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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The purpose of this Act is to 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 January 1, 2012, and ends on June 30, 2015.

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-A 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 January 1, 2012,  
2 through June 30, 2015:

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 shows, or display spaces as described under  
19 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 January 1, 2012;



- 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 January 1, 2012; 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) or  
20       (g), there is levied, assessed, and collected annually against a  
21       person receiving or deriving previously exempt gross income or  
22       gross proceeds of sale, a tax at the rate of:



1       (1) Two per cent on the previously exempt gross income or  
2       gross proceeds of sale received or derived by the  
3       person from January 1, 2012, to December 31, 2012;

4       (2) Three per cent on the previously exempt gross income  
5       or gross proceeds of sale received or derived by the  
6       person from January 1, 2013, to December 31, 2013; and

7       (3) Four per cent on the previously exempt gross income or  
8       gross proceeds of sale received or derived by the  
9       person from January 1, 2014, to June 30, 2015.

10       (c) As used in this section, "previously exempt gross  
11 income or gross proceeds of sale" means the amount of the gross  
12 income or gross proceeds of sale, the exemption for which is  
13 suspended under subsection (a). The term also includes the  
14 value received by a nonprofit organization from conventions,  
15 conferences, trade show exhibits, and display spaces, the  
16 exemption for which is suspended under subsection (a)(5).

17       (d) The person, against whom the tax is levied and  
18 assessed under this section, shall be responsible for payment of  
19 the tax to the director of taxation.

20       (e) Notwithstanding section 237-8.6, no county surcharge  
21 shall be levied, assessed, or collected on any previously exempt



1 gross income or gross proceeds of sale that is subject to  
2 taxation under subsection (b).

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

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

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

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

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





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

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

6       §237-B Information reporting. From January 1, 2012, the  
7 director shall require information reporting on all exclusions  
8 or exemptions of all amounts, persons, or transactions from this  
9 chapter, except for the following:

- 10       (1) Amounts received that are exempt under section 237-  
11 24(1) through (7); and  
12       (2) Any other amounts, persons, or transactions as  
13 determined by the director to be in the best interest  
14 of tax administration and made by official  
15 pronouncement."

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

19       "§238-A Temporary suspension of exemption of certain  
20 amounts; levy of tax. (a) Notwithstanding any other law to the  
21 contrary, the exemption of the following from taxation under



1 this chapter shall be suspended from January 1, 2012, through  
2 June 30, 2015:

3 (1) The leasing or renting of aircraft or keeping of  
4 aircraft solely for leasing or renting for commercial  
5 transportation of passengers and goods or the  
6 acquisition or importation of aircraft or aircraft  
7 engines by a lessee or renter engaged in interstate  
8 air transportation, as described under paragraph (6)  
9 of the definition of "use" in section 238-1;

10 (2) The use of oceangoing vehicles for passenger or  
11 passenger and goods transportation from one point to  
12 another within the State as a public utility, as  
13 described under paragraph (7) of the definition of  
14 "use" in section 238-1;

15 (3) The use of material, parts, or tools imported or  
16 purchased by a person licensed under chapter 237 that  
17 are used for aircraft service and maintenance or the  
18 construction of an aircraft service and maintenance  
19 facility, as described under paragraph (8) of the  
20 definition of "use" in section 238-1;

21 (4) The use or sale of intoxicating liquor and cigarette  
22 and tobacco products imported into the State and sold



1 to any person or common carrier in interstate  
2 commerce, whether ocean-going or air, for consumption  
3 out of State by the person, crew, or passengers on the  
4 shipper's vessels or airplanes, as described under  
5 section 238-3(g);

6 (5) The use of any vessel constructed under section 189-25  
7 prior to July 1, 1969, as described under section 238-  
8 3(h); and

9 (6) The use of any air pollution control facility subject  
10 to section 237-27.5 as described under section 238-  
11 3(k).

12 (b) Except as otherwise provided under subsection (f) or  
13 (g), there is levied, assessed, and collected annually against a  
14 person who imports or purchases previously exempt property,  
15 services, or contracting for use in this State, a tax at the  
16 rate of:

17 (1) Two per cent on the value of the previously exempt  
18 property, services, or contracting that becomes  
19 subject to the State's taxing jurisdiction from  
20 January 1, 2012, to December 31, 2012;

21 (2) Three per cent on the value of the previously exempt  
22 property, services, or contracting that becomes



1 subject to the State's taxing jurisdiction from  
2 January 1, 2013, to December 31, 2013; and  
3 (3) Four per cent on the value of the previously exempt  
4 property, services, or contracting that becomes  
5 subject to the State's taxing jurisdiction from  
6 January 1, 2014, to June 30, 2015.

7 (c) As used in this section, "previously exempt property,  
8 services, or contracting" means property, services, or  
9 contracting, the exemption for which is suspended under  
10 subsection (a).

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

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

18 (f) This section shall not apply to the value of property,  
19 services, or contracting from binding written contracts entered  
20 into prior to July 1, 2011, that do not permit the passing on of  
21 increased rates of taxes.



1       (g) The tax imposed under subsection (b) shall not apply  
2 to any property, services, or contracting or to any use of the  
3 property, services, or contracting that cannot legally be so  
4 taxed under the Constitution or laws of the United States, but  
5 only so long as, and only to the extent to which the State is  
6 without power to impose the tax.

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

10       (1) Exempt or exclude the property, services, or  
11 contracting or the use of the property, services, or  
12 contracting, from the tax under subsection (b); or

13       (2) Apportion the gross value of services or contracting  
14 sold to customers within the State by persons engaged  
15 in business both within and without the State to  
16 determine the value of that portion of the services or  
17 contracting that is subject to taxation under chapter  
18 237 for the purposes of section 237-21.

19       (h) 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       §238-B Information reporting. From January 1, 2012, the  
5 director shall require information reporting on all exclusions  
6 or exemptions of all amounts, persons, or transactions from this  
7 chapter, except for any amounts, persons, or transactions as  
8 determined by the director to be in the best interest of tax  
9 administration and made by official pronouncement."

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

15       SECTION 5. In codifying the new sections added by sections  
16 2 and 3 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

19       SECTION 6. New statutory material is underscored.

20       SECTION 7. This Act shall take effect on July 1, 2011, and  
21 shall be repealed on June 30, 2015; provided that:



- 1           (1) The suspension of the exemption of section 237-24(14),  
2           Hawaii Revised Statutes, pursuant to section 2 of this  
3           Act, shall not be affected by the repeal and  
4           reenactment of that section on December 31, 2013,  
5           pursuant to Act 70, Session Laws of Hawaii 2009; and  
6           (2) The suspension of certain exemptions of sections 237-  
7           24.3 and 237-24.7, Hawaii Revised Statutes, pursuant  
8           to section 2 of this Act, shall not be affected by the  
9           repeal and reenactment of those sections on December  
10          31, 2014, pursuant to Act 91, Session Laws of Hawaii  
11          2010.



**Report Title:**

General Excise and Use Taxes; Temporary Suspension; Exemption for Certain Persons and Gross Amounts

**Description:**

Suspends temporarily the exemptions for certain persons and certain amounts of gross income or proceeds from the general excise and use tax and requires the payment of the tax at escalating rates. Effective 07/01/2011 and sunsets on 06/30/2015. (HD1 Proposed)

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