

JAN 25 2010

A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX ON INSURANCE PRODUCERS.

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

1 SECTION 1. Currently, every business involving the payment
2 of commissions is taxed for general excise tax purposes at the
3 four per cent rate. However, salespersons of insurance products
4 pay a fraction of the general excise tax that is paid by their
5 commission agent counterparts in other industries. These
6 commission-earning counterparts include real estate brokers and
7 securities brokers who earn commission income from their
8 proceeds of sales. The Legislature finds that this disparity in
9 the assessment of the general excise tax on commissions is
10 unwarranted, especially during the current budget crisis.

11 The purpose of this Act is to provide for fairness in the
12 assessment of the general excise tax on those that earn proceeds
13 in the form of commissions by adjusting the general excise tax
14 assessed on insurance commission proceeds.

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

17 "**§237-13 Imposition of tax.** There is hereby levied and
18 shall be assessed and collected annually privilege taxes against

1 persons on account of their business and other activities in the
2 State measured by the application of rates against values of
3 products, gross proceeds of sales, or gross income, whichever is
4 specified, as follows:

5 (1) Tax on manufacturers.

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

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

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- 1 (i) If the products at the time of their entry
2 into interstate or foreign commerce already
3 have been sold, the gross proceeds of sale,
4 less the transportation expenses, if any,
5 incurred in realizing the gross proceeds for
6 transportation from the time of entry of the
7 products into interstate or foreign
8 commerce, including insurance and storage in
9 transit, shall be the measure of the value
10 of the products;
- 11 (ii) If the products have not been sold at the
12 time of their entry into interstate or
13 foreign commerce, and in cases governed by
14 clause (i) in which the products are sold
15 under circumstances such that the gross
16 proceeds of sale are not indicative of the
17 true value of the products, the value of the
18 products constituting the basis for
19 assessment shall correspond as nearly as
20 possible to the gross proceeds of sales for
21 delivery outside the State, adjusted as
22 provided in clause (i), or if sufficient

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (3) Tax upon contractors.

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

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

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

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

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

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- 1 (i) The gross income exempted shall constitute
2 reimbursement of costs incurred for
3 materials, plant, or equipment purchased
4 from a taxpayer licensed under this chapter,
5 not exceeding the gross proceeds of sale of
6 the taxpayer on account of the transaction;
7 and
- 8 (ii) The taxpayer making the sale shall have
9 certified to the department that the
10 taxpayer is taxable with respect to the
11 gross proceeds of the sale, and that the
12 taxpayer elects to have the tax on gross
13 income computed the same as upon a sale to
14 the state government.
- 15 (D) A person who, as a business or as a part of a
16 business in which the person is engaged, erects,
17 constructs, or improves any building or
18 structure, of any kind or description, or makes,
19 constructs, or improves any road, street,
20 sidewalk, sewer, or water system, or other
21 improvements on land held by the person (whether
22 held as a leasehold, fee simple, or otherwise),

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

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

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

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

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

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

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

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

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

10 (6) Tax on service business.

11 (A) Upon every person engaging or continuing within
12 the State in any service business or calling
13 including professional services not otherwise
14 specifically taxed under this chapter, there is
15 likewise hereby levied and shall be assessed and
16 collected a tax equal to four per cent of the
17 gross income of the business, and in the case of
18 a wholesaler under section 237-4(a)(10), the tax
19 shall be equal to one-half of one per cent of the
20 gross income of the business. Notwithstanding
21 the foregoing, a wholesaler under section 237-
22 4(a)(10) shall be subject to section 237-13.3.

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

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

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

17 (C) Where any person is engaged in the business of
18 selling interstate or foreign common carrier
19 telecommunication services within and without the
20 State, other than as a home service provider, the
21 tax shall be imposed on that portion of gross
22 income received by a person from service which is

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

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

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

- 17 (i) Gross receipts from mobile
18 telecommunications services provided to a
19 customer with a place of primary use outside
20 this State;

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

11 For the purposes of this paragraph, "charges for

12 mobile telecommunications services", "customer",

13 "home service provider", "mobile

14 telecommunications services", "place of primary

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

16 as in section 239-22.

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

18 as a licensed producer pursuant to chapter 431, there

19 is hereby levied and shall be assessed and collected a

20 tax equal to [~~0.15~~] four per cent of the commissions

21 due to that activity.

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

20 (9) Tax on other business. Upon every person engaging or
21 continuing within the State in any business, trade,
22 activity, occupation, or calling not included in the

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

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

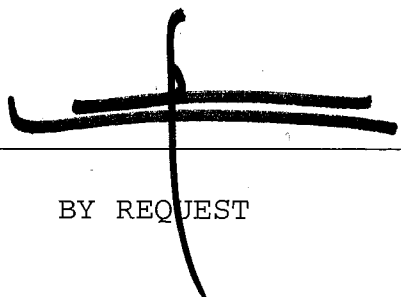
13 SECTION 4. This Act shall take effect upon its approval
14 and apply to gross income or gross proceeds received on or after
15 the date this Act takes effect.

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INTRODUCED BY:


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BY REQUEST

Report Title:

General Excise Tax; Insurance Producers

Description:

Adjusts the rate of the general excise tax assessed on insurance commissions by making it equivalent to the tax rate paid by other commission agent counterparts.

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO GENERAL EXCISE TAX ON INSURANCE PRODUCERS.

PURPOSE: To provide parity in the general excise taxation of commission income.

MEANS: Amend section 237-13(7), Hawaii Revised Statutes.

JUSTIFICATION: Currently, there is only one industry that enjoys the lowest general excise tax rate on commissions earned from selling goods or services. This industry is the insurance sales industry, which enjoys a general excise tax rate of 0.15 percent—more than twenty six-times lower than the ordinary four percent rate on other commission income. Commission-earning counterparts in other industries include stockbrokers and real estate brokers, who earn commission income on the proceeds from sales, but pay general excise tax at the rate of four percent. This disparity in the taxation of commission salespersons is unwarranted, especially during the current budget crisis.

The purpose of this measure is to provide fairness in the assessment of the general excise tax on those that earn proceeds in the form of commissions by adjusting the general excise tax on insurance producers.

Impact on the public: Insurance producers subject to the general excise tax, which does not include insurance salespersons who are considered employees, will be subject to the general excise tax on their commission income at the rate of four percent.

Impact on the department and other agencies: The Department of Taxation will be responsible for administering the general

excise tax adjustment contained in this measure.

GENERAL FUND: Revenue gain of \$20,600,000 per year.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: TAX-100.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval and applying to gross income or gross proceeds received on or after its effective date.