
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 **PART I**

2 SECTION 1. The purpose of this Act is to address the
3 \$1,200,000,000 revenue shortfall that the State of Hawaii faces
4 for the fiscal year 2010 and fiscal year 2011 fiscal biennium.

5 During the last legislative session, the state legislature
6 reduced government spending by over \$1,000,000,000 in general
7 fund budget cuts. It reduced tax credits or imposed new taxes
8 in the amount of over \$550,000,000, added \$115,000,000 in
9 federal stimulus funds and made over \$150,000,000 worth of
10 transfers from special funds in order to tackle the original
11 \$2,100,000,000 revenue shortfall.

12 However, the range of alternative solutions is severely
13 limited during this year's session. With furlough Fridays in
14 Hawaii's public schools criticized both nationally and
15 internationally, and further public outcry over cutbacks to
16 human services and social services programs, delayed payments to
17 QUEST and other health care providers, or the loss of

18 critically-needed agriculture inspectors, the legislature would



1 be hard-pressed to reduce government spending by another
2 \$1,000,000,000 in general fund cuts.

3 As such, among the available options remaining is that
4 which is proposed in this measure: a temporary increase in the
5 State's four per cent general excise tax for a limited period
6 for the specific purposes of maintaining critical state
7 services, preserving existing jobs within the private and
8 nonprofit sectors, and collectively pursuing the State's
9 economic recovery.

10 SECTION 2. Section 235-110.7, Hawaii Revised Statutes, is
11 amended by amending as follows:

12 1. By amending subsection (a) to read:

13 "(a) There shall be allowed to each taxpayer subject to
14 the tax imposed by this chapter a capital goods excise tax
15 credit which shall be deductible from the taxpayer's net income
16 tax liability, if any, imposed by this chapter for the taxable
17 year in which the credit is properly claimed.

18 The amount of the tax credit shall be determined by the
19 application of the following rates against the cost of the
20 eligible depreciable tangible personal property used by the
21 taxpayer in a trade or business and placed in service within



1 Hawaii after December 31, 1987. For calendar years beginning
2 after:

3 (1) December 31, 1987, the applicable rate shall be three
4 per cent;

5 (2) December 31, 1988, the applicable rate shall be four
6 per cent;

7 (3) December 31, 2008, the applicable rate shall be zero
8 per cent; [~~and~~]

9 (4) December 31, 2009, and thereafter, the applicable rate
10 shall be four per cent[~~-~~]; and

11 (5) October 1, 2010, and thereafter, the applicable rate
12 shall be five per cent.

13 For taxpayers with fiscal taxable years, the applicable
14 rate shall be the rate for the calendar year in which the
15 eligible depreciable tangible personal property used in the
16 trade or business is placed in service within Hawaii.

17 In the case of a partnership, S corporation, estate, or
18 trust, the tax credit allowable is for eligible depreciable
19 tangible personal property which is placed in service by the
20 entity. The cost upon which the tax credit is computed shall be
21 determined at the entity level. Distribution and share of
22 credit shall be determined by rules.



1 In the case of eligible depreciable tangible personal
2 property for which a credit for sales or use taxes paid to
3 another state is allowable under section 238-3(i), the amount of
4 the tax credit allowed under this section shall not exceed the
5 amount of use tax actually paid under chapter 238 relating to
6 such tangible personal property.

7 If a deduction is taken under section 179 (with respect to
8 election to expense certain depreciable business assets) of the
9 Internal Revenue Code of 1954, as amended, no tax credit shall
10 be allowed for that portion of the cost of property for which
11 the deduction was taken."

12 2. By amending the definition of "tangible personal
13 property" to read:

14 "Tangible personal property" means tangible personal
15 property which is placed in service within Hawaii after
16 December 31, 1987, and the purchase or importation of which
17 resulted in a transaction which was subject to the imposition
18 and payment of tax at the rate of [~~four~~] five per cent under
19 chapter 237 or 238. "Tangible personal property" does not
20 include tangible personal property which is an integral part of
21 a building or structure or tangible personal property used in a
22 foreign trade zone, as defined under chapter 212."



1 SECTION 3. 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



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



1 commerce, whether the products are then sold or
2 not. The department shall determine the basis
3 for assessment, as provided by this paragraph, as
4 follows:

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

15 (ii) If the products have not been sold at the
16 time of their entry into interstate or
17 foreign commerce, and in cases governed by
18 clause (i) in which the products are sold
19 under circumstances such that the gross
20 proceeds of sale are not indicative of the
21 true value of the products, the value of the
22 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) Tax on business of selling tangible personal property;
6 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), there is likewise hereby levied, and
12 shall be assessed and collected, a tax equivalent
13 to [~~four~~] five per cent of the gross proceeds of
14 sales of the business; provided that insofar as
15 the sale of tangible personal property is a
16 wholesale sale under section [237-4(a)(8)], the
17 sale shall be subject to section 237-13.3. Upon
18 every person engaging or continuing within this
19 State in the business of a producer, the tax
20 shall be equal to one-half of one per cent of the
21 gross proceeds of sales of the business, or the
22 value of the products, for sale, if sold for



1 delivery outside the State or shipped or
2 transported out of the State, and the value of
3 the products shall be determined in the same
4 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 in
7 interstate and foreign commerce shall constitute
8 a part of the measure of the tax imposed on
9 persons in the business of selling tangible
10 personal property, to the extent, under the
11 conditions, and in accordance with the provisions
12 of the Constitution of the United States and the
13 Acts of the Congress of the United States which
14 may be now in force or may be hereafter adopted,
15 and whenever there occurs in the State an
16 activity to which, under the Constitution and
17 Acts of Congress, there may be attributed gross
18 proceeds of sales, the gross proceeds shall be so
19 attributed.

20 (C) No manufacturer or producer, engaged in such
21 business in the State and selling the
22 manufacturer's or producer's products for



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

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



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

18 (E) A taxpayer selling to a federal cost-plus
19 contractor may make the election provided for by
20 paragraph (3)(C), and in that case the tax shall
21 be computed pursuant to the election,



1 notwithstanding this paragraph or paragraph (1)
2 to the contrary.

3 (F) The department, by rule, may require that a
4 seller take from the purchaser of tangible
5 personal property a certificate, in a form
6 prescribed by the department, certifying that the
7 sale is a sale at wholesale; provided that:

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

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

17 (3) Tax upon contractors.

18 (A) Upon every person engaging or continuing within
19 the State in the business of contracting, the tax
20 shall be equal to [~~four~~] five per cent of the
21 gross income of the business.



1 (B) In computing the tax levied under this paragraph,
2 there shall be deducted from the gross income of
3 the taxpayer so much thereof as has been included
4 in the measure of the tax levied under
5 subparagraph (A), on:

6 (i) Another taxpayer who is a contractor, as
7 defined in section 237-6;

8 (ii) A specialty contractor, duly licensed by the
9 department of commerce and consumer affairs
10 pursuant to section 444-9, in respect of the
11 specialty contractor's business; or

12 (iii) A specialty contractor who is not licensed
13 by the department of commerce and consumer
14 affairs pursuant to section 444-9, but who
15 performs contracting activities on federal
16 military installations and nowhere else in
17 this State;

18 provided that any person claiming a deduction
19 under this paragraph shall be required to show in
20 the person's return the name and general excise
21 number of the person paying the tax on the amount
22 deducted by the person.



1 (C) In computing the tax levied under this paragraph
2 against any federal cost-plus contractor, there
3 shall be excluded from the gross income of the
4 contractor so much thereof as fulfills the
5 following requirements:

6 (i) The gross income exempted shall constitute
7 reimbursement of costs incurred for
8 materials, plant, or equipment purchased
9 from a taxpayer licensed under this chapter,
10 not exceeding the gross proceeds of sale of
11 the taxpayer on account of the transaction;
12 and

13 (ii) The taxpayer making the sale shall have
14 certified to the department that the
15 taxpayer is taxable with respect to the
16 gross proceeds of the sale, and that the
17 taxpayer elects to have the tax on gross
18 income computed the same as upon a sale to
19 the state government.

20 (D) A person who, as a business or as a part of a
21 business in which the person is engaged, erects,
22 constructs, or improves any building or



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



1 improving of the road, street, sidewalk, sewer,
2 or water system, or other improvements. The
3 measure of tax in respect of the improvements
4 shall not exceed the amount which would have been
5 taxable had the work been performed by another,
6 subject as in other cases to the deductions
7 allowed by subparagraph (B). Upon the election
8 of the taxpayer, this paragraph may be applied
9 notwithstanding that the improvements were not
10 made by the taxpayer, or were not made as a
11 business or as a part of a business, or were made
12 with the intention of holding the same. However,
13 this paragraph shall not apply in respect of any
14 proceeds that constitute or are in the nature of
15 rent; all such gross income shall be taxable
16 under paragraph (9); provided that insofar as the
17 business of renting or leasing real property
18 under a lease is taxed under section 237-16.5,
19 the tax shall be levied by section 237-16.5.

- 20 (4) Tax upon theaters, amusements, radio broadcasting
21 stations, etc.



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

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

17 (i) Any licensed seller who furnishes a
18 certificate shall be obligated to pay to the
19 person rendering the amusement, upon demand,
20 the amount of additional tax that is imposed
21 upon the seller whenever the sale is not at
22 wholesale; and



1 (ii) The absence of a certificate in itself shall
2 give rise to the presumption that the sale
3 is not at wholesale unless the person
4 rendering the sale is exclusively rendering
5 the amusement at wholesale.

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

15 (6) Tax on service business.
16 (A) Upon every person engaging or continuing within
17 the State in any service business or calling
18 including professional services not otherwise
19 specifically taxed under this chapter, there is
20 likewise hereby levied and shall be assessed and
21 collected a tax equal to [~~four~~] five per cent of
22 the gross income of the business, and in the case



1 of a wholesaler under section 237-4(a)(10), the
2 tax shall be equal to one-half of one per cent of
3 the gross income of the business.

4 Notwithstanding the foregoing, a wholesaler under
5 section 237-4(a)(10) shall be subject to section
6 237-13.3.

7 (B) The department may require that the person
8 rendering a service at wholesale take from the
9 licensed seller 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 licensed seller who furnishes a
13 certificate shall be obligated to pay to the
14 person rendering the service, upon demand,
15 the amount of additional tax that is imposed
16 upon the seller whenever the sale is not at
17 wholesale; and

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



- 1 (C) Where any person is engaged in the business of
2 selling interstate or foreign common carrier
3 telecommunication services within and without the
4 State, other than as a home service provider, the
5 tax shall be imposed on that portion of gross
6 income received by a person from service which is
7 originated or terminated in this State and is
8 charged to a telephone number, customer, or
9 account in this State notwithstanding any other
10 state law (except for the exemption under section
11 237-23(a)(1)) to the contrary. If, under the
12 Constitution and laws of the United States, the
13 entire gross income as determined under this
14 paragraph of a business selling interstate or
15 foreign common carrier telecommunication services
16 cannot be included in the measure of the tax, the
17 gross income shall be apportioned as provided in
18 section 237-21; provided that the apportionment
19 factor and formula shall be the same for all
20 persons providing those services in the State.
- 21 (D) Where any person is engaged in the business of a
22 home service provider, the tax shall be imposed



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



1 (i) Gross receipts from mobile
2 telecommunications services provided to a
3 customer with a place of primary use outside
4 this State;

5 (ii) Gross receipts from mobile
6 telecommunications services that are subject
7 to the tax imposed by chapter 239;

8 (iii) Gross receipts from mobile
9 telecommunications services taxed under
10 section 237-13.8; and

11 (iv) Gross receipts of a home service provider
12 acting as a serving carrier providing mobile
13 telecommunications services to another home
14 service provider's customer.

15 For the purposes of this paragraph, "charges for
16 mobile telecommunications services", "customer",
17 "home service provider", "mobile
18 telecommunications services", "place of primary
19 use", and "serving carrier" have the same meaning
20 as in section 239-22.

21 (7) Tax on insurance producers. Upon every person engaged
22 as a licensed producer pursuant to chapter 431, there



1 is hereby levied and shall be assessed and collected a
2 tax equal to 0.15 per cent of the commissions due to
3 that activity.

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



1 (9) Tax on other business. Upon every person engaging or
2 continuing within the State in any business, trade,
3 activity, occupation, or calling not included in the
4 preceding paragraphs or any other provisions of this
5 chapter, there is likewise hereby levied and shall be
6 assessed and collected, a tax equal to [~~four~~] five per
7 cent of the gross income thereof. In addition, the
8 rate prescribed by this paragraph shall apply to a
9 business taxable under one or more of the preceding
10 paragraphs or other provisions of this chapter, as to
11 any gross income thereof not taxed thereunder as gross
12 income or gross proceeds of sales or by taxing an
13 equivalent value of products, unless specifically
14 exempted."

15 SECTION 4. Section 237-15, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§237-15 Technicians.** When technicians supply dentists or
18 physicians with dentures, orthodontic devices, braces, and
19 similar items which have been prepared by the technician in
20 accordance with specifications furnished by the dentist or
21 physician, and such items are to be used by the dentist or
22 physician in the dentist's or physician's professional practice



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

7 SECTION 5. Section 237-16.5, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsection (a) to read:

10 "(a) This section relates to the leasing of real property
11 by a lessor to a lessee. There is hereby levied, and shall be
12 assessed and collected annually, a privilege tax against persons
13 engaging or continuing within the State in the business of
14 leasing real property to another, equal to [~~four~~] five per cent
15 of the gross proceeds or gross income received or derived from
16 the leasing; provided that where real property is subleased by a
17 lessee to a sublessee, the lessee, as provided in this section,
18 shall be allowed a deduction from the amount of gross proceeds
19 or gross income received from its sublease of the real property.
20 The deduction shall be in the amount allowed under this section.

21 All deductions under this section and the name and general
22 excise tax number of the lessee's lessor shall be reported on



1 the general excise tax return. Any deduction allowed under this
2 section shall only be allowed with respect to leases and
3 subleases in writing and relating to the same real property."

4 2. By amending subsection (f) to read:

5 "(f) This section shall not cause the tax upon a lessor,
6 with respect to any item of the lessor's gross proceeds or gross
7 income, to exceed [~~four~~] five per cent."

8 SECTION 6. Section 237-18, Hawaii Revised Statutes, is
9 amended by amending subsection (f) to read as follows:

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

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



1 are subject to a [~~four~~] five per cent tax under this chapter or
2 chapter 239."

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

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

14 (1) If the importer or purchaser is licensed under chapter
15 237 and is:

16 (A) A wholesaler or jobber importing or purchasing
17 for purposes of sale or resale; or

18 (B) A manufacturer importing or purchasing material
19 or commodities which are to be incorporated by
20 the manufacturer into a finished or saleable
21 product (including the container or package in
22 which the product is contained) wherein it will



1 remain in such form as to be perceptible to the
2 senses, and which finished or saleable product is
3 to be sold in such manner as to result in a
4 further tax on the activity of the manufacturer
5 as the manufacturer or as a wholesaler, and not
6 as a retailer,

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

- 21 (2) If the importer or purchaser is licensed under chapter
22 237 and is:



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



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

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

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



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

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

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

10 SECTION 8. Section 238-2.3, Hawaii Revised Statutes, is
11 amended to read as follows:

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



- 1 (1) If the importer or purchaser is licensed under chapter
2 237 and is:
- 3 (A) Engaged in a service business or calling in which
4 the imported or purchased services or contracting
5 become identifiable elements, excluding overhead,
6 of the services rendered by the importer or
7 purchaser, and the gross income of the importer
8 or purchaser is subject to the tax imposed under
9 chapter 237 on services at the rate of one-half
10 of one per cent or the rate of tax imposed under
11 section 237-13.3; or
- 12 (B) A manufacturer importing or purchasing services
13 or contracting that become identifiable elements,
14 excluding overhead, of a finished or saleable
15 product (including the container or package in
16 which the product is contained) and the finished
17 or saleable product is to be sold in a manner
18 that results in a further tax on the manufacturer
19 as a wholesaler, and not a retailer;
- 20 there shall be no tax imposed on the value of the
21 imported or purchased services or contracting;
22 provided that if the manufacturer is also engaged in



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

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

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

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



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

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

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

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



1 SECTION 9. Section 239-5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) There shall be levied and assessed upon each public
4 utility, except airlines, motor carriers, common carriers by
5 water, and contract carriers taxed by section 239-6, a tax of
6 such rate per cent of its gross income each year from its public
7 utility business as shall be determined in the manner
8 hereinafter provided. The tax imposed by this section is in
9 lieu of all taxes other than those below set out, and is a means
10 of taxing the personal property of the public utility, tangible
11 and intangible, including going concern value. In addition to
12 the tax imposed by this chapter there also are imposed income
13 taxes, the specific taxes imposed by chapter 249, the fees
14 prescribed by chapter 269, any tax specifically imposed by the
15 terms of the public utility's franchise or under chapter 240,
16 the use or consumption tax imposed by chapter 238, and
17 employment taxes.

18 The rate of the tax upon the gross income of the public
19 utility shall be [~~four~~] five per cent; provided that if:

20 (1) A county provides by ordinance for a real property tax
21 exemption for real property used by a public utility
22 in its public utility business and owned by the public



1 utility (or leased to it by a lease under which the
2 public utility is required to pay the taxes upon the
3 property), and

4 (2) The county has not denied the exemption to the public
5 utility, but excluding a denial based upon a dispute
6 as to the ownership, lease, or use of a specific
7 parcel of real property,

8 then there shall be levied and assessed a tax in excess of the
9 [~~four~~] five per cent rate determined in the manner hereinafter
10 provided upon the gross income allocable to such county. The
11 revenues generated from the tax in excess of the [~~four~~] five per
12 cent rate hereinbefore established shall be paid by the public
13 utility directly to such county based upon the proportion of
14 gross income from its public utility business attributable to
15 such county, based upon the allocation made in the public
16 utility's filings with the State of Hawaii; provided that if the
17 gross income from the public utility business attributable to
18 such county is not so allocated in the public utility's State
19 filings, then the gross income from the public utility business
20 shall be equitably allocated to each county. The relative
21 number of access lines in each county shall be deemed an



1 acceptable basis of equitable allocation for telecommunication
2 companies.

3 The rate of the tax in excess of the [~~four~~] five per cent
4 rate hereinbefore established upon the gross income from the
5 public utility business shall be determined as follows:

6 If the ratio of the net income of the company to its gross
7 income is fifteen per cent or less, the rate of tax in excess of
8 the [~~four~~] five per cent rate on gross income shall be 1.885 per
9 cent; for all companies having net income in excess of fifteen
10 per cent of the gross, the rate of the tax on gross income shall
11 increase continuously in proportion to the increase in ratio of
12 net income to gross, at such rate that for each increase of one
13 per cent in the ratio of net income to gross, there shall be an
14 increase of .2675 per cent in the rate of the tax.

15 The following formula may be used to determine the rate, in
16 which formula the term "R" is the ratio of net income to gross
17 income, and "X" is the required rate of the tax on gross income
18 for the utility in question:

19
$$X = (26.75R - 2.1275)\%;$$

20 provided that in no case governed by the formula shall "X" be
21 less than 1.885 per cent or more than 4.2 per cent.



1 However, if the gross income is apportioned under section
2 239-8(b) or (c), there shall be no adjustment of the rate of tax
3 on the amount of gross income so apportioned to the State on
4 account of the ratio of the net income to the gross income being
5 in excess of fifteen per cent, and it shall be assumed in such
6 case that the ratio is fifteen per cent or less."

7 SECTION 10. Section 239-6, Hawaii Revised Statutes, is
8 amended by amending subsections (a) and (b) to read as follows:

9 "(a) There shall be levied and assessed upon each airline
10 a tax of [~~four~~] five per cent of its gross income each year from
11 the airline business; provided that if an airline adopts a rate
12 schedule for students in grade twelve or below traveling in
13 school groups providing such students at reasonable hours a rate
14 less than one-half of the regular adult fare, the tax shall be
15 three per cent of its gross income each year from the airline
16 business.

17 (b) There shall be levied and assessed upon each motor
18 carrier, each common carrier by water, and upon each contract
19 carrier other than a motor carrier, a tax of [~~four~~] five per
20 cent of its gross income each year from the motor carrier or
21 contract carrier business."



1 SECTION 11. Section 239-7, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) The tax imposed by this chapter shall be assessed
5 against each public service company in the manner provided by
6 this chapter, and shall be paid to the department of taxation at
7 the times and in the manner (in installments or otherwise)
8 provided by this section, except as provided in section 239-
9 5(a), where there is levied and assessed a tax in excess of
10 [~~four~~] five per cent upon gross income, the revenues generated
11 from the tax in excess of the [~~four~~] five per cent rate shall be
12 paid to the respective county director of finance at the times
13 and in the manner (in installments or otherwise) provided by
14 this section."

15 2. By amending subsection (c) to read:

16 "(c) The department shall prescribe the forms in which
17 returns shall be made so as to reflect clearly the liability of
18 each public service company subject to this tax, and may provide
19 in the forms for such additional information as it may deem
20 necessary. All provisions of the laws, not inapplicable and not
21 inconsistent with this chapter, relating to returns for income
22 tax purposes, the assessment (including additional assessments),



1 collection, and payment (in installments or otherwise) of income
2 taxes and the powers and duties of the department and the state
3 director of finance in connection therewith, and relating to
4 appeals from or other adjustments of such assessments,
5 limitation periods for assessments, enforcement of attendance of
6 witnesses, and the production of evidence, examination of
7 witnesses and records, the effect of assessments, tax books, and
8 lists and other official tax records as evidence, delinquent
9 dates and penalties, and the rights and liabilities (civil and
10 criminal) of taxpayers and other persons in connection with any
11 matters dealt with by chapter 235, are made applicable (1) to
12 the taxes and the assessment, payment, and collection thereof,
13 provided by this chapter, and (2) to the department and the
14 state director of finance in connection with the taxes and the
15 assessment, payment, or enforcement of payment and collection
16 thereof, and (3) to taxpayers and other persons affected by this
17 chapter, as the case may be. The provisions of chapter 235
18 regarding the limitation period for assessment and refunds shall
19 run from the filing of the return for the taxable year, or the
20 due date prescribed for the filing of the return, whichever is
21 later. With respect to payments due to a county of the revenues
22 generated from the tax in excess of the [~~four~~] five per cent



1 rate imposed under section 239-5(a), a county director of
2 finance shall be afforded such rights and procedures of the
3 department in the enforcement of payment and collection of the
4 taxes assessed and levied under this chapter."

5 SECTION 12. Section 239-9, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) First year of doing business. The measure of the tax
8 for the year in which the company begins business is an estimate
9 of the gross income of the public service company for that year
10 or for the part of that year in which it is in business.

11 The tax thereon for the year in which the company begins
12 business shall be at the following rate:

13 (1) If subsection (a)(2) applies, at the rate of [~~four~~
14 five per cent, or

15 (2) If subsection (a)(1) applies but the company though in
16 business at the commencement of the calendar year was
17 not in business during any part of the preceding year,
18 the tax shall be at the rate provided by sections 239-
19 5 and 239-6, except that there shall be no adjustment
20 of the rate of tax on account of the ratio of the net
21 income to the gross income being in excess of fifteen
22 per cent and it shall be assumed for purposes of this



1 subsection and subsection (e) that the ratio is
2 fifteen per cent or less.

3 The estimate shall be made and the tax returned on or
4 before the twentieth day of the third month after the month in
5 which the company begins business and shall be subject to
6 adjustment by the filing of an amended return as provided in
7 subsection (e). Payment of the tax shall accompany the return
8 unless time for payment is extended by the director of taxation.
9 The extension may be granted by the director in order to provide
10 for payment of the tax in installments during the remainder of
11 the taxable year."

12 SECTION 13. Section 239-10, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§239-10 Disposition of revenues.** All taxes collected
15 under this chapter shall be state realizations; provided that
16 where a tax in excess of the [~~four~~] five per cent rate upon
17 gross income is levied and assessed under section 239-5(a), such
18 tax revenues to be paid to the county shall be realizations of
19 such county."

20 **PART II**



1 SECTION 14. The purpose of this part is to provide a
2 refundable state earned income tax credit equal to twenty per
3 cent of the federal earned income tax credit.

4 SECTION 15. Chapter 235, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§235- Earned income tax credit. (a) Each resident
8 individual taxpayer who:

9 (1) Files an individual income tax return for a taxable
10 year; and

11 (2) Is not claimed or is not eligible to be claimed as a
12 dependent by another taxpayer for income tax purposes;

13 may claim a refundable earned income tax credit. The tax
14 credit, for the appropriate taxable year, shall be equal to
15 twenty per cent of the earned income tax credit allowed under
16 section 32 (with respect to earned income) of the Internal
17 Revenue Code and reported as an earned income tax credit on the
18 resident individual's federal income tax return.

19 (b) In the case of a part-year resident, the tax credit
20 shall equal the amount of the tax credit calculated in
21 subsection (a) multiplied by the ratio of adjusted gross income
22 attributed to this State to the entire adjusted gross income



1 computed without regard to source in the State pursuant to
2 section 235-5.

3 (c) For purposes of claiming the tax credit allowed by
4 this section, a resident individual taxpayer shall use the same
5 filing status on the taxpayer's Hawaii tax return as is used on
6 the taxpayer's federal return for the taxable year. In the case
7 of a husband and wife filing separately, the credit allowed may
8 be applied against the income tax liability of either, or
9 divided between them, as elected by the husband and wife.

10 (d) The tax credit shall be reduced by other tax credits
11 allowed under this chapter. If the tax credit under this
12 section exceeds the taxpayer's income tax liability, the excess
13 of tax credits over liability shall be refunded to the taxpayer;
14 provided that no refund or payment on account of the tax credits
15 allowed by this section shall be made for amounts less than \$1.

16 (e) All claims, including any amended claims for the tax
17 credit under this section, shall be filed on or before the end
18 of the twelfth month following the close of the taxable year for
19 which the tax credit may be claimed. Failure to comply with
20 this subsection shall constitute a waiver of the right to claim
21 the tax credit.

22 (f) The director of taxation:



- 1 (1) Shall prepare any forms that may be necessary to claim
- 2 a tax credit under this section;
- 3 (2) May require proof from the taxpayer for their claim of
- 4 the tax credit;
- 5 (3) Shall alert eligible taxpayers of the tax credit using
- 6 appropriate and available means;
- 7 (4) Shall prepare an annual report to the governor and
- 8 legislature containing the:
- 9 (A) Number of credits granted for the prior calendar
- 10 year;
- 11 (B) Total amount of the credits granted; and
- 12 (C) Average value of the credits granted to taxpayers
- 13 whose earned income falls within various income
- 14 ranges; and
- 15 (5) May adopt rules necessary to effectuate the purposes
- 16 of this section pursuant to chapter 91."

PART III

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

SECTION 17. This Act shall take effect on October 1, 2010; provided that on September 30, 2012, sections two through thirteen shall be repealed and sections 235-110.7, 237-13,



1 237-15, 237-16.5(a) and (f), 237-18(f), 238-2, 238-2.3,
2 239-5(a), 239-6(a), 239-6(b), 239-7(a) and (c), 239-9(c), and
3 239-10, Hawaii Revised Statutes, shall be reenacted in the form
4 in which they read on the day before the effective date of this
5 Act; and provided further that section 15 shall apply to taxable
6 years beginning after December 31, 2010.

7



Report Title:

General Excise, Use, and Public Service Company Taxes; Temporary Increase

Description:

Part I increases the general excise tax, the use tax, and the public service company tax from four to five per cent for the period of October 1, 2010, through September 30, 2012; part II provides a refundable state earned income tax credit equivalent to twenty per cent of the federal earned income tax credit; effective 10/1/10, with tax increases repealed 9/30/12. (SD1)

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

