



GOV. MSG. NO. 1132

April 29, 2011

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 29, 2011, the following bill was signed into law:

SB1318 SD1

RELATING TO USE TAX  
ACT 032 (11)

*Alaka'i*  
Sincerely,  
*Neil Abercrombie*

NEIL ABERCROMBIE  
Governor, State of Hawaii

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# A BILL FOR AN ACT

RELATING TO USE TAX.

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

1           SECTION 1. The purpose of this Act is to clarify the  
2 current application of the use tax by eliminating overbroad and  
3 redundant language in a provision relating to interstate  
4 commerce activities.

5           In Act 74, Session Laws of Hawaii 1979, the legislature  
6 amended the tax law to prevent the application of Hawaii general  
7 excise or use tax to certain interstate commerce activities of  
8 common carriers, which the legislative history identifies as  
9 primarily those involved in stevedoring and other similar  
10 activities. Act 74 was enacted in response to a United States  
11 Supreme Court opinion that expanded the State's ability to tax  
12 interstate commerce. In order to prevent the State from taxing  
13 stevedoring and other similar activities, Act 74 was the  
14 solution.

15           Since the enactment of Act 74, the tax laws have been  
16 amended to expressly exempt the particular stevedoring and other  
17 interstate commerce activities originally intended to be  
18 exempted by the legislature by Act 74. Because other provisions

1 now expressly exempt these activities, language in the use tax  
2 law referencing Act 74 is redundant and unnecessary.

3 SECTION 2. Section 238-3, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) The tax imposed by this chapter shall not apply to  
6 any property, services, or contracting or to any use of the  
7 property, services, or contracting that cannot legally be so  
8 taxed under the Constitution or laws of the United States, but  
9 only so long as, and only to the extent to which the State is  
10 without power to impose the tax.

11 To the extent that any exemption, exclusion, or  
12 apportionment is necessary to comply with the preceding  
13 sentence, the director of taxation shall:

14 (1) Exempt or exclude from the tax under this chapter,  
15 property, services, or contracting or the use of  
16 property, services, or contracting exempted under  
17 chapter 237; or

18 (2) Apportion the gross value of services or contracting  
19 sold to customers within the State by persons engaged  
20 in business both within and without the State to  
21 determine the value of that portion of the services or



1 contracting that is subject to taxation under chapter  
2 237 for the purposes of section 237-21.

3 ~~[Any provision of law to the contrary notwithstanding,~~  
4 ~~exemptions or exclusions from tax under this chapter allowed on~~  
5 ~~or before April 1, 1978, under the provisions of the~~  
6 ~~Constitution of the United States or an act of the Congress of~~  
7 ~~the United States to persons or common carriers engaged in~~  
8 ~~interstate or foreign commerce, or both, whether ocean going or~~  
9 ~~air, shall continue undiminished and be available thereafter.]"~~

10 SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken.

12 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 29<sup>th</sup> day of April, 2011

Neil Abernethy

GOVERNOR OF THE STATE OF HAWAII