
A BILL FOR AN ACT

RELATING TO TAXATION.

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

PART I

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§231- **Businesses domiciled out-of-state; nexus presumptions.** (a) Notwithstanding any law to the contrary, a person or entity conducting business in this State that has its commercial domicile in another state is presumed to be systematically and regularly engaging in business in this State and taxable under title 14 if, during any year:

(1) The person or entity engages in or solicits business with persons within this State; and

(2) The person or entity earns income, gross proceeds, gross rental, or gross rental proceeds attributable to sources in this State.

(b) Notwithstanding any requirement under title 14 that a person or entity remit tax on a monthly basis, if a person is taxable in this State by reason of this section, the person or



1 entity may petition the director of taxation to allow the
2 remitting of tax on a basis other than monthly for good cause.
3 For purposes of this section, good cause includes compliance
4 with the United States Constitution and the Hawaii State
5 Constitution."

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

9 "§237- Businesses domiciled out-of-state; annual
10 statement. (a) Any person or entity conducting business in
11 this State that:

- 12 (1) Has its commercial domicile in another state;
- 13 (2) Is presumed to be systematically and regularly
14 engaging in business in this State under section
15 231- ; and
- 16 (3) Does not pay or is not otherwise required to pay the
17 tax imposed by this chapter for sales of tangible
18 personal property to residents of this State,
19 shall file an annual statement with the department of taxation,
20 as provided in this section.

21 (b) The annual statement required by this section shall be
22 filed on forms provided or approved by the department on or

1 before the fourth month following the close of the taxable year.

2 The annual statement shall include the following information:

3 (1) Names of residents of this State to whom the out-of-
4 state business sold tangible personal property during
5 the taxable year;

6 (2) Dates of each sale;

7 (3) Zip code of the shipping address of each sale; and

8 (4) Dollar amount of each sale.

9 Except for the dollar amount required under paragraph (4), no
10 information describing the tangible personal property sold shall
11 be provided in the annual statement.

12 (c) Any person or entity that files an annual report with
13 the department pursuant to this section shall be relieved of any
14 duty to pay the tax imposed by this chapter for sales of
15 tangible personal property to residents of this State for the
16 taxable year for which the annual statement is filed.

17 (d) This section shall not apply to a person or entity
18 that has a physical presence in the State.

19 For purposes of this subsection, a person or entity has a
20 physical presence in the State if the person or entity's
21 business activities during a taxable year include any of the
22 following:



- 1 (1) Being an individual physically present in the State,
2 or assigning one or more employees to be in the State;
- 3 (2) Using the services of an agent, excluding any
4 employee, to establish or maintain the person or
5 entity's business activities in the State, if the
6 agent does not perform business services in the State
7 for any other person or entity during the taxable
8 year; or
- 9 (3) The leasing or owning of tangible personal property or
10 real property in the State.

11 §237- **Businesses domiciled in the state; annual**
12 statement. (a) Any person or entity conducting business in
13 this State that is presumed to be systematically and regularly
14 engaging in business in this State, unless otherwise required to
15 pay the tax imposed by this chapter for sales of tangible
16 personal property to residents of this State, shall file an
17 annual statement with the department of taxation, as provided in
18 this section.

19 (b) The annual statement required by this section shall be
20 filed on forms provided or approved by the department on or
21 before the fourth month following the close of the taxable year.
22 The annual statement shall include the following information:



1 (1) Names of residents of this State to whom the business
2 in this State sold tangible personal property during
3 the taxable year;

4 (2) Dates of each sale;

5 (3) Zip code of the shipping address of each sale; and

6 (4) Dollar amount of each sale.

7 Except for the dollar amount required under paragraph (4), no
8 information describing the tangible personal property sold shall
9 be provided in the annual statement.

10 (c) Any person or entity that files an annual report with
11 the department pursuant to this section shall be relieved of any
12 duty to pay the tax imposed by this chapter for sales of
13 tangible personal property to residents of this State for the
14 taxable year for which the annual statement is filed.

15 (d) This section shall not apply to a person or entity
16 that has a physical presence in the State.

17 For purposes of this subsection, a person or entity has a
18 physical presence in the State if the person or entity's
19 business activities during a taxable year include any of the
20 following:

21 (1) Being an individual physically present in the State,
22 or assigning one or more employees to be in the State;



1 (2) Using the services of an agent, excluding any
2 employee, to establish or maintain the person or
3 entity's business activities in the State, if the
4 agent does not perform business services in the State
5 for any other person or entity during the taxable
6 year; or

7 (3) The leasing or owning of tangible personal property or
8 real property in the State."

9 SECTION 3. Section 237-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§237-2 "Business", "engaging" in business, defined.**

12 "Business" as used in this chapter, includes all activities
13 (personal, professional, or corporate), engaged in or caused to
14 be engaged in with the object of gain or economic benefit either
15 direct or indirect, but does not include casual sales.

16 The term "engaging" as used in this chapter with reference
17 to engaging or continuing in business also includes [~~the~~]:

18 (1) The exercise of corporate or franchise powers[-]; or

19 (2) The sale of tangible personal property by a person
20 soliciting business through an independent contractor
21 or other representative if the person enters into an
22 agreement with a resident of this State under which



1 the resident, for a commission or other consideration,
 2 directly or indirectly refers potential customers,
 3 whether by a link on an internet website or otherwise,
 4 to the person.

5 This presumption may be rebutted by proof that the
 6 resident with whom the person has an agreement did not
 7 engage in any solicitation in the State on behalf of
 8 the person that would satisfy the nexus requirement of
 9 the United States Constitution during the taxable year
 10 in question. Nothing in this section shall be
 11 construed to narrow the scope of the terms "person",
 12 "purchasing agent", or "representative" as defined in
 13 section 237-1."

PART II

15 SECTION 4. The purpose of this part is to repeal the
 16 income tax exemption for income derived from stock options or
 17 stocks from a qualified high technology business.

18 The legislature finds that the State can no longer afford
 19 the cost of this tax exemption.

20 SECTION 5. Section 235-9.5, Hawaii Revised Statutes, is
 21 repealed.

1 ~~["§235-9.5—Stock options from qualified high technology~~
2 ~~businesses excluded from taxation. (a) Notwithstanding any law~~
3 ~~to the contrary, all income earned and proceeds derived from~~
4 ~~stock options or stock, including stock issued through the~~
5 ~~exercise of stock options or warrants, from a qualified high~~
6 ~~technology business or from a holding company of a qualified~~
7 ~~high technology business by an employee, officer, or director of~~
8 ~~the qualified high technology business, or investor who~~
9 ~~qualifies for the credit under section 235-110.9, that would~~
10 ~~otherwise be taxed as ordinary income or as capital gains to~~
11 ~~those persons shall be excluded from taxation under this~~
12 ~~chapter.~~

13 ~~Similar provisions shall apply to options to acquire equity~~
14 ~~interests and to equity interests themselves with regard to~~
15 ~~entities other than corporations.~~

16 ~~(b) For the purposes of this section:~~

17 ~~"Holding company of a qualified high technology business"~~
18 ~~means any business entity that possesses:~~

19 ~~(1) At least eighty per cent of the total voting power of~~
20 ~~the stock or other interest; and~~

21 ~~(2) At least eighty per cent of the total value of the~~
22 ~~stock or other interest;~~



1 ~~in the qualified high technology business.~~

2 ~~"Income earned and proceeds derived from stock options or~~
3 ~~stock" includes income from:~~

4 ~~(1) Dividends from stock or stock received through the~~
5 ~~exercise of stock options or warrants;~~

6 ~~(2) The receipt or the exercise of stock options or~~
7 ~~warrants; or~~

8 ~~(3) The sale of stock options or stock, including stock~~
9 ~~issued through the exercise of stock options or~~
10 ~~warrants.~~

11 ~~"Qualified high technology business" means the same as~~
12 ~~defined in section 235-7.3."]~~

13 PART III

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2112, and
17 shall apply to taxable years beginning after December 31, 2010.



Report Title:

GET; Out-of-State Business; In-State Business; Nexus Standard;
High Technology Stock Options Income Tax Exemption

Description:

Creates a nexus standard for taxing out-of-state businesses on their business activities in Hawaii. Includes local affiliate agreements under the GET. Allows out-of-state and in-state businesses to file information regarding sales to residents of the State instead of collecting GET. Repeals the income tax exemption for income derived from stock options or stock from a qualified high technology business. Effective 07/01/2112.
(HD1)

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

