
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The purpose of this Act is to adopt changes to
2 Hawaii's tax law that will allow Hawaii to participate in the
3 national streamlined sales and use tax agreement. This
4 agreement simplifies state tax systems, removes burdens to
5 interstate commerce that are defined in the United States
6 Supreme Court decision in *Quill Corp. v. North Dakota*, 504 U.S.
7 298 (1992), and "levels the playing field" between local and
8 out-of-state retailers. At its core, the Streamlined Sales Tax
9 Project uses technology to accurately identify tax rates,
10 collect taxes, and remit state tax revenues. Since 2005,
11 out-of-state retailers have voluntarily collected and remitted
12 over \$350,000,000 in taxes to participating states that would
13 have otherwise likely gone uncollected by the states.

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

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

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

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

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

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

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

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

1 (3) Moving the 0.15 per cent tax on insurance producers to
2 a new chapter; and

3 (4) Eliminating the tax on businesses owned by disabled
4 persons.

5 This Act also provides for destination-based sourcing and
6 amnesty.

7 The contents of this Act are updated to reflect the
8 Streamlined Sales Tax Governing Board's amendments to the
9 streamlined sales and use tax agreement through 2009. The State
10 of Hawaii would benefit tremendously by adopting legislation
11 that would enable the State to be in compliance with the
12 streamlined sales and use tax agreement at the same time that
13 federal legislation is being re-introduced in 2010.

14 SECTION 2. The Hawaii Revised Statutes is amended by
15 adding a new chapter to be appropriately designated and to read
16 as follows:

17 **"CHAPTER**

18 **TAX ON WHOLESALERS, SERVICE BUSINESSES, AND CONTRACTORS**

19 **§A-1 Definitions.** "Department" means the department of
20 taxation.

21 The definitions contained in sections 237-1, 237-2, and
22 237-3 shall apply to this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

- 1 section 237D-2 for the purpose of furnishing
2 transient accommodations;
- 3 (B) The tangible personal property becomes or is used
4 as an identifiable element of the service
5 rendered; and
- 6 (C) The cost of the tangible personal property does
7 not constitute overhead to the licensed seller;
- 8 (9) Sales to a licensed leasing company of capital goods
9 that have a depreciable life, are purchased by the
10 leasing company for lease to its customers, and are
11 thereafter leased as a service to others;
- 12 (10) Sales of services to a licensed seller engaging in a
13 business or calling whenever:
- 14 (A) Either:
- 15 (i) In the context of a service-to-service
16 transaction, a service is rendered upon the
17 order or request of a licensed seller for
18 the purpose of rendering another service in
19 the course of the seller's service business
20 or calling;
- 21 (ii) In the context of a service-to-tangible
22 personal property transaction, a service is

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

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

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

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

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

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

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

17 (A) Either:

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

1 in the course of the seller's service
2 business or calling;

3 (ii) In the context of an amusement-to-tangible
4 personal property transaction, an amusement
5 is rendered upon the order or request of a
6 licensed seller for the purpose of selling
7 tangible personal property; or

8 (iii) In the context of an amusement-to-amusement
9 transaction, an amusement is rendered upon
10 the order or request of a licensed seller
11 for the purpose of rendering another
12 amusement in the course of the person's
13 amusement business;

14 (B) The benefit of the amusement passes to the
15 customer of the licensed seller as an
16 identifiable element of the other service,
17 tangible personal property to be sold, or
18 amusement;

19 (C) The cost of the amusement does not constitute
20 overhead to the licensed seller;

21 (D) The gross income of the licensed seller is not
22 divided between the licensed seller and another

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (1) Tax on manufacturers:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (5) Tax on sales by wholesalers:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 all similar products manufactured by the
2 manufacturer; and

3 (D) The producer's gross proceeds of sales are
4 reduced by reason of the tax on the value or sale
5 of the manufactured products.

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

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

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

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

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

14 **"CHAPTER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 similar printed materials to the public or
2 defined segment of the public, whether or not
3 there is a charge to the persons who actually
4 receive the magazines or similar printed
5 materials,
6 the tax shall be one-half of one per cent of the
7 purchase price of the property, if the purchase and
8 sale are consummated in Hawaii; or, if there is no
9 purchase price applicable thereto, or if the purchase
10 or sale is consummated outside of Hawaii, then one-
11 half of one per cent of the value of the property.

12 **§B-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 is performed by an unlicensed seller at a point
16 outside the State and imported or purchased for use in this
17 State. The tax imposed by this chapter shall accrue when the
18 service or contracting as defined in section 237-6 is received
19 by the importer or purchaser and becomes subject to the taxing
20 jurisdiction of the State. The rate of the tax hereby imposed
21 and the exemptions from the tax are as follows:

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

3 (A) Engaged in a service business or calling in which
4 the imported or purchased services or contracting
5 becomes identifiable elements, excluding
6 overhead, of the services rendered by the
7 importer or purchaser, and the gross income of
8 the importer or purchaser is subject to the tax
9 imposed under chapter A on services at the rate
10 of one-half of one per cent; or

11 (B) A manufacturer importing or purchasing services
12 or contracting that becomes identifiable
13 elements, excluding overhead, of a finished or
14 saleable product (including the container or
15 package in which the product is contained) and
16 the finished or saleable product is to be sold in
17 a manner that results in a further tax under
18 chapter A on the manufacturer as a wholesaler,
19 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; and

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

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

21 (B) A manufacturer importing or purchasing services
22 or contracting that becomes identifiable

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

8 (C) A contractor importing or purchasing services or
9 contracting that becomes 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 **§B-4 Application of tax, etc.** Section 238-3 shall apply
18 to this chapter.

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

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

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

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

16 **"CHAPTER**

17 **INSURANCE PRODUCER'S TAX**

18 **§C-1 Definitions.** The definitions contained in sections
19 237-1, 237-2, and 237-3 shall apply to this chapter.

20 **§C-2 Tax on insurance producers.** Upon every person
21 engaged as a licensed producer pursuant to chapter 431, there is

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

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

9 **§C-4 Administrative provisions.** Sections 237-8, 237-9,
10 237-9.5, 237-11, 237-12, 237-30, 237-31, 237-32, 237-33,
11 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39,
12 237-40, 237-41, 237-42, 237-43, 237-46, 237-47, 237-49, and
13 237-A to 237-F shall apply to this chapter."

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

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

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

4 **"§237-A General sourcing rules.**

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

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

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

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

1 business when use of this address does not
2 constitute bad faith;
3 (D) When subparagraph (A), (B), and (C) do not apply,
4 the sale is sourced to the location indicated by
5 an address for the purchaser obtained during the
6 consummation of the sale, including the address
7 of a purchaser's payment instrument, if no other
8 address is available, when use of this address
9 does not constitute bad faith; or
10 (E) When subparagraphs (A), (B), (C), and (D) do not
11 apply, including the circumstance in which the
12 seller is without sufficient information to apply
13 subparagraphs (A), (B), (C), and (D), then the
14 location shall be determined by the address from
15 which tangible personal property was shipped,
16 from which the digital good or the computer
17 software delivered electronically was first
18 available for transmission by the seller, or from
19 which the service was provided (disregarding for
20 these purposes any location that merely provided
21 the digital transfer of the product sold);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (A) Service for a separate charge related to a
2 customer channel termination point is sourced to
3 each level of jurisdiction in which the customer
4 channel termination point is located;
- 5 (B) Service where all customer termination points are
6 located entirely within one jurisdiction or
7 levels of jurisdiction is sourced in the
8 jurisdiction in which the customer channel
9 termination points are located; or
- 10 (C) Service for segments of a channel between two
11 customer channel termination points located in
12 different jurisdictions and which segment of a
13 channel are separately charged is sourced fifty
14 per cent in each level of jurisdiction in which
15 the customer channel termination points are
16 located.
- 17 Service for segments of a channel located in more than
18 one jurisdiction or levels of jurisdiction and where
19 the segments are not separately billed shall be
20 sourced in each jurisdiction based on the percentage
21 determined by dividing the number of customer channel
22 termination points in the jurisdiction by the total

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

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

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

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

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

15 "Customer":

16 (1) Means the person or entity that contracts with the
17 seller of telecommunications services. For the
18 purpose of sourcing sales of telecommunications
19 services under section 237-C, the end user of
20 telecommunications services is not the contracting
21 party, the end user of the telecommunications service
22 is the customer of the telecommunications service; and

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

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

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

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

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

18 "Place of primary use" means the street address
19 representative of where the customer's use of the
20 telecommunications service primarily occurs, which shall be the
21 residential street address or the primary business street
22 address of the customer. In the case of mobile

1 telecommunications services, "place of primary use" shall be
2 within the licensed service area of the home service provider.

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

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

19 "Prepaid wireless calling service" means a
20 telecommunications service that provides the right to utilize
21 mobile wireless service as well as other non-telecommunications
22 services, including the download of digital products delivered

1 electronically, and content and ancillary services, which must
2 be paid for in advance and is sold in predetermined units or
3 dollars of which the number declines with use in a known amount.

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

12 "Service address" means:

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

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

1 provider, where the system used to transport the
2 signals is not that of the seller; or

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

6 **§237-E Deduction for bad debts.** (a) A seller shall be
7 allowed a deduction from taxable sales for bad debts. A seller
8 may deduct the amount of bad debts from the seller's gross
9 sales, rentals, or services used for the computation of the tax.
10 The amount of gross sales, rentals, or services deducted shall
11 be charged off as uncollectible on the books and records of the
12 seller at the time the debt becomes worthless and deducted on
13 the return for the period during which the bad debt is written
14 off as uncollectible in the claimant's books and records and
15 shall be eligible to be deducted for income tax purposes.

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

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

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

19 (c) If a certified service provider assumed filing
20 responsibility under chapter 255D, the certified service
21 provider may claim, on behalf of the seller, any bad debt

1 allowable to the seller and shall credit or refund that amount
2 of bad debt allowed or refunded to the seller.

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

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

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

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

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

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

4 (5) Repossessed property.

5 **§237-F Direct mail sourcing.** (a) Notwithstanding the
6 general sourcing provisions of section 237-A, a purchaser of
7 direct mail who is not a holder of a direct pay permit shall
8 provide to the seller, in conjunction with the purchase, either
9 a direct mail form or information to show the jurisdictions to
10 which the direct mail is delivered to recipients.

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

17 Upon receipt of information from the purchaser showing the
18 jurisdictions to which the direct mail is delivered to
19 recipients, the seller shall collect the tax according to the
20 delivery information provided by the purchaser. In the absence
21 of bad faith, the seller shall be relieved of any further
22 obligation to collect tax on any transaction for which the

1 seller has collected tax pursuant to the delivery information
2 provided by the purchaser.

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

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

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

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

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

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

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

20 (2) A percentage based on the total weight of the taxable
21 property compared to the total weight of all property
22 in the shipment.

1 "Department" means the department of taxation.

2 "Direct mail":

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

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

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

14 "Lease or rental":

15 (1) Means any transfer of possession or control of
16 tangible personal property for a fixed or
17 indeterminate term for consideration;

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

19 (3) Does not include:

20 (A) A transfer of possession or control of property
21 under a security agreement or deferred payment

1 plan that requires the transfer of title upon
2 completion of the required payments;

3 (B) A transfer of possession or control of property
4 under an agreement that requires the transfer of
5 title upon completion of required payments and
6 payment of an option price that does not exceed
7 the greater of \$100 or one per cent of the total
8 required payments;

9 (C) Providing tangible personal property along with
10 an operator for a fixed or indeterminate period
11 of time. A condition of this exclusion is that
12 the operator is necessary for the equipment to
13 perform as designed. For the purpose of this
14 subparagraph, an operator shall do more than
15 maintain, inspect, or set-up the tangible
16 personal property; or

17 (D) Agreements covering motor vehicles and trailers
18 where the amount of consideration may be
19 increased or decreased by reference to the amount
20 realized upon sale or disposition of the property
21 as defined in section 7701(h) (with respect to

1 motor vehicle operating leases) of the Internal
2 Revenue Code.

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

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

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

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

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

4 (4) Delivery and installation charges; or

5 (5) Installation charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (1) Any tax liability of the registered seller for
14 transactions that are subject to sales or use tax in
15 the State in which the registered seller is the
16 purchaser;

17 (2) Any sales or use taxes already paid or remitted to the
18 State or to taxes collected by the seller; and

19 (3) Any transactions for which the seller received notice
20 of the commencement of an audit and the audit is not
21 finally resolved, including related administrative or
22 judicial processes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (2) If required by the director as a condition of
2 obtaining the license, furnish with the annual return,
3 a list (including identification numbers) of all
4 direct sellers for the taxable year who have been
5 provided (by the tax collection agent) information
6 returns required under section 6041A (with respect to
7 returns regarding payments of remuneration for
8 services and direct sales) of the Internal Revenue
9 Code [~~of 1986, as amended,~~] and any other information
10 that is relevant to ensure proper payment of taxes due
11 under this section; and
- 12 (3) Be personally liable for the taxes due and collected
13 under the tax collection agreement if taxes are
14 collected, but not reported or paid, together with
15 penalties and interest as provided by law.
- 16 (f) The director may authorize a person to assume the
17 obligation of self-accruing and remitting tax due on purchases
18 or leases or rentals directly to the department under a direct
19 payment authorization, if the following conditions are met:
- 20 (1) The authorization is to be used for the purchase or
21 lease of tangible personal property or services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 ~~(ii) The absence of a certificate in itself shall~~
18 ~~give rise to the presumption that the sale~~
19 ~~is not at wholesale unless the sales of the~~
20 ~~business are exclusively at wholesale.~~

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

1 (A) Upon every person engaging or continuing within
2 the State in the business of contracting, the tax
3 shall be equal to four per cent of the gross
4 income of the business[~~-~~];

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

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

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

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

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

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

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

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

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

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

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

1 the business of renting or leasing real property
2 under a lease is taxed under section 237-16.5,
3 the tax shall be levied by section 237-16.5~~[7]~~;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 As used in this subsection:

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

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

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

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

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

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

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

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

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

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

- 1 damages for any tort injury to or destruction of
2 property, whether as the result of action or by
3 private agreement between the parties (provided that
4 amounts received as punitive damages for tort injury
5 or breach of contract injury shall be included in
6 gross income);
- 7 (6) Amounts received as salaries or wages for services
8 rendered by an employee to an employer;
- 9 (7) Amounts received as alimony and other similar payments
10 and settlements;
- 11 (8) Amounts collected by distributors as fuel taxes on
12 "liquid fuel" imposed by chapter 243, and the amounts
13 collected by such distributors as a fuel tax imposed
14 by any Act of the Congress of the United States;
- 15 (9) Taxes on liquor imposed by chapter 244D on dealers
16 holding permits under that chapter;
- 17 ~~[-(10) The amounts of taxes on cigarettes and tobacco~~
18 ~~products imposed by chapter 245 on wholesalers or~~
19 ~~dealers holding licenses under that chapter and~~
20 ~~selling the products at wholesale;~~

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

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

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

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

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

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

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

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

6 (A) Having one and only one class of stock
7 outstanding;

8 (B) Each of the stockholders of which is entitled
9 solely by reason of the stockholder's ownership
10 of stock in the corporation, to occupy for
11 dwelling purposes a house, or an apartment in a
12 building owned or leased by the corporation; and

13 (C) No stockholder of which is entitled (either
14 conditionally or unconditionally) to receive any
15 distribution not out of earnings and profits of
16 the corporation except in a complete or partial
17 liquidation of the corporation; and

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

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

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

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

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

17 (2) Amounts received from sales of:

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

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

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

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

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

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

10 (B) A nonprofit homeowners or community association
11 incorporated in accordance with chapter 414D or
12 any predecessor thereto and existing pursuant to
13 covenants running with the land,

14 in reimbursement of sums paid for common expenses;

15 (4) Amounts received or accrued from:

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

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

1 ships, barges, or vessels in and out of state
2 harbors, or from one pier to another; and
3 (C) The transportation of pilots or governmental
4 officials to ships, barges, or vessels offshore;
5 rigging gear; checking freight and similar
6 services; standby charges; and use of moorings
7 and running mooring lines;
8 (5) Amounts received by an employee benefit plan by way of
9 contributions, dividends, interest, and other income;
10 and amounts received by a nonprofit organization or
11 office, as payments for costs and expenses incurred
12 for the administration of an employee benefit plan;
13 provided that this exemption shall not apply to any
14 gross rental income or gross rental proceeds received
15 after June 30, 1994, as income from investments in
16 real property in this State; and provided further that
17 gross rental income or gross rental proceeds from
18 investments in real property received by an employee
19 benefit plan after June 30, 1994, under written
20 contracts executed prior to July 1, 1994, shall not be
21 taxed until the contracts are renegotiated, renewed,
22 or extended, or until after December 31, 1998,

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

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

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

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

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

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

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

- 1 (C) Support a weak or deformed portion of the body.
2 A prosthetic device does not include corrective
3 eyeglasses, contact lenses, hearing aids, and dental
4 prosthesis;
- 5 (8) Taxes on transient accommodations imposed by chapter
6 237D and passed on and collected by operators holding
7 certificates of registration under that chapter;
- 8 (9) Amounts received as dues by an unincorporated
9 merchants association from its membership for
10 advertising media, promotional, and advertising costs
11 for the promotion of the association for the benefit
12 of its members as a whole and not for the benefit of
13 an individual member or group of members less than the
14 entire membership;
- 15 (10) Amounts received by a labor organization for real
16 property leased to:
- 17 (A) A labor organization; or
- 18 (B) A trust fund established by a labor organization
19 for the benefit of its members, families, and
20 dependents for medical or hospital care, pensions
21 on retirement or death of employees,

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

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

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

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

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

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

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

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

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

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

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

22 (1) Trustees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 ~~(C) A contractor importing or purchasing material or~~
2 ~~commodities which are to be incorporated by the~~
3 ~~contractor into the finished work or project~~
4 ~~required by the contract and which will remain in~~
5 ~~such finished work or project in such form as to~~
6 ~~be perceptible to the senses;~~
- 7 ~~(D) A person engaged in a service business or calling~~
8 ~~as defined in section 237-7, or a person~~
9 ~~furnishing transient accommodations subject to~~
10 ~~the tax imposed by section 237D-2, in which the~~
11 ~~import or purchase of tangible personal property~~
12 ~~would have qualified as a sale at wholesale as~~
13 ~~defined in section 237-4(a)(8) had the seller of~~
14 ~~the property been subject to the tax in chapter~~
15 ~~237; or~~
- 16 ~~(E) A publisher of magazines or similar printed~~
17 ~~materials containing advertisements, when the~~
18 ~~publisher is under contract with the advertisers~~
19 ~~to distribute a minimum number of magazines or~~
20 ~~similar printed materials to the public or~~
21 ~~defined segment of the public, whether or not~~
22 ~~there is a charge to the persons who actually~~

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

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

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

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

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

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

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

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

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

5 ~~there shall be no tax imposed on the value of the~~
6 ~~imported or purchased services or contracting;~~

7 ~~provided that if the manufacturer is also engaged in~~
8 ~~business as a retailer as classified under chapter~~
9 ~~237, paragraph (2) shall apply to the manufacturer,~~

10 ~~but the director of taxation shall refund to the~~
11 ~~manufacturer, in the manner provided under section~~

12 ~~231-23(c), that amount of tax that the manufacturer,~~
13 ~~to the satisfaction of the director, shall establish~~

14 ~~to have been paid by the manufacturer to the director~~
15 ~~with respect to services that have been used by the~~

16 ~~manufacturer for the purposes stated in this~~
17 ~~paragraph.~~

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

20 ~~(A) Engaged in a service business or calling in which~~
21 ~~the imported or purchased services or contracting~~

22 ~~become identifiable elements, excluding overhead,~~

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

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

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

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

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

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

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

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

10 ~~["§237-4 "Wholesaler", "jobber", defined. (a)~~
11 ~~"Wholesaler" or "jobber" applies only to a person making sales~~
12 ~~at wholesale. Only the following are sales at wholesale:~~
13 ~~(1) Sales to a licensed retail merchant, jobber, or other~~
14 ~~licensed seller for purposes of resale;~~
15 ~~(2) Sales to a licensed manufacturer of materials or~~
16 ~~commodities that are to be incorporated by the~~
17 ~~manufacturer into a finished or saleable product~~
18 ~~(including the container or package in which the~~
19 ~~product is contained) during the course of its~~
20 ~~preservation, manufacture, or processing, including~~
21 ~~preparation for market, and that will remain in such~~
22 ~~finished or saleable product in such form as to be~~

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 ~~(A) Either:~~
- 2 ~~(i) In the context of a service-to-service~~
- 3 ~~transaction, a service is rendered upon the~~
- 4 ~~order or request of a licensed seller for~~
- 5 ~~the purpose of rendering another service in~~
- 6 ~~the course of the seller's service business~~
- 7 ~~or calling, including a dealer's furnishing~~
- 8 ~~of goods or services to the purchaser of~~
- 9 ~~tangible personal property to fulfill a~~
- 10 ~~warranty obligation of the manufacturer of~~
- 11 ~~the property;~~
- 12 ~~(ii) In the context of a service-to-tangible~~
- 13 ~~personal property transaction, a service is~~
- 14 ~~rendered upon the order or request of a~~
- 15 ~~licensed seller for the purpose of~~
- 16 ~~manufacturing, producing, or preparing~~
- 17 ~~tangible personal property to be sold;~~
- 18 ~~(iii) In the context of a services-to-contracting~~
- 19 ~~transaction, a service is rendered upon the~~
- 20 ~~order or request of a licensed contractor as~~
- 21 ~~defined in section 237-6 for the purpose of~~
- 22 ~~assisting that licensed contractor; or~~

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

- 1 ~~(E) The gross income of the licensed seller is not~~
2 ~~subject to a deduction under this chapter or~~
3 ~~chapter 237D; and~~
- 4 ~~(F) The resale of the service, tangible personal~~
5 ~~property, contracting, or transient~~
6 ~~accommodations is subject to the tax imposed~~
7 ~~under this chapter at the highest tax rate.~~
- 8 ~~Sales subject to this paragraph shall be subject to~~
9 ~~section 237-13.3;~~
- 10 ~~(11) Sales to a licensed retail merchant, jobber, or other~~
11 ~~licensed seller of bulk condiments or prepackaged~~
12 ~~single-serving packets of condiments that are provided~~
13 ~~to customers by the licensed retail merchant, jobber,~~
14 ~~or other licensed seller;~~
- 15 ~~(12) Sales to a licensed retail merchant, jobber, or other~~
16 ~~licensed seller of tangible personal property that~~
17 ~~will be incorporated or processed by the licensed~~
18 ~~retail merchant, jobber, or other licensed seller into~~
19 ~~a finished or saleable product during the course of~~
20 ~~its preparation for market (including disposable,~~
21 ~~nonreturnable containers, packages, or wrappers, in~~
22 ~~which the product is contained and that are generally~~

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

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

9 ~~(A) Either:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Report Title:

Streamlined Sales and Use Tax Amendments

Description:

Adopts amendments to Hawaii tax laws to implement the streamlined sales and use tax agreement. Effective when the State becomes a party to the Streamlined Sales and Use Tax Agreement. (SD1)

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