



GOV. MSG. NO. 1208

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 9, 2011

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

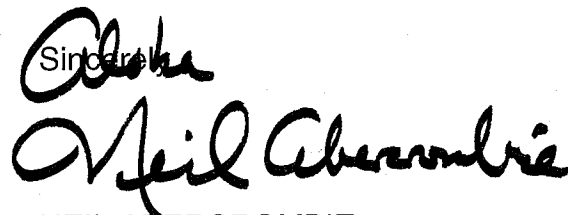
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

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

This is to inform you that on June 9, 2011, the following bill was signed into law:

SB754 SD1 HD1 CD1

RELATING TO TAXATION.
Act 105 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

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 temporarily
2 suspend the general excise and use tax exemptions for certain
3 amounts received by certain persons and, instead, require those
4 persons to pay the applicable tax on those amounts at a
5 specified rate. The suspension and imposition of the tax
6 commences on July 1, 2011, and ends on June 30, 2013.

7 This Act does not suspend the existing general excise tax
8 exemption for nonprofit organizations with the exception of the
9 value or gross income received by nonprofit organizations from
10 certain conventions, conferences, trade shows, or display
11 spaces.

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

15 "§237- Temporary suspension of exemption of certain
16 amounts; levy of tax. (a) Notwithstanding any other law to the
17 contrary, the exemption of the following amounts from taxation



1 under this chapter shall be suspended from July 1, 2011, through
2 June 30, 2013:

3 (1) Amounts deducted from the gross income received by
4 contractors as described under section 237-13(3)(B);

5 (2) Reimbursements received by federal cost-plus
6 contractors for the costs of purchased materials,
7 plant, and equipment as described under section 237-
8 13(3)(C);

9 (3) Gross receipts of home service providers acting as
10 service carriers providing mobile telecommunications
11 services to other home service providers as described
12 under section 237-13(6)(D);

13 (4) Amounts deducted from the gross income of real
14 property lessees because of receipt from sublessees as
15 described under section 237-16.5;

16 (5) The value or gross income received by nonprofit
17 organizations from certain conventions, conferences,
18 trade show exhibits, or display spaces as described
19 under section 237-16.8;

20 (6) Amounts received by sugarcane producers as described
21 under section 237-24(14);



- 1 (7) Amounts received from the loading, transportation, and
2 unloading of agricultural commodities shipped
3 interisland as described under section 237-24.3(1);
- 4 (8) Amounts received from the sale of intoxicating liquor,
5 cigarettes and tobacco products, and agricultural,
6 meat, or fish products to persons or common carriers
7 engaged in interstate or foreign commerce as described
8 under section 237-24.3(2);
- 9 (9) Amounts received or accrued from the loading or
10 unloading of cargo as described under section 237-
11 24.3(4)(A);
- 12 (10) Amounts received or accrued from tugboat and towage
13 services as described under section 237-24.3(4)(B);
- 14 (11) Amounts received or accrued from the transportation of
15 pilots or government officials and other maritime-
16 related services as described under section 237-
17 24.3(4)(C);
- 18 (12) Amounts received by labor organizations for real
19 property leases as described under section 237-
20 24.3(10);



- 1 (13) Amounts received as rent for aircraft or aircraft
2 engines used for interstate air transportation as
3 described under section 237-24.3(12);
- 4 (14) Amounts received by exchanges and exchange members as
5 described under section 237-24.5;
- 6 (15) Amounts received as high technology research and
7 development grants under section 206M-15 as described
8 under section 237-24.7(10);
- 9 (16) Amounts received from the servicing and maintenance of
10 aircraft or construction of aircraft service and
11 maintenance facilities as described under section 237-
12 24.9;
- 13 (17) Gross proceeds from the sale of the following:
- 14 (A) Intoxicating liquor to the United States
15 (including any agency or instrumentality of the
16 United States that is wholly owned or otherwise
17 so constituted as to be immune from the levy of a
18 tax under chapter 238 or 244D, but not including
19 national banks) or any organization to which the
20 sale is permitted by the proviso of "Class 3" of
21 section 281-31 that is located on any Army, Navy,



- 1 or Air Force reservation as described under
2 section 237-25(a) (1);
- 3 (B) Tobacco products and cigarettes to the United
4 States (including any agency or instrumentality
5 thereof that is wholly owned or otherwise so
6 constituted as to be immune from the levy of tax
7 under chapter 238 or 245, but not including
8 national banks) as described under section 237-
9 25(a) (2); and
- 10 (C) "Other tangible personal property" to the United
11 States (including any agency, instrumentality, or
12 federal credit union thereof, but not including
13 national banks) and any state-chartered credit
14 union as described under section 237-25(a) (3);
- 15 (18) Amounts received by petroleum product refiners from
16 other refiners for further refining of petroleum
17 products as described under section 237-27;
- 18 (19) Gross proceeds received from the construction,
19 reconstruction, erection, operation, use, maintenance,
20 or furnishing of air pollution control facilities, as
21 described under section 237-27.5, that do not have
22 valid certificates of exemption on July 1, 2011;



- 1 (20) Gross proceeds received from shipbuilding and ship
2 repairs as described under section 237-28.1;
- 3 (21) Amounts received by telecommunications common carriers
4 from call center operators for interstate or foreign
5 telecommunications services as described under section
6 237-29.8;
- 7 (22) Gross proceeds received by qualified businesses in
8 enterprise zones, as described under section 209E-11,
9 that do not have valid certificates of qualification
10 from the department of business, economic development,
11 and tourism on July 1, 2011; and
- 12 (23) Gross proceeds received by contractors licensed under
13 chapter 444 for construction within enterprise zones
14 performed for qualified businesses within the
15 enterprise zones or businesses approved by the
16 department of business, economic development, and
17 tourism to enroll into the enterprise zone program, as
18 described under section 209E-11.
- 19 (b) Except as otherwise provided under subsection (f),
20 (g), or (h), there is levied, assessed, and collected annually
21 against a taxpayer receiving or deriving previously exempt gross
22 income or gross proceeds of sale from July 1, 2011, to June 30,



1 2013, a tax at the rate of four per cent on that previously
2 exempt gross income or gross proceeds of sale.

3 (c) As used in this section, "previously exempt gross
4 income or gross proceeds of sale" means the amount of the gross
5 income or gross proceeds of sale, the exemption for which is
6 suspended under subsection (a). The term also includes the
7 value received by a nonprofit organization from conventions,
8 conferences, trade show exhibits, and display spaces, the
9 exemption for which is suspended under subsection (a) (5).

10 (d) The taxpayer, against whom the tax is levied and
11 assessed under this section, shall be responsible for payment of
12 the tax to the director of taxation.

13 (e) Notwithstanding section 237-8.6, no county surcharge
14 shall be levied, assessed, or collected on any previously exempt
15 gross income or gross proceeds of sale that is subject to
16 taxation under subsection (b).

17 (f) This section shall not apply to gross income or gross
18 proceeds from binding written contracts entered into prior to
19 July 1, 2011, that do not permit the passing on of increased
20 rates of taxes.

21 (g) This section shall not apply to gross income or gross
22 proceeds from stevedoring services and related services, as



1 defined in section 382-1, furnished to a company by its wholly
2 owned subsidiary.

3 (h) The tax imposed under subsection (b) shall not apply
4 to any gross income or gross proceeds of sale that cannot
5 legally be so taxed under the Constitution or laws of the United
6 States, but only so long as, and only to the extent to which the
7 State is without power to impose the tax.

8 To the extent that any exemption, exclusion, or
9 apportionment is necessary to comply with the preceding
10 sentence, the director of taxation shall:

11 (1) Exempt or exclude the gross income or gross proceeds
12 of sale from the tax under subsection (b); or

13 (2) Apportion the gross income or gross proceeds of sale
14 derived within the State by persons engaged in
15 business both within and without the State to
16 determine the gross income or gross proceeds of sale
17 that is subject to taxation under this chapter for the
18 purposes of section 237-21.

19 (i) This chapter shall apply to the payment, collection,
20 enforcement, and appeal of the tax levied under this section.



1 The director of taxation may establish additional
2 requirements, procedures, and forms pursuant to rules adopted
3 under chapter 91, to effectuate this section.

4 §237- Information reporting. Beginning July 1, 2011,
5 the director of taxation shall require information reporting on
6 all exclusions or exemptions of all amounts, persons, or
7 transactions from this chapter, except for the following:

8 (1) Amounts received that are exempt under section 237-
9 24(1) through (7); and

10 (2) Any other amounts, persons, or transactions as
11 determined by the director to be in the best interest
12 of tax administration and made by official
13 pronouncement."

14 SECTION 3. Chapter 238, Hawaii Revised Statutes, is
15 amended by adding two new sections to be appropriately
16 designated and to read as follows:

17 "§238- Temporary suspension of exemption of certain
18 amounts; levy of tax. (a) Notwithstanding any other law to the
19 contrary, the exemption of the following from taxation under
20 this chapter shall be suspended from July 1, 2011, through June
21 30, 2013:



- 1 (1) The leasing or renting of aircraft or keeping of
2 aircraft solely for leasing or renting for commercial
3 transportation of passengers and goods or the
4 acquisition or importation of aircraft or aircraft
5 engines by a lessee or renter engaged in interstate
6 air transportation, as described under paragraph (6)
7 of the definition of "use" in section 238-1;
- 8 (2) The use of oceangoing vehicles for passenger or
9 passenger and goods transportation from one point to
10 another within the State as a public utility, as
11 described under paragraph (7) of the definition of
12 "use" in section 238-1;
- 13 (3) The use of material, parts, or tools imported or
14 purchased by a person licensed under chapter 237 that
15 are used for aircraft service and maintenance or the
16 construction of an aircraft service and maintenance
17 facility, as described under paragraph (8) of the
18 definition of "use" in section 238-1;
- 19 (4) The use or sale of intoxicating liquor and cigarette
20 and tobacco products imported into the State and sold
21 to any person or common carrier in interstate
22 commerce, whether ocean-going or air, for consumption



1 out of State by the person, crew, or passengers on the
2 shipper's vessels or airplanes, as described under
3 section 238-3(g);

4 (5) The use of any vessel constructed under section 189-25
5 prior to July 1, 1969, as described under section 238-
6 3(h); and

7 (6) The use of any air pollution control facility subject
8 to section 237-27.5 as described under section 238-
9 3(k).

10 (b) Except as otherwise provided under subsection (f) or
11 (g), there is levied, assessed, and collected annually against a
12 taxpayer who imports or purchases previously exempt property,
13 services, or contracting for use in this State that becomes
14 subject to the State's taxing jurisdiction from July 1, 2011, to
15 June 30, 2013, a tax at the rate of four per cent on the value
16 of that previously exempt property, services, or contracting.

17 (c) As used in this section, "previously exempt property,
18 services, or contracting" means property, services, or
19 contracting, the exemption for which is suspended under
20 subsection (a).



1 (d) A taxpayer, against whom the tax is levied and
2 assessed under this section, shall be responsible for payment of
3 the tax to the director of taxation.

4 (e) Notwithstanding section 238-2.6, no county surcharge
5 shall be levied, assessed, or collected on the value of any
6 previously exempt property, services, or contracting that is
7 subject to taxation under subsection (b).

8 (f) This section shall not apply to any property,
9 services, or contracting imported or purchased under binding
10 written contracts entered into prior to July 1, 2011, that do
11 not permit the passing on of increased rates of taxes.

12 (g) The tax imposed under subsection (b) shall not apply
13 to any property, services, or contracting or to any use of the
14 property, services, or contracting that cannot legally be so
15 taxed under the Constitution or laws of the United States, but
16 only so long as, and only to the extent to which the State is
17 without power to impose the tax.

18 To the extent that any exemption, exclusion, or
19 apportionment is necessary to comply with the preceding
20 sentence, the director of taxation shall:



1 (1) Exempt or exclude the property, services, or
2 contracting or the use of the property, services, or
3 contracting, from the tax under subsection (b); or

4 (2) Apportion the gross value of services or contracting
5 sold to customers within the State by persons engaged
6 in business both within and without the State to
7 determine the value of that portion of the services or
8 contracting that is subject to taxation under chapter
9 237 for the purposes of section 237-21.

10 (h) This chapter shall apply to the payment, collection,
11 enforcement, and appeal of the tax levied under this section.

12 The director of taxation may establish additional
13 requirements, procedures, and forms pursuant to rules adopted
14 under chapter 91, to effectuate this section.

15 §238- Information reporting. Beginning July 1, 2011,
16 the director of taxation shall require information reporting on
17 all exclusions or exemptions of all amounts, persons, or
18 transactions from this chapter, except for any amounts, persons,
19 or transactions as determined by the director to be in the best
20 interest of tax administration and made by official
21 pronouncement."



1 SECTION 4. The department of taxation shall have the
2 authority to postpone the payment of the tax imposed under this
3 Act until the deadline to file the general excise or use tax
4 annual return and reconciliation form, as applicable, without
5 regard to any extension.

6 SECTION 5. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on July 1, 2011, and
8 shall be repealed on June 30, 2013.

APPROVED this 9 day of JUN, 2011


GOVERNOR OF THE STATE OF HAWAII