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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 assess the  
2 general excise tax on certain securities. More specifically,  
3 this Act:

4 (1) Temporarily imposes the general excise tax at a four  
5 per cent rate on the gross income of businesses from  
6 the sale of securities. This provision is repealed on  
7 June 30, 2015; and

8 (2) Repeals the general excise tax exemption for stock and  
9 commodity future exchanges.

10 This Act is not intended to impose the general excise tax  
11 on gross income from the casual sale of securities.

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

15 "§237- Tax on certain securities. (a) Except as  
16 provided under subsection (b), there is hereby levied, and shall  
17 be assessed and collected annually, a privilege tax against a  
18 sole proprietorship, partnership, corporation, or limited



1 liability entity that, as a business or part of a business,  
2 sells securities owned or borrowed by the sole proprietorship,  
3 partnership, corporation, or limited liability entity to another  
4 person. The tax shall be equal to four per cent of the  
5 following: the gross income received from the sale of the  
6 securities less a deduction for any commission paid from the  
7 gross income by the seller to a sales representative that is  
8 taxable under section 237-13(5).

9 (b) Gross income from the casual sale of securities shall  
10 be exempt from the tax under subsection (a). The exemption  
11 shall apply whether the casual sale is made by a person licensed  
12 or unlicensed under this chapter."

13 SECTION 3. Section 237-1, Hawaii Revised Statutes, is  
14 amended as follows:

15 1. By amending the definition of "casual sale" to read:

16 ""Casual sale" means an occasional or isolated sale or  
17 transaction involving:

18 (1) Tangible personal property or securities by a person  
19 who is not required to be licensed under this chapter,  
20 or



1           (2) Tangible personal property or securities [~~which is~~]  
2           that are not ordinarily sold in the business of a  
3           person who is regularly engaged in business."

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

6           "(a) "Gross income" means the gross receipts, cash or  
7 accrued, of the taxpayer received as compensation for personal  
8 services and the gross receipts of the taxpayer derived from  
9 trade, business, commerce, or sales and the value proceeding or  
10 accruing from the sale of tangible personal property, or  
11 service, or both, and all receipts, actual or accrued as  
12 hereinafter provided, by reason of the investment of the capital  
13 of the business engaged in, including interest, discount,  
14 rentals, royalties, fees, or other emoluments however designated  
15 and without any deductions on account of the cost of property  
16 sold, the cost of materials used, labor cost, taxes, royalties,  
17 interest, or discount paid or any other expenses whatsoever.

18 "Gross income" also includes the gross receipts from the sale of  
19 "securities" as defined in section 485A-102.

20           Every taxpayer shall be presumed to be dealing on a cash  
21 basis unless the taxpayer proves to the satisfaction of the  
22 department of taxation that the taxpayer is dealing on an



1 accrual basis and the taxpayer's books are so kept, or unless  
2 the taxpayer employs or is required to employ the accrual basis  
3 for the purposes of the tax imposed by chapter 235 for any  
4 taxable year in which event the taxpayer shall report the  
5 taxpayer's gross income for the purposes of this chapter on the  
6 accrual basis for the same period.

7 "Gross proceeds of sale" means the value actually  
8 proceeding from the sale of tangible personal property without  
9 any deduction on account of the cost of property sold or  
10 expenses of any kind.

11 (b) The words "gross income" and "gross proceeds of sales"  
12 shall not be construed to include: gross receipts [~~from the~~  
13 ~~sale of securities as defined in 15 United States Code section~~  
14 ~~78c or similar laws of jurisdictions outside the United States,~~  
15 ~~contracts for the sale of a commodity for future delivery and~~  
16 ~~other agreements, options, and rights as defined in 7 United~~  
17 ~~States Code section 2 that are permitted to be traded on a board~~  
18 ~~of trade designated by the Commodities Futures Trading~~  
19 ~~Commission under the Commodity Exchange Act, or evidence of~~  
20 ~~indebtedness or, except as otherwise provided,]~~ from the sale of  
21 land in fee simple, improved or unimproved[~~7~~]; dividends as  
22 defined by chapter 235; cash discounts allowed and taken on



1 sales; the proceeds of sale of goods, wares, or merchandise  
2 returned by customers when the sale price is refunded either in  
3 cash or by credit; or the sale price of any article accepted as  
4 part payment on any new article sold, if the full sale price of  
5 the new article is included in the "gross income" or "gross  
6 proceeds of sales"; gross receipts from the sale or transfer of  
7 materials or supplies, interest on loans, or the provision of  
8 engineering, construction, maintenance, or managerial services  
9 by one "member" of an "affiliated public service company group"  
10 to another "member" of the same group as such terms are defined  
11 in section 239-2. Accounts found to be worthless and actually  
12 charged off for income tax purposes may be deducted, at  
13 corresponding periods, from gross proceeds of sale, or gross  
14 income, within this chapter, so far as they reflect taxable  
15 sales made, or gross income earned, after July 1, 1935, but  
16 shall be added to gross proceeds of sale or gross income when  
17 and if afterwards collected."

18 SECTION 5. Section 237-24.5, Hawaii Revised Statutes, is  
19 repealed.

20 [~~§237-24.5 Additional exemptions.~~ (a) In addition to  
21 the amounts exempt under section 237-24, this chapter shall not  
22 apply to amounts received by:



- 1       ~~(1) An exchange from:~~
- 2           ~~(A) Transaction fees charged exchange members by the~~
- 3           ~~exchange for:~~
- 4           ~~(i) The sale or purchase of securities or~~
- 5           ~~products, or both, bought or sold on an~~
- 6           ~~exchange by exchange members for their own~~
- 7           ~~account or an account for which they have~~
- 8           ~~responsibility as an agent, broker, or~~
- 9           ~~fiduciary;~~
- 10          ~~(ii) Order book executions made for purposes of~~
- 11          ~~effecting transactions; and~~
- 12          ~~(iii) Trade processing performed by an exchange in~~
- 13          ~~matching trades, keypunching, record~~
- 14          ~~keeping, post cashiering, and notarization;~~
- 15          ~~(B) Membership dues, fees, charges, assessments, and~~
- 16          ~~finer from individuals or firms, including~~
- 17          ~~charges for firm symbols (member identification),~~
- 18          ~~application processing, registration, initiation,~~
- 19          ~~membership transfers, floor or post privileges,~~
- 20          ~~transaction time extensions, expediting~~
- 21          ~~transactions, crossover trades (trading out of~~
- 22          ~~assigned functions) and rule infractions;~~



- 1           ~~(C) Service fees charged to members including fees~~
- 2           ~~for communications, badges, forms, documents, and~~
- 3           ~~reports;~~
- 4           ~~(D) Listing fees and listing maintenance fees charged~~
- 5           ~~to companies that wish to be listed and have~~
- 6           ~~their securities or products traded on the~~
- 7           ~~exchange; and~~
- 8           ~~(E) Participation in the communication network~~
- 9           ~~consortium operated collectively by United States~~
- 10           ~~exchanges or other markets recognized by the~~
- 11           ~~Securities and Exchange Commission, the~~
- 12           ~~Commodities Futures Trading Commission, or~~
- 13           ~~similar regulatory authorities outside the United~~
- 14           ~~States that provides last sale and quote~~
- 15           ~~securities information to subscribers or that~~
- 16           ~~connects such markets or exchanges for purposes~~
- 17           ~~of data transmission;~~
- 18           ~~(2) Exchange members by reason of executing a securities~~
- 19           ~~or product transaction on an exchange; provided that~~
- 20           ~~this exemption shall apply only to amounts received by~~
- 21           ~~exchange members from brokers or dealers registered~~
- 22           ~~with the Securities and Exchange Commission, from~~



1 ~~futures commission merchants, brokers, or associates~~  
2 ~~registered with the Commodities Futures Trading~~  
3 ~~Commission, or from similar individuals or firms~~  
4 ~~registered with similar regulatory authorities outside~~  
5 ~~the United States; and~~

6 ~~(3) Exchange members as proceeds from the sale of their~~  
7 ~~exchange memberships.~~

8 ~~(b) As used in this section:~~

9 ~~"Exchange" means an exchange or board of trade as defined~~  
10 ~~in 15 United States Code section 78c(a)(1) or in 7 United States~~  
11 ~~Code section 7, respectively, which is subject to regulation by~~  
12 ~~the Securities and Exchange Commission or the Commodities~~  
13 ~~Futures Trading Commission or an organization subject to similar~~  
14 ~~regulation under the laws of a jurisdiction outside the United~~  
15 ~~States.~~

16 ~~"Exchange member" means an individual or firm that is~~  
17 ~~qualified by an exchange as a member and pays membership dues to~~  
18 ~~an exchange in order to trade securities or products on an~~  
19 ~~exchange.~~

20 ~~"Securities" means securities as defined in 15 United~~  
21 ~~States Code section 78c and "products" means contracts of sale~~  
22 ~~of commodities for future delivery, futures contracts, options,~~





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1 ~~calls, puts, and similar rights as defined in 7 United States~~  
2 ~~Code section 2, which securities or products are permitted to be~~  
3 ~~traded on an exchange."}]~~

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

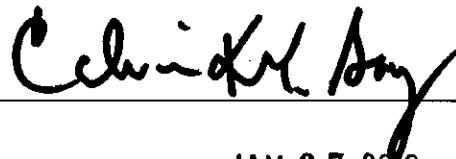
6 SECTION 7. This Act shall take effect on October 1, 2010  
7 and shall be repealed on June 30, 2015; provided that:

8 (1) Sections 237-1 and 237-3(a) and (b), Hawaii Revised  
9 Statutes, shall be reenacted in the form in which they  
10 read on the day before the effective date of this Act;  
11 and

12 (2) Section 237-24.5, Hawaii Revised Statutes, shall not  
13 be reenacted after June 30, 2015.

14

INTRODUCED BY:



JAN 27 2010



**Report Title:**

Securities; General Excise Taxation

**Description:**

Imposes the general excise tax at a 4% rate on the gross income from the sale of securities. Repeals the general excise tax exemption for stock or future exchanges. Takes effect on 10/01/10 and sunsets on 06/30/15, except that the repeal of the exchange exemption shall be permanent.

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

