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# A BILL FOR AN ACT

RELATING TO INTRA-STATE AVIATION.

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

1           SECTION 1. The legislature finds that a healthy  
2 interisland airline industry is vital to the state's economy.  
3 Hawaii's interisland airlines continue to face severe financial  
4 challenges.

5           Sales of fuel sold from a foreign-trade zone for use by  
6 airlines traveling out of the state are exempt from general  
7 excise and use taxes. However, interisland flights are not  
8 exempt. To the extent that the Hawaii general excise and use  
9 taxes are being applied to interisland flights, the Federal  
10 Aviation Act, which includes interisland flights in the  
11 definition of "interstate air transportation," is being  
12 violated.

13           The legislature finds that exempting common carriers from  
14 the general excise and use taxes for sales of fuel from a  
15 foreign-trade zone for interisland flights would level the  
16 playing field and create a fairer market for all airlines.

17           The purpose of this Act is to exempt common carriers from  
18 the general excise and use taxes for fuel sold from a foreign-



1 trade zone to common carriers for use in interisland air  
2 transportation.

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

6 "§237- Aviation fuel for air transportation. This  
7 chapter shall not apply to amounts received from the sale of  
8 aviation fuel, as defined in section 243-1, categorized as  
9 privileged foreign merchandise, non-privileged foreign  
10 merchandise, domestic merchandise, or zone-restricted  
11 merchandise that is admitted into a foreign-trade zone and  
12 purchased by a common carrier for consumption or use in air  
13 transportation between two points in the state."

14 SECTION 3. Section 238-1, Hawaii Revised Statutes, is  
15 amended by amending the definition of "use" to read as follows:

16 ""Use" (and any nounal, verbal, adjectival, adverbial, and  
17 other equivalent form of the term) herein used interchangeably  
18 means any use, whether the use is of such nature as to cause the  
19 property, services, or contracting to be appreciably consumed or  
20 not, or the keeping of the property or services for such use or  
21 for sale, the exercise of any right or power over tangible or  
22 intangible personal property incident to the ownership of that



1 property, and shall include control over tangible or intangible  
2 property by a seller who is licensed or who should be licensed  
3 under chapter 237, who directs the importation of the property  
4 into the State for sale and delivery to a purchaser in the  
5 [~~State,~~] state, liability and free on board (FOB) to the  
6 contrary notwithstanding, regardless of where title passes, but  
7 the term "use" shall not include:

8 (1) Temporary use of property, not of a perishable or  
9 quickly consumable nature, where the property is  
10 imported into the [~~State~~] state for temporary use (not  
11 sale) therein by the person importing the same and is  
12 not intended to be, and is not, kept permanently in  
13 the [~~State,~~] state. For example, without limiting the  
14 generality of the foregoing language:

15 (A) In the case of a contractor importing permanent  
16 equipment for the performance of a construction  
17 contract, with intent to remove, and who does  
18 remove, the equipment out of the [~~State~~] state  
19 upon completing the contract;

20 (B) In the case of moving picture films imported for  
21 use in theaters in the [~~State~~] state with intent  
22 or under contract to transport the same out of



1           the [~~State~~] state after completion of such use;  
2           and

3           (C) In the case of a transient visitor importing an  
4           automobile or other belongings into the [~~State~~]  
5           state to be used by the transient visitor while  
6           therein but which are to be used and are removed  
7           upon the transient visitor's departure from the  
8           [~~State~~] state;

9           (2) Use by the taxpayer of property acquired by the  
10          taxpayer solely by way of gift;

11          (3) Use which is limited to the receipt of articles and  
12          the return thereof, to the person from whom acquired,  
13          immediately or within a reasonable time either after  
14          temporary trial or without trial;

15          (4) Use of goods imported into the [~~State~~] state by the  
16          owner of a vessel or vessels engaged in interstate or  
17          foreign commerce and held for and used only as ship  
18          stores for the vessels;

19          (5) The use or keeping for use of household goods,  
20          personal effects, and private automobiles imported  
21          into the [~~State~~] state for nonbusiness use by a person  
22          who:



- 1 (A) Acquired them in another state, territory,
- 2 district, or country;
- 3 (B) At the time of the acquisition was a bona fide
- 4 resident of another state, territory, district,
- 5 or country;
- 6 (C) Acquired the property for use outside the
- 7 [~~State~~] state; and
- 8 (D) Made actual and substantial use thereof outside
- 9 this [~~State~~] state;

10 provided that as to an article acquired less than  
11 three months prior to the time of its importation into  
12 the [~~State~~] state it shall be presumed, until and  
13 unless clearly proved to the contrary, that it was  
14 acquired for use in the [~~State~~] state and that its use  
15 outside the [~~State~~] state was not actual and  
16 substantial;

- 17 (6) The leasing or renting of any aircraft or the keeping
- 18 of any aircraft solely for leasing or renting to
- 19 lessees or renters using the aircraft for commercial
- 20 transportation of passengers and goods or the
- 21 acquisition or importation of any such aircraft or
- 22 aircraft engines by any lessee or renter engaged in



1 interstate air transportation. For purposes of this  
2 paragraph, "leasing" includes all forms of lease,  
3 regardless of whether the lease is an operating lease  
4 or financing lease. The definition of "interstate air  
5 transportation" is the same as in [~~49 U.S.C. 40102;~~]  
6 Title 49 United States Code section 40102;

7 (7) The use of oceangoing vehicles for passenger or  
8 passenger and goods transportation from one point to  
9 another within the [~~State~~] state as a public utility  
10 as defined in chapter 269;

11 (8) The use of material, parts, or tools imported or  
12 purchased by a person licensed under chapter 237 which  
13 are used for aircraft service and maintenance, or the  
14 construction of an aircraft service and maintenance  
15 facility as those terms are defined in section  
16 237-24.9;

17 (9) The use of services or contracting imported for resale  
18 where the contracting or services are for resale,  
19 consumption, or use outside the [~~State~~] state pursuant  
20 to section 237-29.53(a);

21 (10) The use of contracting imported or purchased by a  
22 contractor as defined in section 237-6 who is:



- 1 (A) Licensed under chapter 237;
- 2 (B) Engaged in business as a contractor; and
- 3 (C) Subject to the tax imposed under section 238-2.3;
- 4 [~~and~~]

5 (11) The use of property, services, or contracting imported  
6 by foreign diplomats and consular officials who are  
7 holding cards issued or authorized by the United  
8 States Department of State granting them an exemption  
9 from state taxes~~[and]~~; and

10 (12) The use of aviation fuel, as defined in section 243-1,  
11 categorized as privileged foreign merchandise, non-  
12 privileged foreign merchandise, domestic merchandise,  
13 or zone-restricted merchandise that is admitted into a  
14 foreign-trade zone and is used by a common carrier for  
15 consumption or use in air transportation between two  
16 points in the state.

17 With regard to purchases made and distributed under the  
18 authority of chapter 421, a cooperative association shall be  
19 deemed the user thereof."

20 SECTION 4. This Act shall not be construed to imply that  
21 any law prior to the effective date of this Act is inconsistent  
22 with this Act.



1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2009.

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INTRODUCED BY:

*Joseph M. Sisti*  
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JAN 22 2009





**Report Title:**

Taxes; Intrastate Aviation; Foreign Trade Zone; Exemption

**Description:**

Exempts the general excise and use taxes on fuel sold from a foreign-trade zone to common carriers for use in interisland air transportation.

