purchaser,  
10                   in cases in which the cost of the items are not billed  
11                   directly to the recipients;

12        (2) Includes tangible personal property supplied directly  
13                   or indirectly by the purchaser to the direct mail  
14                   seller for inclusion in the package containing the  
15                   printed material; and

16        (3) Does not include multiple items of printed material.

17        "Lease or rental":

18        (1) Means any transfer of possession or control of  
19                   tangible personal property for a fixed or  
20                   indeterminate term for consideration;

21        (2) May include future options to purchase or extend; and

22        (3) Does not include:



- 1           (A) A transfer of possession or control of property  
2                   under a security agreement or deferred payment  
3                   plan that requires the transfer of title upon  
4                   completion of the required payments;
  
- 5           (B) A transfer of possession or control of property  
6                   under an agreement that requires the transfer of  
7                   title upon completion of required payments and  
8                   payment of an option price that does not exceed  
9                   the greater of \$100 or one per cent of the total  
10                  required payments;
  
- 11          (C) Providing tangible personal property along with  
12                  an operator for a fixed or indeterminate period  
13                  of time. A condition of this exclusion is that  
14                  the operator is necessary for the equipment to  
15                  perform as designed. For the purpose of this  
16                  subparagraph, an operator shall do more than  
17                  maintain, inspect, or set-up the tangible  
18                  personal property; or
  
- 19          (D) Agreements covering motor vehicles and trailers  
20                  where the amount of consideration may be  
21                  increased or decreased by reference to the amount  
22                  realized upon sale or disposition of the property





1           as defined in section 7701(h) (with respect to  
2           motor vehicle operating leases) of the Internal  
3           Revenue Code.

4           For the purposes of this chapter, the definition of "lease  
5           or rental" shall be used regardless of whether a transaction is  
6           characterized as a lease or rental under generally accepted  
7           accounting principles, the federal Internal Revenue Code, or  
8           other provisions of federal, state, or local law; provided that  
9           this definition shall not apply to section 237-16.5 or 237-43.

10          "Purchase price" applies to the measure subject to use tax  
11          and has the same meaning as sales price.

12          "Sales price" applies to the measure subject to tax and  
13          means the total amount of consideration, including cash, credit,  
14          property, and services for which personal property or services  
15          are sold, leased, or rented, valued in money, whether money is  
16          received or otherwise, without any deduction for the following:

- 17           (1) The seller's cost of the property sold;  
18           (2) The cost of the materials used, labor or service cost,  
19           losses, all costs of transportation to the seller, all  
20           taxes imposed on the seller, and any other expense of  
21           the seller;



1        (3) Charges by the seller for any services necessary to  
2        complete the sale, other than delivery and  
3        installation charges;

4        (4) Delivery and installation charges; or

5        (5) Installation charges.

6        "Tangible personal property" means personal property that  
7        can be seen, weighed, measured, felt, or touched, or that is in  
8        any manner perceptible to the senses. Tangible personal  
9        property includes gas, steam, and prewritten computer software."

10       SECTION 8. Chapter 239, Hawaii Revised Statutes, is  
11       amended by adding a new section to part II to be appropriately  
12       designated and to read as follows:

13       "§239- Treatment of conflicts. In a case where the tax  
14       under chapter 237 and this part may be applied to the same gross  
15       income or gross proceeds, the tax shall only be levied,  
16       assessed, and collected under chapter 237."

17       SECTION 9. Chapter 255D, Hawaii Revised Statutes, is  
18       amended by adding nine new sections to be appropriately  
19       designated and to read as follows:

20       "§255D-A Relief from certain liability. All sellers and  
21       certified service providers as defined in section 255D-2 using  
22       databases pursuant to section 255D-D(f) and (g) shall be



1 relieved from liability to the state and local jurisdictions for  
2 having charged and collected the incorrect amount of sales or  
3 use tax resulting from the seller or certified service provider  
4 relying on erroneous data provided by the State on tax rates,  
5 boundaries, or taxing jurisdiction assignments.

6 §255D-B Rounding rule. For the purpose of calculating the  
7 amount of the sales or use tax:

8 (1) The tax computation shall be carried to the third  
9 decimal place; and

10 (2) The tax shall be rounded to a whole cent using a  
11 method that rounds up to the next cent whenever the  
12 third decimal place is greater than four.

13 Sellers may elect to compute the tax due on a transaction  
14 on an item or an invoice basis, and shall allow the rounding  
15 rule to be applied to the aggregated state and local taxes.

16 §255D-C Amnesty for registration under this chapter. (a)  
17 The department shall provide amnesty for uncollected or unpaid  
18 sales tax under chapter 237 or use tax under chapter 238,  
19 including any county surcharge, to a seller who registers to pay  
20 or to collect and remit applicable sales or use tax on  
21 transactions made to purchasers in the State in accordance with  
22 the terms of the streamlined sales and use tax agreement;



1 provided that the seller was not so registered in the State in  
2 the twelve-month period preceding the effective date of the  
3 State's participation in the streamlined sales and use tax  
4 agreement.

5 (b) The amnesty shall preclude assessment for uncollected  
6 or unpaid sales tax under chapter 237 or use tax under chapter  
7 238 together with penalty or interest for sales made during the  
8 period the seller was not registered in the State; provided  
9 registration occurs within twelve months of the effective date  
10 of the State's participation in the streamlined sales and use  
11 tax agreement.

12 (c) The amnesty shall not be available to a seller with  
13 respect to any matter or matters for which the seller received  
14 notice of the commencement of an audit and the audit is not yet  
15 finally resolved including any related administrative and  
16 judicial processes.

17 (d) The amnesty shall not be available for sales or use  
18 taxes already paid or remitted to the State or to taxes  
19 collected by the seller.

20 (e) The amnesty shall be fully effective, absent the  
21 seller's fraud or intentional misrepresentation of a material  
22 fact, as long as the seller continues registration and continues



1 payment or collection and remittance of applicable sales or use  
2 taxes for a period of at least thirty-six months. The statute  
3 of limitations is tolled with respect to asserting a tax  
4 liability during this thirty-six month period.

5 (f) The amnesty shall only apply to sales or use taxes due  
6 from a seller in its capacity as a seller and not to sales or  
7 use taxes due from a seller in its capacity as a buyer.

8 §255D-D Local rate and boundary changes. (a) Any rate  
9 changes by a local jurisdiction shall be effective only on the  
10 first day of a calendar quarter after a minimum of sixty days  
11 notice to sellers.

12 (b) Any local tax rate changes relating to purchases from  
13 printed catalogs wherein the purchaser computes the tax based  
14 upon local tax rates published in the catalog shall be effective  
15 only on the first day of a calendar quarter after a minimum of  
16 one hundred twenty days notice to sellers.

17 (c) For sales and use tax purposes only, local  
18 jurisdiction boundary changes apply only on the first day of a  
19 calendar quarter after a minimum of sixty days notice to  
20 sellers.

21 (d) The department shall provide and maintain a database  
22 that describes boundary changes for all taxing jurisdictions.



1 The database shall include a description of the change and the  
2 effective date of the change for sales tax under chapter 237 and  
3 use tax under chapter 238 purposes.

4 (e) The department shall provide and maintain a database  
5 of all sales tax rates under chapter 237 and use tax rates under  
6 chapter 238 for all of the jurisdictions levying taxes within  
7 the State. For the identification of states, counties, and  
8 cities, codes corresponding to the rates shall be provided  
9 according to Federal Information Processing Standards as  
10 developed by the National Institute of Standards and Technology.  
11 For the identification of all other jurisdictions, codes  
12 corresponding to the rates shall be in the format determined by  
13 the Streamlined Sales Tax Governing Board, Incorporated.

14 (f) The department shall provide and maintain a database  
15 that assigns each five digit and nine digit zip code within the  
16 State to the proper tax rates and jurisdictions. The department  
17 shall apply the lowest combined tax rate imposed in the zip code  
18 area if the area includes more than one tax rate in any level of  
19 taxing jurisdictions. If a nine digit zip code designation is  
20 not available for a street address or if a seller or certified  
21 service provider is unable to determine the nine digit zip code  
22 designation of a purchaser after exercising due diligence to



1 determine the designation, the seller or certified service  
2 provider may apply the rate for the five digit zip code area.  
3 For the purposes of this section, there is a rebuttable  
4 presumption that a seller or certified service provider has  
5 exercised due diligence if the seller has attempted to determine  
6 the nine digit zip code designation by utilizing software  
7 approved by the Streamlined Sales Tax Governing Board,  
8 Incorporated, that makes this designation from the street  
9 address and the five digit zip code of the purchaser.

10 (g) The State shall participate with other states in the  
11 development of an address-based system for assigning taxing  
12 jurisdictions. The system shall meet the requirements developed  
13 pursuant to the federal Mobile Telecommunications Sourcing Act  
14 (4 U.S.C. 116). If any state develops an address-based  
15 assignment system pursuant to the Mobile Telecommunications  
16 Sourcing Act, a seller may use that system in place of the  
17 system provided for in subsection (e).

18 §255D-E Certified service provider; agent of the seller.

19 (a) A certified service provider is the agent of a seller, with  
20 whom the certified service provider has contracted for the  
21 collection and remittance of sales and use taxes. As the  
22 seller's agent, the certified service provider is liable for



1 sales and use tax due to the State on all sales transactions it  
2 processes for the seller unless the seller made a material  
3 misrepresentation or committed fraud.

4 (b) A seller that uses a certified automated system is  
5 responsible and is liable to the State for reporting and  
6 remitting tax.

7 §255D-F Confidentiality of records. (a) Except as  
8 provided in subsection (c), a certified service provider shall  
9 not retain or disclose the personally identifiable information  
10 of consumers. A certified service provider's system shall be  
11 designed and tested to ensure the privacy of consumers by  
12 protecting their anonymity.

13 (b) A certified service provider shall provide clear and  
14 conspicuous notice of its information practices to consumers,  
15 including but not limited to what information it collects, how  
16 it collects the information, how it uses the information, how  
17 long it retains the information, and whether it discloses the  
18 information to member states.

19 (c) A certified service provider's retention or disclosure  
20 to member states of personally identifiable information is  
21 limited to that required to ensure the validity of exemptions





1 claimed because of a consumer's status or intended use of the  
2 goods or services purchased.

3 (d) A certified service provider shall provide the  
4 necessary technical, physical, and administrative safeguards to  
5 protect personally identifiable information from unauthorized  
6 access and disclosure.

7 (e) The privacy policy required under this section shall  
8 be subject to enforcement by the attorney general.

9 (f) If personally identifiable information is retained by  
10 the State for the purpose of subsection (c), in the absence of  
11 exigent circumstances, a person shall be afforded reasonable  
12 access to their own data, with a right to correct inaccurately  
13 recorded data.

14 (g) The agreement does not enlarge or limit the State's  
15 authority to do any of the following:

16 (1) Conduct audits or other reviews as provided under the  
17 agreement or the State's law;

18 (2) Provide records pursuant to chapter 92F, disclosure  
19 laws with governmental agencies, or other regulations;

20 (3) Prevent, consistent with the State's law, disclosures  
21 of confidential taxpayer information;



1       (4) Prevent, consistent with federal law, disclosures or  
2       misuse of federal return information obtained under a  
3       disclosure agreement with the Internal Revenue  
4       Service; or

5       (5) Collect, disclose, disseminate, or otherwise use  
6       anonymous data for governmental purposes.

7       (h) The department shall publish on the department's  
8       website the State's policy relating to the collection, use, and  
9       retention of personally identifiable information obtained from a  
10      certified service provider under subsection (c).

11      (i) The department shall destroy personally identifiable  
12      information obtained from a certified service provider when the  
13      information is no longer required for purposes under subsection  
14      (c).

15      (j) If a person other than a member state or person  
16      authorized by a member state's law or the agreement seeks to  
17      discover personally identifiable information about an individual  
18      from the State, the department shall make a reasonable and  
19      timely effort to notify that individual of the request.

20      (k) As used in this section, "personally identifiable  
21      information" means information that identifies a specific  
22      person.



1        §255D-G Liability for uncollected tax. (a) A seller  
2        registered under the agreement is not liable for any uncollected  
3        or nonremitted tax on transactions with purchasers in the State  
4        before the date of registration, if the seller was not licensed  
5        or registered under chapter 237 in the twelve-month period  
6        preceding the effective date of the State's participation in the  
7        agreement. The seller is also not responsible for any penalty  
8        or interest that may be due on those transactions. This  
9        subsection applies only if the seller is registered in this  
10       State within twelve months of the effective date of this State's  
11       participation in the agreement.

12       (b) Subsection (a) does not apply to:

- 13       (1) Any tax liability of the registered seller for  
14       transactions that are subject to sales or use tax in  
15       the State in which the registered seller is the  
16       purchaser;
- 17       (2) Any sales or use taxes already paid or remitted to the  
18       State or to taxes collected by the seller; and
- 19       (3) Any transactions for which the seller received notice  
20       of the commencement of an audit and the audit is not  
21       finally resolved, including related administrative or  
22       judicial processes.



1        (c) Subsection (a) applies to the seller absent the  
2 seller's fraud or intentional misrepresentation of a material  
3 fact, only if the seller continues to be registered under the  
4 agreement and continues collection and remittance of applicable  
5 sales and use taxes in the State for at least thirty-six months.  
6 The statute of limitations applicable to assessing a tax  
7 liability shall be tolled during the thirty-six-month period.

8        §255D-H Rate changes. (a) The department shall publish  
9 on its website a notification to sellers registered under the  
10 agreement of a change in tax rate or tax base within five  
11 business days of receiving notice of the changes to the tax rate  
12 or tax base or of an amendment to sales and use tax rules.  
13 Whenever possible, a tax rate or tax base change should occur on  
14 the first day of a calendar quarter.

15        (b) The failure of a seller to receive notice under  
16 subsection (a) does not relieve the seller of its obligation to  
17 collect the sales or use tax.

18        (c) The department shall complete a taxability matrix as  
19 provided for under section 328 of the agreement, maintain it in  
20 a database in a downloadable format approved by the Streamlined  
21 Sales Tax Governing Board, Incorporated, and provide notice of  
22 changes in the matrix.



1        §255D-I Customer refund procedures. A cause of action  
2 against a seller for overcollected sales or use taxes does not  
3 accrue until sixty days after a purchaser has provided written  
4 notice to the seller. The purchaser shall provide sufficient  
5 information in the notice to determine the validity of the  
6 request. In matters relating to the request, a seller is  
7 presumed to have a reasonable business practice if, in the  
8 collection of sales or use tax, the seller has a certified  
9 service provider or a system, including a proprietary system,  
10 certified by the department, and has remitted to this State all  
11 taxes collected, less any deductions, credits, or collection  
12 allowances."

13        SECTION 10. Section 237-3, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15        "(a) "Gross income" means the gross receipts, cash or  
16 accrued, of the taxpayer received as compensation for personal  
17 services and the gross receipts of the taxpayer derived from  
18 trade, business, commerce, or sales and the value proceeding or  
19 accruing from the sale of tangible personal property, or  
20 service, or both, and all receipts, actual or accrued as  
21 hereinafter provided, by reason of the investment of the capital  
22 of the business engaged in, including interest, discount,



1 rentals, royalties, fees, or other emoluments however designated  
2 and without any deductions on account of the cost of property  
3 sold, the cost of materials used, labor cost, taxes, royalties,  
4 interest, or discount paid or any other expenses whatsoever.

5 Every taxpayer shall be presumed to be dealing on a cash basis  
6 unless the taxpayer proves to the satisfaction of the department  
7 of taxation that the taxpayer is dealing on an accrual basis and  
8 the taxpayer's books are so kept, or unless the taxpayer employs  
9 or is required to employ the accrual basis for the purposes of  
10 the tax imposed by chapter 235 for any taxable year in which  
11 event the taxpayer shall report the taxpayer's gross income for  
12 the purposes of this chapter on the accrual basis for the same  
13 period.

14 "Gross proceeds of sale" means the [~~value actually~~  
15 ~~proceeding from the sale of tangible personal property without~~  
16 ~~any deduction on account of the cost of property sold or~~  
17 ~~expenses of any kind.] sales price."~~

18 SECTION 11. Section 237-8.6, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) The county surcharge on state tax, upon the adoption  
21 of county ordinances and in accordance with the requirements of  
22 section 46-16.8, shall be levied, assessed, and collected as



1 provided in this section on all gross proceeds and gross income  
2 taxable under this chapter. No county shall set the surcharge  
3 on state tax at a rate greater than one-half of one per cent of  
4 all gross proceeds and gross income taxable under this chapter.  
5 All provisions of this chapter shall apply to the county  
6 surcharge on state tax. With respect to the surcharge, the  
7 director of taxation shall have all the rights and powers  
8 provided under this chapter. No county shall conduct an  
9 independent tax audit of sellers registered under the  
10 streamlined sales and use tax agreement. In addition, the  
11 director of taxation shall have the exclusive rights and power  
12 to determine the county or counties in which a person is engaged  
13 in business and, in the case of a person engaged in business in  
14 more than one county, the director shall determine, through  
15 apportionment or other means, that portion of the surcharge on  
16 state tax attributable to business conducted in each county."

17 SECTION 12. Section 237-9, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§237-9 Licenses; penalty. (a) Except as provided in  
20 this section, any person who has a gross income or gross  
21 proceeds of sales or value of products upon which a privilege  
22 tax is imposed by this chapter, as a condition precedent to



1 engaging or continuing in [~~such~~] the business, shall in writing  
2 apply for and obtain from the department of taxation, upon a  
3 one-time payment of the sum of \$20, a license to engage in and  
4 to conduct such business, upon condition that the person shall  
5 pay the taxes accruing to the State under this chapter, and the  
6 person shall thereby be duly licensed to engage in and conduct  
7 the business. The license shall not be transferable and shall  
8 be valid only for the person in whose name it is issued and for  
9 the transaction of business at the place designated therein.  
10 The license may be inspected and examined, and shall at all  
11 times be conspicuously displayed at the place for which it is  
12 issued.

13 A seller registered under the streamlined sales and use tax  
14 agreement who is not otherwise obligated to obtain a license in  
15 the State is not required to obtain a license because of that  
16 registration.

17 (b) Licenses and applications therefor shall be in such  
18 form as the department shall prescribe, except that where the  
19 licensee is engaged in two or more forms of business of  
20 different classification, the license shall so state on its  
21 face. The license provided for by this section shall be  
22 effective until canceled in writing. Any application for the





1 reissuance of a previously canceled license identification  
2 number after December 31, 1989, shall be regarded as a new  
3 license application and subject to the payment of the one-time  
4 license fee of \$20. The director may revoke or cancel any  
5 license issued under this chapter for cause as provided by rules  
6 adopted pursuant to chapter 91.

7 (c) Any person who receives gross income or gross proceeds  
8 of sales or value of products from engaging in business in the  
9 State and who fails to obtain a license or receives gross income  
10 or gross proceeds of sales or value of products from engaging in  
11 business in the State without a license required under this  
12 section may be fined not more than \$500; provided that a cash-  
13 based business may be fined not less than \$500 and not more than  
14 \$2,000, as determined by the director or the director's  
15 designee. The penalty under this subsection shall be in  
16 addition to any other penalty provided under law and may be  
17 waived or canceled upon a showing of good cause.

18 (d) If the license fee is paid, the department shall not  
19 refuse to issue a license or revoke or cancel a license for the  
20 exercise of a privilege protected by the First Amendment of the  
21 Constitution of the United States, or for the carrying on of  
22 interstate or foreign commerce, or for any privilege the



1 exercise of which, under the Constitution and laws of the United  
2 States, cannot be restrained on account of nonpayment of taxes,  
3 nor shall section 237-46 be invoked to restrain the exercise of  
4 such a privilege, or the carrying on of [~~such~~] interstate or  
5 foreign commerce.

6 (e) The director may permit a person engaged in network  
7 marketing, multi-level marketing, or other similar business to  
8 obtain the license required under this section for purposes of  
9 becoming a tax collection agent on behalf of its direct sellers.  
10 The tax collection agent shall report, collect, and pay over the  
11 taxes due under this chapter and chapter 238 on behalf of its  
12 direct sellers who are covered by the tax collection agreement.  
13 The tax collection agent's direct sellers shall be deemed to be  
14 licensed under this chapter; provided that the licensure shall  
15 apply solely to the business activity conducted directly through  
16 the marketing arrangement. Under this section, a tax collection  
17 agent shall:

18 (1) Notify all of its direct sellers making sales in the  
19 State that it has been designated to collect, report,  
20 and pay over the tax imposed by this chapter and  
21 chapter 238 on their behalf on the business activity  
22 conducted through the marketing arrangement;



1           (2) If required by the director as a condition of  
2           obtaining the license, furnish with the annual return,  
3           a list (including identification numbers) of all  
4           direct sellers for the taxable year who have been  
5           provided (by the tax collection agent) information  
6           returns required under section 6041A (with respect to  
7           returns regarding payments of remuneration for  
8           services and direct sales) of the Internal Revenue  
9           Code [~~of 1986, as amended,~~] and any other information  
10          that is relevant to ensure proper payment of taxes due  
11          under this section; and

12          (3) Be personally liable for the taxes due and collected  
13          under the tax collection agreement if taxes are  
14          collected, but not reported or paid, together with  
15          penalties and interest as provided by law.

16          (f) The director may authorize a person to assume the  
17          obligation of self-accruing and remitting tax due on purchases  
18          or leases or rentals directly to the department under a direct  
19          payment authorization, if the following conditions are met:

20          (1) The authorization is to be used for the purchase or  
21          lease of tangible personal property or services;



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1        (2) The authorization is necessary because it is either  
2        impractical at the time of acquisition to determine  
3        the manner in which the tangible personal property or  
4        services will be used or it will facilitate improved  
5        compliance with the tax laws of the State; and

6        (3) The person requesting authorization for direct payment  
7        maintains accurate and complete records of all  
8        purchases or leases and uses of tangible personal  
9        property or services purchased pursuant to the direct  
10       payment authorization in a form acceptable to the  
11       department.

12       The department may identify items that are not eligible for  
13       a direct payment authorization.

14       [~~f~~] (g) For the purposes of this section:

15       "Cash-based business" has the same meaning as in section  
16       231-93.

17       "Consumer product" shall include tangible consumer products  
18       and intangible consumer services.

19       "Direct seller" means any person who is engaged in the  
20       trade or business of selling (or soliciting the sale of)  
21       consumer products:



1 (1) To any buyer on a buy-sell basis, a deposit-commission  
2 basis, or any similar basis, that the director  
3 prescribes by rule adopted pursuant to chapter 91, for  
4 resale other than in a permanent retail establishment;

5 (2) Other than in a permanent retail establishment;  
6 provided that:

7 (A) Substantially all the remuneration (whether or  
8 not paid in cash) for the sale of consumer  
9 products is directly related to sales or other  
10 output rather than to the number of hours worked;  
11 and

12 (B) The sales of consumer products by the person are  
13 performed pursuant to a written contract that  
14 provides that the person will not be treated as  
15 an employee with respect to those sales for  
16 federal or state tax purposes.

17 "Direct seller" includes individuals who realize  
18 remuneration dependent on the productivity of other individuals  
19 in the marketing arrangement.

20 "Network marketing" or "multi-level marketing" means a  
21 marketing arrangement in which consumer products are distributed  
22 and sold to or through direct sellers."



1 SECTION 13. Section 237-13, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§237-13 Imposition of tax. There is hereby levied and  
4 shall be assessed and collected annually privilege taxes against  
5 persons on account of their business and other activities in the  
6 State measured by the application of rates against values of  
7 products, gross proceeds of sales, or gross income, whichever is  
8 specified, as follows:

9 ~~[(1) Tax on manufacturers.~~

10 ~~(A) Upon every person engaging or continuing within~~  
11 ~~the State in the business of manufacturing,~~  
12 ~~including compounding, canning, preserving,~~  
13 ~~packing, printing, publishing, milling,~~  
14 ~~processing, refining, or preparing for sale,~~  
15 ~~profit, or commercial use, either directly or~~  
16 ~~through the activity of others, in whole or in~~  
17 ~~part, any article or articles, substance or~~  
18 ~~substances, commodity or commodities, the amount~~  
19 ~~of the tax to be equal to the value of the~~  
20 ~~articles, substances, or commodities,~~  
21 ~~manufactured, compounded, canned, preserved,~~  
22 ~~packed, printed, milled, processed, refined, or~~



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1                   ~~prepared for sale, as shown by the gross proceeds~~  
2                   ~~derived from the sale thereof by the manufacturer~~  
3                   ~~or person compounding, preparing, or printing~~  
4                   ~~them, multiplied by one half of one per cent.~~

5           (B) ~~The measure of the tax on manufacturers is the~~  
6           ~~value of the entire product for sale, regardless~~  
7           ~~of the place of sale or the fact that deliveries~~  
8           ~~may be made to points outside the State.~~

9           (C) ~~If any person liable for the tax on manufacturers~~  
10           ~~ships or transports the person's product, or any~~  
11           ~~part thereof, out of the State, whether in a~~  
12           ~~finished or unfinished condition, or sells the~~  
13           ~~same for delivery to points outside the State~~  
14           ~~(for example, consigned to a mainland purchaser~~  
15           ~~via common carrier f.o.b. Honolulu), the value of~~  
16           ~~the products in the condition or form in which~~  
17           ~~they exist immediately before entering interstate~~  
18           ~~or foreign commerce, determined as hereinafter~~  
19           ~~provided, shall be the basis for the assessment~~  
20           ~~of the tax imposed by this paragraph. This tax~~  
21           ~~shall be due and payable as of the date of entry~~  
22           ~~of the products into interstate or foreign~~



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~~commerce, whether the products are then sold or  
net. The department shall determine the basis  
for assessment, as provided by this paragraph, as  
follows:~~

- ~~(i) If the products at the time of their entry  
into interstate or foreign commerce already  
have been sold, the gross proceeds of sale,  
less the transportation expenses, if any,  
incurred in realizing the gross proceeds for  
transportation from the time of entry of the  
products into interstate or foreign  
commerce, including insurance and storage in  
transit, shall be the measure of the value  
of the products;~~
- ~~(ii) If the products have not been sold at the  
time of their entry into interstate or  
foreign commerce, and in cases governed by  
clause (i) in which the products are sold  
under circumstances such that the gross  
proceeds of sale are not indicative of the  
true value of the products, the value of the  
products constituting the basis for~~





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

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

21                   ~~(iv) In all cases in which products leave the~~  
22                   ~~State in an unfinished condition, the basis~~



1                   ~~for assessment shall be adjusted so as to~~  
 2                   ~~deduct the portion of the value as is~~  
 3                   ~~attributable to the finishing of the goods~~  
 4                   ~~outside the State.~~

5       (2)] (1) Tax on business of selling tangible personal  
 6           property [~~;- producing.~~]:

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



1 ~~sale, if sold for delivery outside the State or~~  
2 ~~shipped or transported out of the State, and the~~  
3 ~~value of the products shall be determined in the~~  
4 ~~same manner as the value of manufactured products~~  
5 ~~covered in the cases under paragraph (1)(C).]~~

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

21 ~~(C) No manufacturer or producer, engaged in such~~  
22 ~~business in the State and selling the~~



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1 ~~manufacturer's or producer's products for~~  
2 ~~delivery outside of the State (for example,~~  
3 ~~consigned to a mainland purchaser via common~~  
4 ~~carrier f.o.b. Honolulu), shall be required to~~  
5 ~~pay the tax imposed in this chapter for the~~  
6 ~~privilege of so selling the products, and the~~  
7 ~~value or gross proceeds of sales of the products~~  
8 ~~shall be included only in determining the measure~~  
9 ~~of the tax imposed upon the manufacturer or~~  
10 ~~producer.];~~

11 ~~(D)~~ (C) When a manufacturer or a producer<sup>[7]</sup> as  
12 defined under section A-3, engaged in ~~[such]~~ the  
13 business of manufacturing or producing in the  
14 State, also is engaged in selling the  
15 manufacturer's or producer's products in the  
16 State at wholesale<sup>[7]</sup> and taxed under chapter A,  
17 retail, or in any other manner, the tax for the  
18 privilege of engaging in the business of selling  
19 the products in the State shall apply to the  
20 manufacturer or producer as well as the tax for  
21 the privilege of manufacturing or producing in  
22 the State, and the manufacturer or producer shall



1           make the returns of the gross proceeds of the  
2           wholesale, retail, or other sales required for  
3           the privilege of selling in the State, as well as  
4           making the returns of the value or gross proceeds  
5           of sales of the products required for the  
6           privilege of manufacturing or producing in the  
7           State. The manufacturer or producer shall pay  
8           the tax imposed in this chapter for the privilege  
9           of selling its products in the State, and the  
10          value or gross proceeds of sales of the products,  
11          thus subjected to tax, may be deducted insofar as  
12          duplicated as to the same products by the measure  
13          of the tax upon the manufacturer or producer for  
14          the privilege of manufacturing or producing in  
15          the State ~~[-]~~ under chapter A; provided that no  
16          producer of agricultural products who sells the  
17          products to a purchaser who will process the  
18          products outside the State shall be required to  
19          pay the tax imposed in this chapter for the  
20          privilege of producing or selling those  
21          products ~~[-]~~ ; and



1           ~~[(E)]~~ (D) A taxpayer selling to a federal cost-plus  
2 contractor may make the election provided for by  
3 paragraph ~~[(3)(C)]~~, (2)(C), and in that case the  
4 tax shall be computed pursuant to the election,  
5 notwithstanding this paragraph ~~[or paragraph (1)]~~  
6 to the contrary~~[-]~~;

7           ~~[(F)]~~ ~~The department, by rule, may require that a~~  
8 ~~seller take from the purchaser of tangible~~  
9 ~~personal property a certificate, in a form~~  
10 ~~prescribed by the department, certifying that the~~  
11 ~~sale is a sale at wholesale; provided that:~~

12           ~~(i) Any purchaser who furnishes a certificate~~  
13 ~~shall be obligated to pay to the seller,~~  
14 ~~upon demand, the amount of the additional~~  
15 ~~tax that is imposed upon the seller whenever~~  
16 ~~the sale in fact is not at 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 sales of the~~  
20 ~~business are exclusively at wholesale.~~

21           ~~(3)]~~ (2) Tax upon contractors~~[-]~~:



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- 1 (A) Upon every person engaging or continuing within
- 2 the State in the business of contracting, the tax
- 3 shall be equal to four per cent of the gross
- 4 income of the business[-];
- 5 (B) In computing the tax levied under this paragraph,
- 6 there shall be deducted from the gross income of
- 7 the taxpayer so much thereof as has been included
- 8 in the measure of the tax levied under
- 9 subparagraph (A), on:
  - 10 (i) Another taxpayer who is a contractor, as
  - 11 defined in section 237-6;
  - 12 (ii) A specialty contractor, duly licensed by the
  - 13 department of commerce and consumer affairs
  - 14 pursuant to section 444-9, in respect of the
  - 15 specialty contractor's business; or
  - 16 (iii) A specialty contractor who is not licensed
  - 17 by the department of commerce and consumer
  - 18 affairs pursuant to section 444-9, but who
  - 19 performs contracting activities on federal
  - 20 military installations and nowhere else in
  - 21 this State;

1 provided that any person claiming a deduction  
2 under this paragraph shall be required to show in  
3 the person's return the name and general excise  
4 number of the person paying the tax on the amount  
5 deducted by the person[-];

6 (C) In computing the tax levied under this paragraph  
7 against any federal cost-plus contractor, there  
8 shall be excluded from the gross income of the  
9 contractor so much thereof as fulfills the  
10 following requirements:

11 (i) The gross income exempted shall constitute  
12 reimbursement of costs incurred for  
13 materials, plant, or equipment purchased  
14 from a taxpayer licensed under this chapter,  
15 not exceeding the gross proceeds of sale of  
16 the taxpayer on account of the transaction;  
17 and

18 (ii) The taxpayer making the sale shall have  
19 certified to the department that the  
20 taxpayer is taxable with respect to the  
21 gross proceeds of the sale, and that the  
22 taxpayer elects to have the tax on gross





1                   income computed the same as upon a sale to  
2                   the state government [-];

3           (D) A person who, as a business or as a part of a  
4           business in which the person is engaged, erects,  
5           constructs, or improves any building or  
6           structure, of any kind or description, or makes,  
7           constructs, or improves any road, street,  
8           sidewalk, sewer, or water system, or other  
9           improvements on land held by the person (whether  
10          held as a leasehold, fee simple, or otherwise),  
11          upon the sale or other disposition of the land or  
12          improvements, even if the work was not done  
13          pursuant to a contract, shall be liable to the  
14          same tax as if engaged in the business of  
15          contracting, unless the person shows that at the  
16          time the person was engaged in making the  
17          improvements the person intended, and for the  
18          period of at least one year after completion of  
19          the building, structure, or other improvements  
20          the person continued to intend to hold and not  
21          sell or otherwise dispose of the land or  
22          improvements. The tax in respect of the



1 improvements shall be measured by the amount of  
2 the proceeds of the sale or other disposition  
3 that is attributable to the erection,  
4 construction, or improvement of [~~such~~] the  
5 building or structure, or the making,  
6 constructing, or improving of the road, street,  
7 sidewalk, sewer, or water system, or other  
8 improvements. The measure of tax in respect of  
9 the improvements shall not exceed the amount  
10 [~~which~~] that would have been taxable had the work  
11 been performed by another, subject as in other  
12 cases to the deductions allowed by subparagraph  
13 (B). Upon the election of the taxpayer, this  
14 paragraph may be applied notwithstanding that the  
15 improvements were not made by the taxpayer, or  
16 were not made as a business or as a part of a  
17 business, or were made with the intention of  
18 holding the same. However, this paragraph shall  
19 not apply in respect of any proceeds that  
20 constitute or are in the nature of rent; all  
21 [~~such~~] gross income shall be taxable under  
22 paragraph [~~(9)~~] (6); provided that insofar as



1 the business of renting or leasing real property  
2 under a lease is taxed under section 237-16.5,  
3 the tax shall be levied by section 237-16.5~~[-]~~;

4 ~~[(4)]~~ (3) Tax upon theaters, amusements, radio broadcasting  
5 stations, etc.

6 ~~[(A)]~~ Upon every person engaging or continuing within  
7 the State in the business of operating a theater,  
8 opera house, moving picture show, vaudeville,  
9 amusement park, dance hall, skating rink, radio  
10 broadcasting station, or any other place at which  
11 amusements are offered to the public, unless  
12 taxed under section A-6, the tax shall be equal  
13 to four per cent of the gross income of the  
14 business ~~[, and in the case of a sale of an~~  
15 ~~amusement at wholesale under section~~  
16 ~~237-4(a)(13), the tax shall be subject to section~~  
17 ~~237-13.3.~~

18 ~~(B) The department may require that the person~~  
19 ~~rendering an amusement at wholesale take from the~~  
20 ~~licensed seller a certificate, in a form~~  
21 ~~prescribed by the department, certifying that the~~  
22 ~~sale is a sale at wholesale; provided that:~~



1           ~~(i) Any licensed seller who furnishes a~~  
2           ~~certificate shall be obligated to pay to the~~  
3           ~~person rendering the amusement, upon demand,~~  
4           ~~the amount of additional tax that is imposed~~  
5           ~~upon the seller whenever the sale is not at~~  
6           ~~wholesale; and~~

7           ~~(ii) The absence of a certificate in itself shall~~  
8           ~~give rise to the presumption that the sale~~  
9           ~~is not at wholesale unless the person~~  
10           ~~rendering the sale is exclusively rendering~~  
11           ~~the amusement at wholesale.];~~

12       ~~[-5-]~~ (4) Tax upon sales representatives, etc. Upon every  
13       person classified as a representative or purchasing  
14       agent under section 237-1, engaging or continuing  
15       within the State in the business of performing  
16       services for another, other than as an employee, there  
17       is likewise hereby levied and shall be assessed and  
18       collected a tax equal to four per cent of the  
19       commissions and other compensation attributable to the  
20       services so rendered by the person~~[-]~~, unless taxable  
21       under chapter A or C;

22       ~~[-6-]~~ (5) Tax on service business~~[-]~~:



1 (A) Upon every person engaging or continuing within  
2 the State in any service business or calling  
3 including professional services not otherwise  
4 specifically taxed under this chapter, chapter A,  
5 or chapter C, there is likewise hereby levied and  
6 shall be assessed and collected a tax equal to  
7 four per cent of the gross income of the  
8 business [~~and in the case of a wholesaler under~~  
9 ~~section 237-4(a)(10), the tax shall be equal to~~  
10 ~~one half of one per cent of the gross income of~~  
11 ~~the business. Notwithstanding the foregoing, a~~  
12 ~~wholesaler under section 237-4(a)(10) shall be~~  
13 ~~subject to section 237-13.3.~~

14 ~~(B) The department may require that the person~~  
15 ~~rendering a service at wholesale take from the~~  
16 ~~licensed seller a certificate, in a form~~  
17 ~~prescribed by the department, certifying that the~~  
18 ~~sale is a sale at wholesale; provided that:~~

19 ~~(i) Any licensed seller who furnishes a~~  
20 ~~certificate shall be obligated to pay to the~~  
21 ~~person rendering the service, upon demand,~~  
22 ~~the amount of additional tax that is imposed~~



1                   ~~upon the seller whenever the sale is not at~~  
2                   ~~wholesale; and~~

3                   ~~(ii) The absence of a certificate in itself shall~~  
4                   ~~give rise to the presumption that the sale~~  
5                   ~~is not at wholesale unless the person~~  
6                   ~~rendering the sale is exclusively rendering~~  
7                   ~~services at wholesale.];~~

8                   [~~(C)~~] (B) Where any person is engaged in the business  
9                   of selling interstate or foreign common carrier  
10                   [~~telecommunication~~] telecommunications services  
11                   within and without the State, other than as a  
12                   home service provider, the tax shall be imposed  
13                   on that portion of gross income received by a  
14                   person from service which is originated or  
15                   terminated in this State and is charged to a  
16                   telephone number, customer, or account in this  
17                   State notwithstanding any other state law (except  
18                   for the exemption under section 237-23(a)(1)) to  
19                   the contrary. If, under the Constitution and  
20                   laws of the United States, the entire gross  
21                   income as determined under this paragraph of a  
22                   business selling interstate or foreign common



1 carrier [~~telecommunication~~] telecommunications  
2 services cannot be included in the measure of the  
3 tax, the gross income shall be apportioned as  
4 provided in section 237-21; provided that the  
5 apportionment factor and formula shall be the  
6 same for all persons providing those services in  
7 the State[-];

8 [~~(D)~~] (C) Where any person is engaged in the business  
9 of a home service provider, the tax shall be  
10 imposed on the gross income received or derived  
11 from providing interstate or foreign mobile  
12 telecommunications services to a customer with a  
13 place of primary use in this State when [~~such~~],  
14 the services originate in one state and terminate  
15 in another state, territory, or foreign country;  
16 provided that all charges for mobile  
17 telecommunications services [~~which~~] that are  
18 billed by or for the home service provider are  
19 deemed to be provided by the home service  
20 provider at the customer's place of primary use,  
21 regardless of where the mobile telecommunications  
22 originate, terminate, or pass through; provided



1 further that the income from charges specifically  
2 derived from interstate or foreign mobile  
3 telecommunications services, as determined by  
4 books and records that are kept in the regular  
5 course of business by the home service provider  
6 in accordance with section 239-24, shall be  
7 apportioned under any apportionment factor or  
8 formula adopted under [~~subparagraph (C).~~]  
9 subparagraph (B). Gross income shall not  
10 include:

11 (i) Gross receipts from mobile  
12 telecommunications services provided to a  
13 customer with a place of primary use outside  
14 this State;

15 (ii) Gross receipts from mobile  
16 telecommunications services that are subject  
17 to the tax imposed by chapter 239;

18 (iii) Gross receipts from mobile  
19 telecommunications services taxed under  
20 section 237-13.8; and

21 (iv) Gross receipts of a home service provider  
22 acting as a serving carrier providing mobile





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1 telecommunications services to another home  
2 service provider's customer.

3 For the purposes of this paragraph, [~~charges for~~  
4 ~~mobile telecommunications services~~], "customer",  
5 "home service provider", "mobile  
6 telecommunications services", and "place of  
7 primary use" [~~and "serving carrier"~~] have the  
8 same meaning as in section [~~239-22~~] 237-D and  
9 "charges for mobile telecommunications services"  
10 and "serving carrier" have the same meaning as in  
11 section 239-22; and

12 [~~(7) Tax on insurance producers. Upon every person engaged~~  
13 ~~as a licensed producer pursuant to chapter 431, there~~  
14 ~~is hereby levied and shall be assessed and collected a~~  
15 ~~tax equal to 0.15 per cent of the commissions due to~~  
16 ~~that activity.~~

17 ~~(8) Tax on receipts of sugar benefit payments. Upon the~~  
18 ~~amounts received from the United States government by~~  
19 ~~any producer of sugar (or the producer's legal~~  
20 ~~representative or heirs), as defined under and by~~  
21 ~~virtue of the Sugar Act of 1948, as amended, or other~~  
22 ~~Acts of the Congress of the United States relating~~



1 ~~thereto, there is hereby levied a tax of one half of~~  
2 ~~one per cent of the gross amount received, provided~~  
3 ~~that the tax levied hereunder on any amount so~~  
4 ~~received and actually disbursed to another by a~~  
5 ~~producer in the form of a benefit payment shall be~~  
6 ~~paid by the person or persons to whom the amount is~~  
7 ~~actually disbursed, and the producer actually making a~~  
8 ~~benefit payment to another shall be entitled to claim~~  
9 ~~on the producer's return a deduction from the gross~~  
10 ~~amount taxable hereunder in the sum of the amount so~~  
11 ~~disbursed. The amounts taxed under this paragraph~~  
12 ~~shall not be taxable under any other paragraph,~~  
13 ~~subsection, or section of this chapter.~~

14 ~~(9)]~~ (6) Tax on other business. Upon every person  
15 engaging or continuing within the State in any  
16 business, trade, activity, occupation, or calling not  
17 included in the preceding paragraphs or any other  
18 provisions of this chapter, there is likewise hereby  
19 levied and shall be assessed and collected, a tax  
20 equal to four per cent of the gross income thereof.  
21 In addition, the rate prescribed by this paragraph  
22 shall apply to a business taxable under one or more of



1 the preceding paragraphs or other provisions of this  
2 chapter, as to any gross income thereof not taxed  
3 thereunder as gross income or gross proceeds of sales  
4 or by taxing an equivalent value of products, unless  
5 specifically exempted[-] or subject to tax under  
6 chapter A or C."

7 SECTION 14. Section 237-13.8, Hawaii Revised Statutes, is  
8 amended by amending subsection (c) to read as follows:

9 "(c) When a person licensed under this chapter sells  
10 prepaid telephone calling services to a licensed retail  
11 merchant, jobber, or other licensed seller for purposes of  
12 resale, the person shall be taxed as a wholesaler selling  
13 tangible personal property[-] under section A-13. All other  
14 sales of prepaid telephone calling services shall be taxed as  
15 retail sales of tangible personal property."

16 SECTION 15. Section 237-18, Hawaii Revised Statutes,  
17 amended to read as follows:

18 "§237-18 Further provisions as to application of tax. (a)  
19 Where a coin operated device produces gross income which is  
20 divided between the owner or operator of the device, on the one  
21 hand, and the owner or operator of the premises where the device  
22 is located, on the other hand, the tax imposed by this chapter



1 shall apply to each [such] person with respect to the person's  
2 portion of the proceeds, and no more.

3 (b) Where gate receipts or other admissions are divided  
4 between the person furnishing or producing a play, concert,  
5 lecture, athletic event, or similar spectacle (including any  
6 motion picture showing) on the one hand, and a promoter  
7 (including any proprietor or other operator of a motion picture  
8 house) offering the spectacle to the public, on the other hand,  
9 the tax imposed by this chapter, if the promoter is subject to  
10 the tax imposed by this chapter, shall apply only to the  
11 promoter measured by the whole of the proceeds, and the promoter  
12 shall be authorized to deduct and withhold from the portion of  
13 the proceeds payable to the person furnishing or producing the  
14 spectacle the amount of the tax payable by the person upon such  
15 portion. No tax shall apply to a promoter with respect to  
16 [such] the portion of the proceeds as is payable to a person  
17 furnishing or producing the spectacle, who is exempted by  
18 section 237-23 from taxation upon [such] the activity.

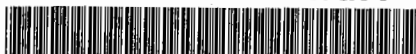
19 ~~[(c) Where, through the activity of a person taxable under~~  
20 ~~section 237-13(6), a product has been milled, processed, or~~  
21 ~~otherwise manufactured upon the order of another taxpayer who is~~  
22 ~~a manufacturer taxable upon the value of the entire manufactured~~



1 ~~products, which consists in part of the value of the services~~  
2 ~~taxable under section 237-13(6), so much gross income as is~~  
3 ~~derived from the rendering of the services shall be subjected to~~  
4 ~~tax on the person rendering the services at the rate of one half~~  
5 ~~of one per cent, and the value of the entire product shall be~~  
6 ~~included in the measure of the tax imposed on the other taxpayer~~  
7 ~~as elsewhere provided.~~

8 ~~(d) Where, through the activity of a person taxable under~~  
9 ~~section 237-13(6), there have been rendered to a cane planter~~  
10 ~~services consisting in the harvesting or hauling of the cane, or~~  
11 ~~consisting in road maintenance, under a contract between the~~  
12 ~~person rendering the services and the cane planter, covering the~~  
13 ~~services and also the milling of the sugar, the services of~~  
14 ~~harvesting and hauling the cane and road maintenance shall be~~  
15 ~~treated the same as the service of milling the cane, as provided~~  
16 ~~by subsection (c), and the value of the entire product,~~  
17 ~~manufactured or sold for the cane planter under the contract,~~  
18 ~~shall be included in the measure of the tax imposed on the~~  
19 ~~person as elsewhere provided.~~

20 ~~(e)] (c) Where [insurance agents, including general~~  
21 ~~agents, subagents, or solicitors, who are not employees and are~~  
22 ~~licensed pursuant to chapter 431, or] real estate brokers or~~



1 salespersons, who are not employees and are licensed pursuant to  
2 chapter 467, produce commissions [~~which~~] that are divided  
3 between [~~such general agents, subagents, or solicitors, or~~  
4 ~~between such~~] real estate brokers or salespersons, [~~as the case~~  
5 ~~may be,~~] the tax levied under section [~~237-13(6)~~] 237-13(5) as  
6 to real estate brokers or salespersons [~~, or under section~~  
7 ~~237-13(7) as to insurance general agents, subagents, or~~  
8 ~~solicitors~~] shall apply to each [~~such~~] person with respect to  
9 the person's portion of the commissions, and no more.

10 [~~(f)~~] (d) Where tourism related services are furnished  
11 through arrangements made by a travel agency or tour packager  
12 and the gross income is divided between the provider of the  
13 services and the travel agency or tour packager, the tax imposed  
14 by this chapter shall apply to each [~~such~~] person with respect  
15 to [~~such~~] the person's respective portion of the proceeds, and  
16 no more.

17 As used in this subsection, "tourism related services"  
18 means catamaran cruises, canoe rides, dinner cruises, lei  
19 greetings, transportation included in a tour package,  
20 sightseeing tours not subject to chapter 239, admissions to  
21 luaus, dinner shows, extravaganzas, cultural and educational  
22 facilities, and other services rendered directly to the customer



1 or tourist, but only if the providers of the services other than  
2 air transportation are subject to a four per cent tax under this  
3 chapter or chapter 239.

4 [~~g~~] (e) Where transient accommodations are furnished  
5 through arrangements made by a travel agency or tour packager at  
6 noncommissioned negotiated contract rates and the gross income  
7 is divided between the operator of transient accommodations on  
8 the one hand and the travel agency or tour packager on the other  
9 hand, the tax imposed by this chapter shall apply to each [~~such~~]  
10 person with respect to [~~such~~] the person's respective portion of  
11 the proceeds, and no more.

12 As used in this subsection, the words "transient  
13 accommodations" and "operator" shall be defined in the same  
14 manner as they are defined in section 237D-1.

15 [~~h~~] (f) Where the transportation of passengers or  
16 property is furnished through arrangements between motor  
17 carriers, and the gross income is divided between the motor  
18 carriers, any tax imposed by this chapter shall apply to each  
19 motor carrier with respect to each motor carrier's respective  
20 portion of the proceeds.

21 As used in this subsection:



1 "Carrier" means a person who engages in transportation, and  
2 does not include a person such as a freight forwarder or tour  
3 packager who provides transportation by contracting with others,  
4 except to the extent that [~~such~~] the person [~~oneself~~] engages in  
5 transportation.

6 "Contract carrier" means a person other than a public  
7 utility as defined under section 239-2 or taxicab, which under  
8 contracts or agreements, engages in the transportation of  
9 persons or property for compensation, by land, water, or air.

10 "Motor carrier" means a common carrier or contract carrier  
11 transporting persons or property for compensation on the public  
12 highways, other than a public utility as defined under section  
13 239-2 or taxicab.

14 "Public highways" has the meaning defined by section 264-1  
15 including both state and county highways, but operation upon  
16 rails shall not be deemed transportation on the public  
17 highways."

18 SECTION 16. Section 237-21, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§237-21 Apportionment. If any person [~~, other than~~  
21 ~~persons liable to the tax on manufacturers as provided by~~  
22 ~~section 237-13(1),~~] is engaged in business both within and





1 without the State or in selling goods for delivery outside the  
2 State, and if under the Constitution or laws of the United  
3 States or section 237-29.5 the entire gross income of [~~such~~] the  
4 person cannot be included in the measure of this tax, there  
5 shall be apportioned to the State and included in the measure of  
6 the tax that portion of the gross income [~~which~~] that is derived  
7 from activities within the State, to the extent that the  
8 apportionment is required by the Constitution or laws of the  
9 United States or section 237-29.5. [~~In the case of a tax upon~~  
10 ~~the production of property in the State the apportionment shall~~  
11 ~~be determined as in the case of the tax on manufacturers.] In~~  
12 other cases, if and to the extent that the apportionment cannot  
13 be accurately made by separate accounting methods, there shall  
14 be apportioned to the State and included in the measure of this  
15 tax that proportion of the total gross income, so requiring  
16 apportionment, which the cost of doing business within the  
17 State, applicable to the gross income, bears to the cost of  
18 doing business both within and without the State, applicable to  
19 the gross income."

20 SECTION 17. Section 237-24, Hawaii Revised Statutes, is  
21 amended to read as follows:



1       "§237-24 Amounts not taxable. This chapter shall not  
2 apply to the following amounts:

- 3       (1) Amounts received under life insurance policies and  
4       contracts paid by reason of the death of the insured;
- 5       (2) Amounts received (other than amounts paid by reason of  
6       death of the insured) under life insurance, endowment,  
7       or annuity contracts, either during the term or at  
8       maturity or upon surrender of the contract;
- 9       (3) Amounts received under any accident insurance or  
10       health insurance policy or contract or under workers'  
11       compensation acts or employers' liability acts, as  
12       compensation for personal injuries, death, or  
13       sickness, including also the amount of any damages or  
14       other compensation received, whether as a result of  
15       action or by private agreement between the parties on  
16       account of the personal injuries, death, or sickness;
- 17       (4) The value of all property of every kind and sort  
18       acquired by gift, bequest, or devise, and the value of  
19       all property acquired by descent or inheritance;
- 20       (5) Amounts received by any person as compensatory damages  
21       for any tort injury to the person, or to the person's  
22       character reputation, or received as compensatory



1 damages for any tort injury to or destruction of  
2 property, whether as the result of action or by  
3 private agreement between the parties (provided that  
4 amounts received as punitive damages for tort injury  
5 or breach of contract injury shall be included in  
6 gross income);

7 (6) Amounts received as salaries or wages for services  
8 rendered by an employee to an employer;

9 (7) Amounts received as alimony and other similar payments  
10 and settlements;

11 (8) Amounts collected by distributors as fuel taxes on  
12 "liquid fuel" imposed by chapter 243, and the amounts  
13 collected by such distributors as a fuel tax imposed  
14 by any Act of the Congress of the United States;

15 (9) Taxes on liquor imposed by chapter 244D on dealers  
16 holding permits under that chapter;

17 ~~[-(10) The amounts of taxes on cigarettes and tobacco  
18 products imposed by chapter 245 on wholesalers or  
19 dealers holding licenses under that chapter and  
20 selling the products at wholesale;~~



- 1       ~~(11)~~ (10) Federal excise taxes imposed on articles sold at  
2           retail and collected from the purchasers thereof and  
3           paid to the federal government by the retailer;
- 4       ~~[(12) The amounts of federal taxes under chapter 37 of the~~  
5           ~~Internal Revenue Code, or similar federal taxes,~~  
6           ~~imposed on sugar manufactured in the State, paid by~~  
7           ~~the manufacturer to the federal government;~~
- 8       ~~(13) An amount up to, but not in excess of, \$2,000 a year~~  
9           ~~of gross income]~~
- 10       (11) Amounts received by any blind, deaf, or totally  
11           disabled person engaging, or continuing, in any  
12           business, trade, activity, occupation, or calling  
13           within the State; a corporation all of whose  
14           outstanding shares are owned by an individual or  
15           individuals who are blind, deaf, or totally disabled;  
16           a general, limited, or limited liability partnership,  
17           all of whose partners are blind, deaf, or totally  
18           disabled; or a limited liability company, all of whose  
19           members are blind, deaf, or totally disabled;
- 20       ~~[(14) Amounts received by a producer of sugarcane from the~~  
21           ~~manufacturer to whom the producer sells the sugarcane,~~  
22           ~~where:~~



1           ~~(A) The producer is an independent cane farmer, so~~  
2           ~~classified by the Secretary of Agriculture under the~~  
3           ~~Sugar Act of 1948 (61 Stat. 922, Chapter 519) as~~  
4           ~~the Act may be amended or supplemented;~~

5           ~~(B) The value or gross proceeds of the sale of the~~  
6           ~~sugar, and other products manufactured from the~~  
7           ~~sugarcane, are included in the measure of the tax~~  
8           ~~levied on the manufacturer under section 237-~~  
9           ~~13(1) or (2);~~

10          ~~(C) The producer's gross proceeds of sales are~~  
11          ~~dependent upon the actual value of the products~~  
12          ~~manufactured therefrom or the average value of~~  
13          ~~all similar products manufactured by the~~  
14          ~~manufacturer; and~~

15          ~~(D) The producer's gross proceeds of sales are~~  
16          ~~reduced by reason of the tax on the value or sale~~  
17          ~~of the manufactured products;~~

18          ~~(15)]~~ (12) Money paid by the State or eleemosynary child-  
19          placing organizations to foster parents for their care  
20          of children in foster homes;

21          ~~(16)]~~ (13) Amounts received by a cooperative housing  
22          corporation from its shareholders in reimbursement of



1 funds paid by the corporation for lease rental, real  
2 property taxes, and other expenses of operating and  
3 maintaining the cooperative land and improvements;  
4 provided that the cooperative corporation is a  
5 corporation:

- 6 (A) Having one and only one class of stock  
7 outstanding;
- 8 (B) Each of the stockholders of which is entitled  
9 solely by reason of the stockholder's ownership  
10 of stock in the corporation, to occupy for  
11 dwelling purposes a house, or an apartment in a  
12 building owned or leased by the corporation; and
- 13 (C) No stockholder of which is entitled (either  
14 conditionally or unconditionally) to receive any  
15 distribution not out of earnings and profits of  
16 the corporation except in a complete or partial  
17 liquidation of the corporation; and

18 [~~17~~] (14) Amounts received by a managed care support  
19 contractor of the TRICARE program that is established  
20 under Title 10 United States Code chapter 55, as  
21 amended, for the actual cost or advancement to third



1 party health care providers pursuant to a contract  
2 with the United States."

3 SECTION 18. Section 237-24.3, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§237-24.3 Additional amounts not taxable. In addition to  
6 the amounts not taxable under section 237-24, this chapter shall  
7 not apply to:

8 (1) Amounts received from the loading, transportation, and  
9 unloading of agricultural commodities shipped for a  
10 producer or produce dealer on one island of this State  
11 to a person, firm, or organization on another island  
12 of this State. The terms "agricultural commodity",  
13 "producer", and "produce dealer" shall be defined in  
14 the same manner as they are defined in section 147-1;  
15 provided that agricultural commodities need not have  
16 been produced in the State;

17 (2) Amounts received from sales of:

18 (A) Intoxicating liquor as the term "liquor" is  
19 defined in chapter 244D;

20 (B) Cigarettes and tobacco products as defined in  
21 chapter 245; and

22 (C) Agricultural, meat, or fish products;



1 to any person or common carrier in interstate or  
2 foreign commerce, or both, whether ocean-going or air,  
3 for consumption out-of-state on the shipper's vessels  
4 or airplanes;

5 (3) Amounts received by the manager, submanager, or board  
6 of directors of:

7 (A) An association of owners of a condominium  
8 property regime established in accordance with  
9 chapter 514A or 514B; or

10 (B) A nonprofit homeowners or community association  
11 incorporated in accordance with chapter 414D or  
12 any predecessor thereto and existing pursuant to  
13 covenants running with the land,  
14 in reimbursement of sums paid for common expenses;

15 (4) Amounts received or accrued from:

16 (A) The loading or unloading of cargo from ships,  
17 barges, vessels, or aircraft, whether or not the  
18 ships, barges, vessels, or aircraft travel  
19 between the State and other states or countries  
20 or between the islands of the State;

21 (B) Tugboat services including pilotage fees  
22 performed within the State, and the towage of





1           ships, barges, or vessels in and out of state  
2           harbors, or from one pier to another; and  
3       (C) The transportation of pilots or governmental  
4           officials to ships, barges, or vessels offshore;  
5           rigging gear; checking freight and similar  
6           services; standby charges; and use of moorings  
7           and running mooring lines;

- 8       (5) Amounts received by an employee benefit plan by way of  
9           contributions, dividends, interest, and other income;  
10          and amounts received by a nonprofit organization or  
11          office, as payments for costs and expenses incurred  
12          for the administration of an employee benefit plan;  
13          provided that this exemption shall not apply to any  
14          gross rental income or gross rental proceeds received  
15          after June 30, 1994, as income from investments in  
16          real property in this State; and provided further that  
17          gross rental income or gross rental proceeds from  
18          investments in real property received by an employee  
19          benefit plan after June 30, 1994, under written  
20          contracts executed prior to July 1, 1994, shall not be  
21          taxed until the contracts are renegotiated, renewed,  
22          or extended, or until after December 31, 1998,



1           whichever is earlier. For the purposes of this  
2           paragraph, "employee benefit plan" means any plan as  
3           defined in section 1002(3) of title 29 of the United  
4           States Code, as amended;

5           (6) Amounts received for purchases made with United States  
6           Department of Agriculture food coupons under the  
7           federal food stamp program, and amounts received for  
8           purchases made with United States Department of  
9           Agriculture food vouchers under the Special  
10          Supplemental Foods Program for Women, Infants and  
11          Children;

12          (7) Amounts received by a hospital, infirmary, medical  
13          clinic, health care facility, pharmacy, or a  
14          practitioner licensed to administer the drug to an  
15          individual for selling prescription drugs or  
16          prosthetic devices to an individual; provided that  
17          this paragraph shall not apply to any amounts received  
18          for services provided in selling prescription drugs or  
19          prosthetic devices. As used in this paragraph:

20                 "Prescription drugs" are those drugs defined  
21                 under section 328-1 and dispensed by filling or  
22                 refilling a written or oral prescription by a



1 practitioner licensed under law to administer the drug  
2 and sold by a licensed pharmacist under section 328-16  
3 or practitioners licensed to administer drugs; and

4 "Prosthetic device" means ~~[any artificial device~~  
5 ~~or appliance, instrument, apparatus, or contrivance,~~  
6 ~~including their components, parts, accessories, and~~  
7 ~~replacements thereof, used to replace a missing or~~  
8 ~~surgically removed part of the human body, which is~~  
9 ~~prescribed by a licensed practitioner of medicine,~~  
10 ~~osteopathy, or podiatry and which is sold by the~~  
11 ~~practitioner or which is dispensed and sold by a~~  
12 ~~dealer of prosthetic devices; provided that~~  
13 ~~"prosthetic device" shall not mean any auditory,~~  
14 ~~ophthalmic, dental, or ocular device or appliance,~~  
15 ~~instrument, apparatus, or contrivance;]~~ a replacement,  
16 corrective, or supportive device including repair and  
17 replacement parts for the device, worn on or in the  
18 body to:

- 19 (A) Artificially replace a missing portion of the  
20 body;  
21 (B) Prevent or correct physical deformity or  
22 malfunction; or



1           (C) Support a weak or deformed portion of the body.

2           A prosthetic device does not include corrective  
3           eyeglasses, contact lenses, hearing aids, and dental  
4           prosthesis;

5           (8) Taxes on transient accommodations imposed by chapter  
6           237D and passed on and collected by operators holding  
7           certificates of registration under that chapter;

8           (9) Amounts received as dues by an unincorporated  
9           merchants association from its membership for  
10           advertising media, promotional, and advertising costs  
11           for the promotion of the association for the benefit  
12           of its members as a whole and not for the benefit of  
13           an individual member or group of members less than the  
14           entire membership;

15          (10) Amounts received by a labor organization for real  
16          property leased to:

17           (A) A labor organization; or

18           (B) A trust fund established by a labor organization  
19           for the benefit of its members, families, and  
20           dependents for medical or hospital care, pensions  
21           on retirement or death of employees,



1           apprenticeship and training, and other membership  
2           service programs.

3           As used in this paragraph, "labor organization" means  
4           a labor organization exempt from federal income tax  
5           under section 501(c)(5) (with respect to exemption  
6           from tax on corporations, certain trusts, etc.) of the  
7           Internal Revenue [~~Code, as amended,~~] Code;

8           (11) Amounts received from foreign diplomats and consular  
9           officials who are holding cards issued or authorized  
10          by the United States Department of State granting them  
11          an exemption from state taxes; and

12          (12) Amounts received as rent for the rental or leasing of  
13          aircraft or aircraft engines used by the lessees or  
14          renters for interstate air transportation of  
15          passengers and goods. For purposes of this paragraph,  
16          payments made pursuant to a lease shall be considered  
17          rent regardless of whether the lease is an operating  
18          lease or a financing lease. The definition of  
19          "interstate air transportation" is the same as in 49  
20          U.S.C. 40102."

21          SECTION 19. Section 237-31, Hawaii Revised Statutes, is  
22          amended to read as follows:



1       "§237-31 Remittances. All remittances of taxes imposed by  
2 this chapter shall be made by money, bank draft, check,  
3 cashier's check, money order, or certificate of deposit to the  
4 office of the department of taxation to which the return was  
5 transmitted. The department shall issue its receipts therefor  
6 to the taxpayer and shall pay the moneys into the state treasury  
7 as a state realization, to be kept and accounted for as provided  
8 by law; provided that:

9       (1) The sum from all general excise tax revenues realized  
10       by the State that represents the difference between  
11       \$45,000,000 and the proceeds from the sale of any  
12       general obligation bonds authorized for that fiscal  
13       year for the purposes of the state educational  
14       facilities improvement special fund shall be deposited  
15       in the state treasury in each fiscal year to the  
16       credit of the state educational facilities improvement  
17       special fund; [~~and~~]

18       (2) A sum, not to exceed \$5,000,000, from all general  
19       excise tax revenues realized by the State shall be  
20       deposited in the state treasury in each fiscal year to  
21       the credit of the compound interest bond reserve  
22       fund[-]; and



1        (3) All tax revenues realized by the State under chapters  
2        A, B, and C, respectively, shall be deposited in the  
3        state treasury."

4        SECTION 20. Section 237-34, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6        "(b) All tax returns and return information required to be  
7 filed under this chapter, and the report of any investigation of  
8 the return or of the subject matter of the return, shall be  
9 confidential. It shall be unlawful for any person or any  
10 officer or employee of the State to intentionally make known  
11 information imparted by any tax return or return information  
12 filed pursuant to this chapter, or any report of any  
13 investigation of the return or of the subject matter of the  
14 return, or to wilfully permit any [~~such~~] return, return  
15 information, or report so made, or any copy thereof, to be seen  
16 or examined by any person; provided that for tax purposes only  
17 the taxpayer, the taxpayer's authorized agent, or persons with a  
18 material interest in the return, return information, or report  
19 may examine them. Unless otherwise provided by law, persons  
20 with a material interest in the return, return information, or  
21 report shall include:

22        (1) Trustees;



- 1 (2) Partners;
- 2 (3) Persons named in a board resolution or a one per cent  
3 shareholder in case of a corporate return;
- 4 (4) The person authorized to act for a corporation in  
5 dissolution;
- 6 (5) The shareholder of an S corporation;
- 7 (6) The personal representative, trustee, heir, or  
8 beneficiary of an estate or trust in case of the  
9 estate's or decedent's return;
- 10 (7) The committee, trustee, or guardian of any person in  
11 paragraphs (1) to (6) who is incompetent;
- 12 (8) The trustee in bankruptcy or receiver, and the  
13 attorney-in-fact of any person in paragraphs (1) to  
14 (7);
- 15 (9) Persons duly authorized by the State in connection  
16 with their official duties;
- 17 (10) Any duly accredited tax official of the United States  
18 or of any state or territory;
- 19 (11) The Multistate Tax Commission or its authorized  
20 representative;
- 21 (12) Members of a limited liability company; [and]





1 (13) A person contractually obligated to pay the taxes  
2 assessed against another when the latter person is  
3 under audit by the department [-]; and

4 (14) The Streamlined Sales Tax Governing Board, Inc., or  
5 its authorized representative.

6 Any violation of this subsection shall be a misdemeanor."

7 SECTION 21. Section 238-2, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§238-2 Imposition of tax on tangible personal property;  
10 exemptions. There is hereby levied an excise tax on the use in  
11 this State of tangible personal property [~~which~~] that is  
12 imported by a taxpayer in this State whether owned, purchased  
13 from an unlicensed seller, or however acquired for use in this  
14 State[-], unless subject to tax or exempt from tax under  
15 chapter B. The tax imposed by this chapter shall accrue when  
16 the property is acquired by the importer or purchaser and  
17 becomes subject to the taxing jurisdiction of the State. The  
18 [~~rates~~] rate of the tax hereby imposed [~~and the exemptions~~  
19 ~~thereof are as follows:~~

20 ~~(1) If the importer or purchaser is licensed under chapter~~  
21 ~~237 and is:~~



1           ~~(A) A wholesaler or jobber importing or purchasing~~  
2           ~~for purposes of sale or resale, or~~

3           ~~(B) A manufacturer importing or purchasing material~~  
4           ~~or commodities which are to be incorporated by~~  
5           ~~the manufacturer into a finished or saleable~~  
6           ~~product (including the container or package in~~  
7           ~~which the product is contained) wherein it will~~  
8           ~~remain in such form as to be perceptible to the~~  
9           ~~senses, and which finished or saleable product is~~  
10           ~~to be sold in such manner as to result in a~~  
11           ~~further tax on the activity of the manufacturer~~  
12           ~~as the manufacturer or as a wholesaler, and not~~  
13           ~~as a retailer,~~

14           ~~there shall be no tax, provided that if the~~  
15           ~~wholesaler, jobber, or manufacturer is also engaged in~~  
16           ~~business as a retailer (so classed under chapter 237),~~  
17           ~~paragraph (2) shall apply to the wholesaler, jobber,~~  
18           ~~or manufacturer, but the director of taxation shall~~  
19           ~~refund to the wholesaler, jobber, or manufacturer, in~~  
20           ~~the manner provided under section 231-23(c) such~~  
21           ~~amount of tax as the wholesaler, jobber, or~~  
22           ~~manufacturer shall, to the satisfaction of the~~



1           ~~director, establish to have been paid by the~~  
2           ~~wholesaler, jobber, or manufacturer to the director~~  
3           ~~with respect to property which has been used by the~~  
4           ~~wholesaler, jobber, or manufacturer for the purposes~~  
5           ~~stated in this paragraph;~~

6           ~~(2) If the importer or purchaser is licensed under chapter~~  
7           ~~237 and is:~~

8           ~~(A) A retailer or other person importing or~~  
9           ~~purchasing for purposes of sale or resale, not~~  
10           ~~exempted by paragraph (1);~~

11           ~~(B) A manufacturer importing or purchasing material~~  
12           ~~or commodities which are to be incorporated by~~  
13           ~~the manufacturer into a finished or saleable~~  
14           ~~product (including the container or package in~~  
15           ~~which the product is contained) wherein it will~~  
16           ~~remain in such form as to be perceptible to the~~  
17           ~~senses, and which finished or saleable product is~~  
18           ~~to be sold at retail in this State, in such~~  
19           ~~manner as to result in a further tax on the~~  
20           ~~activity of the manufacturer in selling such~~  
21           ~~products at retail;~~



1           ~~(C) A contractor importing or purchasing material or~~  
2           ~~commodities which are to be incorporated by the~~  
3           ~~contractor into the finished work or project~~  
4           ~~required by the contract and which will remain in~~  
5           ~~such finished work or project in such form as to~~  
6           ~~be perceptible to the senses;~~

7           ~~(D) A person engaged in a service business or calling~~  
8           ~~as defined in section 237-7, or a person~~  
9           ~~furnishing transient accommodations subject to~~  
10           ~~the tax imposed by section 237D-2, in which the~~  
11           ~~import or purchase of tangible personal property~~  
12           ~~would have qualified as a sale at wholesale as~~  
13           ~~defined in section 237-4(a)(8) had the seller of~~  
14           ~~the property been subject to the tax in chapter~~  
15           ~~237; or~~

16           ~~(E) A publisher of magazines or similar printed~~  
17           ~~materials containing advertisements, when the~~  
18           ~~publisher is under contract with the advertisers~~  
19           ~~to distribute a minimum number of magazines or~~  
20           ~~similar printed materials to the public or~~  
21           ~~defined segment of the public, whether or not~~  
22           ~~there is a charge to the persons who actually~~



1           ~~receive the magazines or similar printed~~  
2           ~~materials,~~  
3           ~~the tax shall be one half of one per cent of the~~  
4           ~~purchase price of the property, if the purchase and~~  
5           ~~sale are consummated in Hawaii, or, if there is no~~  
6           ~~purchase price applicable thereto, or if the purchase~~  
7           ~~or sale is consummated outside of Hawaii, then one~~  
8           ~~half of one per cent of the value of such property;~~  
9           ~~and~~  
10          ~~(3) In all other cases,]~~ is four per cent of the value of  
11          the property.

12          For purposes of this section, tangible personal property is  
13          property that is imported by the taxpayer for use in this State,  
14          notwithstanding the fact that title to the property, or the risk  
15          of loss to the property, passes to the purchaser of the property  
16          at a location outside this State."

17          SECTION 22. Section 238-2.3, Hawaii Revised Statutes, is  
18          amended to read as follows:

19          "**§238-2.3 Imposition of tax on imported services or**  
20          **contracting; exemptions.** There is hereby levied an excise tax  
21          on the value of services or contracting as defined in section  
22          237-6 that are performed by an unlicensed seller at a point



1 outside the State and imported or purchased for use in this  
2 State[-], unless subject to tax or exempt from tax under  
3 chapter B. The tax imposed by this chapter shall accrue when  
4 the service or contracting as defined in section 237-6 is  
5 received by the importer or purchaser and becomes subject to the  
6 taxing jurisdiction of the State. The [~~rates~~] rate of the tax  
7 hereby imposed [~~and the exemptions from the tax are as follows:~~

8 ~~(1) If the importer or purchaser is licensed under chapter~~  
9 ~~237 and is:~~

10 ~~(A) Engaged in a service business or calling in which~~  
11 ~~the imported or purchased services or contracting~~  
12 ~~become identifiable elements, excluding overhead,~~  
13 ~~of the services rendered by the importer or~~  
14 ~~purchaser, and the gross income of the importer~~  
15 ~~or purchaser is subject to the tax imposed under~~  
16 ~~chapter 237 on services at the rate of one half~~  
17 ~~of one per cent or the rate of tax imposed under~~  
18 ~~section 237-13.3; or~~

19 ~~(B) A manufacturer importing or purchasing services~~  
20 ~~or contracting that become identifiable elements,~~  
21 ~~excluding overhead, of a finished or saleable~~  
22 ~~product (including the container or package in~~



1           ~~which the product is contained) and the finished~~  
2           ~~or saleable product is to be sold in a manner~~  
3           ~~that results in a further tax on the manufacturer~~  
4           ~~as a wholesaler, and not a retailer;~~

5           ~~there shall be no tax imposed on the value of the~~  
6           ~~imported or purchased services or contracting;~~  
7           ~~provided that if the manufacturer is also engaged in~~  
8           ~~business as a retailer as classified under chapter~~  
9           ~~237, paragraph (2) shall apply to the manufacturer,~~  
10          ~~but the director of taxation shall refund to the~~  
11          ~~manufacturer, in the manner provided under section~~  
12          ~~231-23(c), that amount of tax that the manufacturer,~~  
13          ~~to the satisfaction of the director, shall establish~~  
14          ~~to have been paid by the manufacturer to the director~~  
15          ~~with respect to services that have been used by the~~  
16          ~~manufacturer for the purposes stated in this~~  
17          ~~paragraph.~~

18          ~~(2) If the importer or purchaser is a person licensed~~  
19          ~~under chapter 237 and is:~~

20          ~~(A) Engaged in a service business or calling in which~~  
21                 ~~the imported or purchased services or contracting~~  
22                 ~~become identifiable elements, excluding overhead,~~



1 ~~of the services rendered by the importer or~~  
2 ~~purchaser, and the gross income from these~~  
3 ~~services when sold by the importer or purchaser~~  
4 ~~is subject to the tax imposed under chapter 237~~  
5 ~~at the highest rate;~~

6 ~~(B) A manufacturer importing or purchasing services~~  
7 ~~or contracting that become identifiable elements,~~  
8 ~~excluding overhead, of the finished or saleable~~  
9 ~~manufactured product (including the container or~~  
10 ~~package in which the product is contained) and~~  
11 ~~the finished or saleable product is to be sold in~~  
12 ~~a manner that results in a further tax under~~  
13 ~~chapter 237 on the activity of the manufacturer~~  
14 ~~as a retailer; or~~

15 ~~(C) A contractor importing or purchasing services or~~  
16 ~~contracting that become identifiable elements,~~  
17 ~~excluding overhead, of the finished work or~~  
18 ~~project required, under the contract, and where~~  
19 ~~the gross proceeds derived by the contractor are~~  
20 ~~subject to the tax under section 237 13(3) as a~~  
21 ~~contractor,~~





1           ~~the tax shall be one half of one per cent of the value~~  
2           ~~of the imported or purchased services or contracting,~~  
3           ~~and~~  
4           ~~(3) In all other cases, the importer or purchaser is~~  
5           ~~subject to the tax at the rate of]~~ is four per cent on  
6           the value of the imported or purchased services or  
7           contracting."

8           SECTION 23. Section 238-2.6, Hawaii Revised Statutes, is  
9           amended by amending subsection (a) to read as follows:

10           "(a) The county surcharge on state tax, upon the adoption  
11           of a county ordinance and in accordance with the requirements of  
12           section 46-16.8, shall be levied, assessed, and collected as  
13           provided in this section on the value of property and services  
14           taxable under this chapter. No county shall set the surcharge  
15           on state tax at a rate greater than one-half of one per cent of  
16           the value of property taxable under this chapter. All  
17           provisions of this chapter shall apply to the county surcharge  
18           on state tax. No county shall conduct an independent audit of  
19           sellers registered under the streamlined sales and use tax  
20           agreement. With respect to the surcharge, the director shall  
21           have all the rights and powers provided under this chapter. In  
22           addition, the director of taxation shall have the exclusive



1 rights and power to determine the county or counties in which a  
2 person imports or purchases tangible personal property and, in  
3 the case of a person importing or purchasing tangible property  
4 in more than one county, the director shall determine, through  
5 apportionment or other means, that portion of the surcharge on  
6 state tax attributable to the importation or purchase in each  
7 county."

8 SECTION 24. Section 237-4, Hawaii Revised Statutes, is  
9 repealed.

10 ~~["§237-4 "Wholesaler", "jobber", defined. (a)~~

11 ~~"Wholesaler" or "jobber" applies only to a person making sales~~  
12 ~~at wholesale. Only the following are sales at wholesale:~~

13 ~~(1) Sales to a licensed retail merchant, jobber, or other~~  
14 ~~licensed seller for purposes of resale;~~

15 ~~(2) Sales to a licensed manufacturer of materials or~~  
16 ~~commodities that are to be incorporated by the~~  
17 ~~manufacturer into a finished or saleable product~~  
18 ~~(including the container or package in which the~~  
19 ~~product is contained) during the course of its~~  
20 ~~preservation, manufacture, or processing, including~~  
21 ~~preparation for market, and that will remain in such~~  
22 ~~finished or saleable product in such form as to be~~



1 ~~perceptible to the senses, which finished or saleable~~  
2 ~~product is to be sold and not otherwise used by the~~  
3 ~~manufacturer;~~

4 ~~(3) Sales to a licensed producer or cooperative~~  
5 ~~association of materials or commodities that are to be~~  
6 ~~incorporated by the producer or by the cooperative~~  
7 ~~association into a finished or saleable product that~~  
8 ~~is to be sold and not otherwise used by the producer~~  
9 ~~or cooperative association, including specifically~~  
10 ~~materials or commodities expended as essential to the~~  
11 ~~planting, growth, nurturing, and production of~~  
12 ~~commodities that are sold by the producer or by the~~  
13 ~~cooperative association;~~

14 ~~(4) Sales to a licensed contractor, of materials or~~  
15 ~~commodities that are to be incorporated by the~~  
16 ~~contractor into the finished work or project required~~  
17 ~~by the contract and that will remain in such finished~~  
18 ~~work or project in such form as to be perceptible to~~  
19 ~~the senses;~~

20 ~~(5) Sales to a licensed producer, or to a cooperative~~  
21 ~~association described in section 237-23(a)(7) for sale~~  
22 ~~to a licensed producer, or to a licensed person~~



1           ~~operating a feed lot, of poultry or animal feed,~~  
2           ~~hatching eggs, semen, replacement stock, breeding~~  
3           ~~services for the purpose of raising or producing~~  
4           ~~animal or poultry products for disposition as~~  
5           ~~described in section 237 5 or for incorporation into a~~  
6           ~~manufactured product as described in paragraph (2) or~~  
7           ~~for the purpose of breeding, hatching, milking, or egg~~  
8           ~~laying other than for the customer's own consumption~~  
9           ~~of the meat, poultry, eggs, or milk so produced,~~  
10          ~~provided that in the case of a feed lot operator, only~~  
11          ~~the segregated cost of the feed furnished by the feed~~  
12          ~~lot operator as part of the feed lot operator's~~  
13          ~~service to a licensed producer of poultry or animals~~  
14          ~~to be butchered or to a cooperative association~~  
15          ~~described in section 237 23(a) (7) of such licensed~~  
16          ~~producers shall be deemed to be a sale at wholesale,~~  
17          ~~and provided further that any amount derived from the~~  
18          ~~furnishing of feed lot services, other than the~~  
19          ~~segregated cost of feed, shall be deemed taxable at~~  
20          ~~the service business rate. This paragraph shall not~~  
21          ~~apply to the sale of feed for poultry or animals to be~~  
22          ~~used for hauling, transportation, or sports purposes,~~



- 1       ~~(6) Sales to a licensed producer, or to a cooperative~~  
2       ~~association described in section 237-23(a)(7) for sale~~  
3       ~~to the producer, of seed or seedstock for producing~~  
4       ~~agricultural and aquacultural products, or bait for~~  
5       ~~catching fish (including the catching of bait for~~  
6       ~~catching fish), which agricultural and aquacultural~~  
7       ~~products or fish are to be disposed of as described in~~  
8       ~~section 237-5 or to be incorporated in a manufactured~~  
9       ~~product as described in paragraph (2);~~
- 10       ~~(7) Sales to a licensed producer, or to a cooperative~~  
11       ~~association described in section 237-23(a)(7) for sale~~  
12       ~~to such producer; of polypropylene shade cloth; of~~  
13       ~~polyfilm; of polyethylene film; of cartons and such~~  
14       ~~other containers, wrappers, and sacks, and binders to~~  
15       ~~be used for packaging eggs, vegetables, fruits, and~~  
16       ~~other agricultural and aquacultural products; of~~  
17       ~~seedlings and cuttings for producing nursery plants or~~  
18       ~~aquacultural products; or of chick containers; which~~  
19       ~~cartons and such other containers, wrappers, and~~  
20       ~~sacks, binders, seedlings, cuttings, and containers~~  
21       ~~are to be used as described in section 237-5, or to be~~



1           ~~incorporated in a manufactured product as described in~~  
2           ~~paragraph (2);~~

3           ~~(8) Sales of tangible personal property where:~~

4           ~~(A) Tangible personal property is sold upon the order~~  
5           ~~or request of a licensed seller for the purpose~~  
6           ~~of rendering a service in the course of the~~  
7           ~~person's service business or calling, or upon the~~  
8           ~~order or request of a person subject to tax under~~  
9           ~~section 237D-2 for the purpose of furnishing~~  
10           ~~transient accommodations;~~

11           ~~(B) The tangible personal property becomes or is used~~  
12           ~~as an identifiable element of the service~~  
13           ~~rendered; and~~

14           ~~(C) The cost of the tangible personal property does~~  
15           ~~not constitute overhead to the licensed seller;~~  
16           ~~the sale shall be subject to section 237-13.3;~~

17           ~~(9) Sales to a licensed leasing company of capital goods~~  
18           ~~that have a depreciable life, are purchased by the~~  
19           ~~leasing company for lease to its customers, and are~~  
20           ~~thereafter leased as a service to others;~~

21           ~~(10) Sales of services to a licensed seller engaging in a~~  
22           ~~business or calling whenever:~~



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~~(A) Either:~~

~~(i) In the context of a service to service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling, including a dealer's furnishing of goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property;~~

~~(ii) In the context of a service to tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing tangible personal property to be sold;~~

~~(iii) In the context of a services to contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor; or~~



- 1           ~~(iv) In the context of a services to transient~~  
2           ~~accommodations rental transaction, a service~~  
3           ~~is rendered upon the order or request of a~~  
4           ~~person subject to tax under section 237D-2~~  
5           ~~for the purpose of furnishing transient~~  
6           ~~accommodations;~~
- 7           ~~(B) The benefit of the service passes to the customer~~  
8           ~~of the licensed seller, licensed contractor, or~~  
9           ~~person furnishing transient accommodations as an~~  
10           ~~identifiable element of the other service or~~  
11           ~~property to be sold, the contracting, or the~~  
12           ~~furnishing of transient accommodations;~~
- 13           ~~(C) The cost of the service does not constitute~~  
14           ~~overhead to the licensed seller, licensed~~  
15           ~~contractor, or person furnishing transient~~  
16           ~~accommodations;~~
- 17           ~~(D) The gross income of the licensed seller is not~~  
18           ~~divided between the licensed seller and another~~  
19           ~~licensed seller, contractor, or person furnishing~~  
20           ~~transient accommodations for imposition of the~~  
21           ~~tax under this chapter;~~





1           ~~(E) The gross income of the licensed seller is not~~  
2           ~~subject to a deduction under this chapter or~~  
3           ~~chapter 237D; and~~

4           ~~(F) The resale of the service, tangible personal~~  
5           ~~property, contracting, or transient~~  
6           ~~accommodations is subject to the tax imposed~~  
7           ~~under this chapter at the highest tax rate.~~

8           ~~Sales subject to this paragraph shall be subject to~~  
9           ~~section 237-13.3;~~

10          ~~(11) Sales to a licensed retail merchant, jobber, or other~~  
11          ~~licensed seller of bulk condiments or prepackaged~~  
12          ~~single-serving packets of condiments that are provided~~  
13          ~~to customers by the licensed retail merchant, jobber,~~  
14          ~~or other licensed seller;~~

15          ~~(12) Sales to a licensed retail merchant, jobber, or other~~  
16          ~~licensed seller of tangible personal property that~~  
17          ~~will be incorporated or processed by the licensed~~  
18          ~~retail merchant, jobber, or other licensed seller into~~  
19          ~~a finished or saleable product during the course of~~  
20          ~~its preparation for market (including disposable,~~  
21          ~~nonreturnable containers, packages, or wrappers, in~~  
22          ~~which the product is contained and that are generally~~



1 ~~known and most commonly used to contain food or~~  
2 ~~beverage for transfer or delivery), and which finished~~  
3 ~~or saleable product is to be sold and not otherwise~~  
4 ~~used by the licensed retail merchant, jobber, or other~~  
5 ~~licensed seller;~~

6 ~~(13) Sales of amusements subject to taxation under section~~  
7 ~~237 13(4) to a licensed seller engaging in a business~~  
8 ~~or calling whenever:~~

9 ~~(A) Either:~~

10 ~~(i) In the context of an amusement to service~~  
11 ~~transaction, an amusement is rendered upon~~  
12 ~~the order or request of a licensed seller~~  
13 ~~for the purpose of rendering another service~~  
14 ~~in the course of the seller's service~~  
15 ~~business or calling;~~

16 ~~(ii) In the context of an amusement to tangible~~  
17 ~~personal property transaction, an amusement~~  
18 ~~is rendered upon the order or request of a~~  
19 ~~licensed seller for the purpose of selling~~  
20 ~~tangible personal property; or~~

21 ~~(iii) In the context of an amusement to amusement~~  
22 ~~transaction, an amusement is rendered upon~~



1                   ~~the order or request of a licensed seller~~  
2                   ~~for the purpose of rendering another~~  
3                   ~~amusement in the course of the person's~~  
4                   ~~amusement business;~~

5           ~~(B) The benefit of the amusement passes to the~~  
6           ~~customer of the licensed seller as an~~  
7           ~~identifiable element of the other service,~~  
8           ~~tangible personal property to be sold, or~~  
9           ~~amusement;~~

10          ~~(C) The cost of the amusement does not constitute~~  
11          ~~overhead to the licensed seller;~~

12          ~~(D) The gross income of the licensed seller is not~~  
13          ~~divided between the licensed seller and another~~  
14          ~~licensed seller, person furnishing transient~~  
15          ~~accommodations, or person rendering an amusement~~  
16          ~~for imposition of the tax under chapter 237;~~

17          ~~(E) The gross income of the licensed seller is not~~  
18          ~~subject to a deduction under this chapter; and~~

19          ~~(F) The resale of the service, tangible personal~~  
20          ~~property, or amusement is subject to the tax~~  
21          ~~imposed under this chapter at the highest rate.~~



1 ~~As used in this paragraph, "amusement" means~~  
2 ~~entertainment provided as part of a show for which~~  
3 ~~there is an admission charge. Sales subject to this~~  
4 ~~paragraph shall be subject to section 237-13.3; and~~  
5 ~~(14) Sales by a printer to a publisher of magazines or~~  
6 ~~similar printed materials containing advertisements,~~  
7 ~~when the publisher is under contract with the~~  
8 ~~advertisers to distribute a minimum number of~~  
9 ~~magazines or similar printed materials to the public~~  
10 ~~or defined segment of the public, whether or not there~~  
11 ~~is a charge to the persons who actually receive the~~  
12 ~~magazines or similar printed materials.~~

13 ~~(b) If the use tax law is finally held by a court of~~  
14 ~~competent jurisdiction to be unconstitutional or invalid insofar~~  
15 ~~as it purports to tax the use or consumption of tangible~~  
16 ~~personal property imported into the State in interstate or~~  
17 ~~foreign commerce or both, wholesalers and jobbers shall be taxed~~  
18 ~~thereafter under this chapter in accordance with the following~~  
19 ~~definition (which shall supersede the preceding paragraph~~  
20 ~~otherwise defining "wholesaler" or "jobber"): "Wholesaler" or~~  
21 ~~"jobber" means a person, or a definitely organized division~~  
22 ~~thereof, definitely organized to render and rendering a general~~



1 ~~distribution service that buys and maintains at the person's~~  
2 ~~place of business a stock or lines of merchandise that the~~  
3 ~~person distributes, and that the person, through salespersons,~~  
4 ~~advertising, or sales promotion devices, sells to licensed~~  
5 ~~retailers, to institutional or licensed commercial or industrial~~  
6 ~~users, in wholesale quantities and at wholesale rates. A~~  
7 ~~corporation deemed not to be carrying on a trade or business in~~  
8 ~~this State under section 235-6 shall nevertheless be deemed to~~  
9 ~~be a wholesaler and shall be subject to the tax imposed by this~~  
10 ~~chapter." ]~~

11 SECTION 25. Section 237-5, Hawaii Revised Statutes, is  
12 repealed.

13 [~~§237-5 "Producer" defined. "Producer" means any person~~  
14 ~~engaged in the business of raising and producing agricultural~~  
15 ~~products in their natural state, or in producing natural~~  
16 ~~resource products, or engaged in the business of fishing or~~  
17 ~~aquaculture, for sale, or for shipment or transportation out of~~  
18 ~~the State, of the agricultural or aquaculture products in their~~  
19 ~~natural or processed state, or butchered and dressed, or the~~  
20 ~~natural resource products, or fish.~~

21 As used in this section "agricultural products" include  
22 floricultural, horticultural, viticultural, forestry, nut,



1 ~~coffee, dairy, livestock, poultry, bee, animal, and any other~~  
2 ~~farm, agronomic, or plantation products."~~]

3 SECTION 26. Section 237-13.3, Hawaii Revised Statutes, is  
4 repealed.

5 [~~"§237-13.3 Application of sections 237-4(a)(8),~~  
6 ~~237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and~~  
7 ~~237-13(6)(A). (a) Sections 237-4(a)(8), 237-4(a)(10),~~  
8 ~~237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to~~  
9 ~~the contrary notwithstanding, instead of the tax levied under~~  
10 ~~section 237-13(2)(A) on wholesale sales subject to section~~  
11 ~~237-4(a)(8)(B), under section 237-13(4)(A) on a wholesaler~~  
12 ~~subject to section 237-4(a)(13), and under section 237-13(6)(A)~~  
13 ~~on a wholesaler subject to section 237-4(a)(10) at one half of~~  
14 ~~one per cent, during the period January 1, 2000, to December 31,~~  
15 ~~2005, the tax shall be as follows:~~

- 16 (1) ~~In calendar year 2000, 3.5 per cent;~~
- 17 (2) ~~In calendar year 2001, 3.0 per cent;~~
- 18 (3) ~~In calendar year 2002, 2.5 per cent;~~
- 19 (4) ~~In calendar year 2003, 2.0 per cent;~~
- 20 (5) ~~In calendar year 2004, 1.5 per cent;~~
- 21 (6) ~~In calendar year 2005, 1.0 per cent; and~~



1       ~~(7) In calendar year 2006 and thereafter, the tax shall be~~  
2             ~~0.5 per cent.~~

3       ~~(b) The department shall have the authority to implement~~  
4 ~~the tax rate changes in subsection (a) by prescribing tax forms~~  
5 ~~and instructions that require tax reporting and payment by~~  
6 ~~deduction, allocation, or any other method to determine tax~~  
7 ~~liability with due regard to the tax rate changes." ]~~

8       SECTION 27. Section 237-13.5, Hawaii Revised Statutes, is  
9 repealed.

10       ~~["§237-13.5 Assessment on generated electricity. Any~~  
11 ~~other provision of the law to the contrary notwithstanding, the~~  
12 ~~levy and assessment of the general excise tax on the gross~~  
13 ~~proceeds from the sale of electric power to a public utility~~  
14 ~~company for resale to the public, shall be made only as a tax on~~  
15 ~~the business of a producer, at the rate assessed producers,~~  
16 ~~under section 237-13(2)(A)."]~~

17       SECTION 28. Section 237-15, Hawaii Revised Statutes, is  
18 repealed.

19       ~~["§237-15 Technicians. When technicians supply dentists~~  
20 ~~or physicians with dentures, orthodontic devices, braces, and~~  
21 ~~similar items which have been prepared by the technician in~~  
22 ~~accordance with specifications furnished by the dentist or~~



1 ~~physician, and such items are to be used by the dentist or~~  
2 ~~physician in the dentist's or physician's professional practice~~  
3 ~~for a particular patient who is to pay the dentist or physician~~  
4 ~~for the same as a part of the dentist's or physician's~~  
5 ~~professional services, the technician shall be taxed as though~~  
6 ~~the technician were a manufacturer selling a product to a~~  
7 ~~licensed retailer, rather than at the rate of four per cent~~  
8 ~~which is generally applied to professions and services." ]~~

9 SECTION 29. Section 237-17, Hawaii Revised Statutes, is  
10 repealed.

11 [~~"§237-17 Persons with impaired sight, hearing, or who are~~  
12 ~~totally disabled. Anything in section 237-13 to the contrary~~  
13 ~~notwithstanding, the privilege tax levied, assessed, and~~  
14 ~~collected on account of the business or other activities of~~  
15 ~~individuals who are blind, deaf, or totally disabled,~~  
16 ~~corporations all of whose outstanding shares are owned by~~  
17 ~~individuals who are blind, deaf, or totally disabled, general,~~  
18 ~~limited, or limited liability partnerships, all of whose~~  
19 ~~partners are blind, deaf, or totally disabled, or limited~~  
20 ~~liability companies, all of whose members are blind, deaf, or~~  
21 ~~totally disabled, shall not exceed one half of one per cent of~~  
22 ~~the proceeds, sales, income, or other receipts subject to tax.~~





1 ~~For the purpose of this chapter "blind", "deaf", or "totally~~  
2 ~~disabled" is defined as in section 235 1. The impairment of~~  
3 ~~sight or hearing, or the disability, shall be certified to as~~  
4 ~~provided in section 235 1."~~]

5 SECTION 30. Section 237-29.55, Hawaii Revised Statutes, is  
6 repealed.

7 ~~["§237-29.55] Exemption for sale of tangible personal~~  
8 ~~property for resale at wholesale. (a) There shall be exempted~~  
9 ~~from, and excluded from the measure of, the taxes imposed by~~  
10 ~~this chapter all of the gross proceeds or gross income arising~~  
11 ~~from the sale of tangible personal property imported to Hawaii~~  
12 ~~from a foreign or domestic source to a licensed taxpayer for~~  
13 ~~subsequent resale for the purpose of wholesale as defined under~~  
14 ~~section 237 4.~~

15 ~~(b) The department, by rule, may provide that a seller may~~  
16 ~~take from the purchaser of imported tangible personal property,~~  
17 ~~a certificate, in a form that the department shall prescribe,~~  
18 ~~certifying that the purchaser of the imported tangible personal~~  
19 ~~property shall resell the imported tangible personal property at~~  
20 ~~wholesale as defined under section 237 4. Any purchaser who~~  
21 ~~furnishes a certificate shall be obligated to pay to the seller,~~  
22 ~~upon demand, if the sale in fact is not a sale for the purpose~~



1 ~~of resale at wholesale, the amount of the additional tax which~~  
 2 ~~by reason thereof is imposed upon the seller. The absence of a~~  
 3 ~~certificate, unless the sales of the business are exclusively a~~  
 4 ~~sale for the purpose of resale at wholesale, in itself, shall~~  
 5 ~~give rise to the presumption that the sale is not a sale for the~~  
 6 ~~purpose of resale at wholesale." ]~~

7 SECTION 31. Section 238-4, Hawaii Revised Statutes, is  
 8 repealed.

9 ~~[ "§238-4 Certain property used by producers. If a~~  
 10 ~~licensed producer, or a cooperative association acting under the~~  
 11 ~~authority of chapter 421 or 422, in order to sell to such~~  
 12 ~~producer, or a licensed person, imports into the State or~~  
 13 ~~acquires in the State commodities, materials, items, services,~~  
 14 ~~or living things enumerated in section [237-4(a)(3) and (5) to~~  
 15 ~~(7)], then section 237-4 shall apply. If section 237-4 applies~~  
 16 ~~and the producer is engaged in the sale of the producer's~~  
 17 ~~products at retail or in any manner other than at wholesale,~~  
 18 ~~then the tax upon use of property in the State imposed by~~  
 19 ~~section 238-2(2) shall apply the same as in the case of a~~  
 20 ~~purchaser who is a licensed retailer. In other such cases no~~  
 21 ~~tax shall be imposed under this chapter." ]~~



1 SECTION 32. (a) There is created a committee to oversee  
2 the department of taxation's implementation and administration  
3 of, and compliance with the streamlined sales and use tax  
4 agreement. The committee shall be administratively attached to  
5 the department of taxation. Members of the committee shall be  
6 reimbursed by their appointing body for expenses, including  
7 travel expenses.

8 (b) The president of the senate and the speaker of the  
9 house of representatives shall appoint three members each, which  
10 shall comprise a committee, the purpose of which is to hold  
11 meetings necessary to carry out this Act and to serve as part of  
12 the State's official delegation to the Streamlined Sales Tax  
13 Governing Board when establishing the State's criteria for  
14 compliance with the streamlined sales and use tax agreement.  
15 The director of taxation, or a representative thereof, shall be  
16 an ex officio member. The members of the committee may elect a  
17 chair or co-chairs. Duties of the appointees shall include  
18 attending meetings of the governing board, technical reviews of  
19 Hawaii legislation and state tax operations, and working with  
20 the department of taxation to ensure that all appropriate steps  
21 are taken in order to have Hawaii certified as a state in full  
22 compliance with the streamlined sales and use tax agreement.



1           (c) The department of taxation may seek technical  
2 assistance that includes analysis of the fiscal and legal  
3 impacts of proposed conformance with the existing general excise  
4 tax law and other laws and any other issues that might result  
5 from the implementation of a streamlined sales and use tax under  
6 the streamlined sales and use tax agreement, as well as for the  
7 preparation of proposed legislation by contracting with legal  
8 professionals that have a background and practice in taxation.

9           (d) The department of taxation shall secure the services  
10 necessary to support the project in as expeditious a manner as  
11 possible. The legislative reference bureau shall assist the  
12 department of taxation or contractor in drafting any appropriate  
13 legislation.

14           (e) In an effort to ensure that the State's application  
15 for certification with the Streamlined Sales Tax Governing Board  
16 is completed in as swift and seamless a manner as is possible,  
17 the department of taxation shall work cooperatively with the  
18 committee in gaining the committee's concurrence prior to  
19 contracting for services with outside entities, agencies, or  
20 persons for the implementation and administration of, or  
21 compliance with the streamlined sales and use tax agreement.



1 (f) The department of taxation may contract with outside  
2 entities, agencies, or persons for the purpose of collecting the  
3 tax revenues owed by taxpayers pursuant to the streamlined sales  
4 and use tax agreement, as well as delinquent taxes owed by those  
5 taxpayers, in implementing the streamlined sales and use tax  
6 agreement in this State. The outside entities, agencies, or  
7 persons that the department of taxation contracts with to  
8 collect the tax revenues generated from the streamlined sales  
9 and use tax agreement shall be paid from the tax revenues  
10 collected under the streamlined sales and use tax agreement to  
11 ensure that the cost of implementing and administering the  
12 streamlined sales and use tax agreement for the State is  
13 minimal.

14 SECTION 33. In codifying the new chapters and sections  
15 added to the Hawaii Revised Statutes, the revisor of statutes  
16 shall substitute appropriate section numbers for the letters  
17 used in designating the new chapters and sections.

18 SECTION 34. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 35. This Act shall take effect when the State  
21 becomes a party to the streamlined sales and use tax agreement;  
22 provided that:



- 1 (1) Section 32 shall take effect on approval;
- 2 (2) The amendments made to section 237-9, Hawaii Revised
- 3 Statutes, by this Act shall not be repealed when that
- 4 section is reenacted on June 30, 2014, pursuant to
- 5 section 13(3), Act 134, Session Laws of Hawaii 2009;
- 6 (3) The amendments made to section 237-24, Hawaii Revised
- 7 Statutes, by this Act shall not be repealed when that
- 8 section is reenacted on December 31, 2013, pursuant to
- 9 section 4, Act 70, Session Laws of Hawaii 2009; and
- 10 (4) The amendments made to section 237-24.3, Hawaii
- 11 Revised Statutes, by this Act shall not be repealed
- 12 when that section is reenacted on December 31, 2010,
- 13 pursuant to section 4, Act 239, Session Laws of Hawaii
- 14 2007, as amended by section 5, Act 196, Session Laws
- 15 of Hawaii 2009.
- 16

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**Report Title:**

Streamlined Sales and Use Tax Amendments

**Description:**

Adopts amendments to Hawaii tax laws to implement the streamlined sales and use tax agreement. Effective when the State becomes a party to the Streamlined Sales and Use Tax Agreement.

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

