

JAN 26 2011

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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 measure 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 passed 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 passing of Act 74, the tax laws have been amended  
16 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 now 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

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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.

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INTRODUCED BY: 

BY REQUEST

**SB. NO. 1318**

**Report Title:**

Use Tax; Stevedoring Exemption

**Description:**

Clarifies the current application of the use tax exemption for certain interstate commerce activities by repealing overbroad and redundant language in the use tax law.

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO USE TAX.

PURPOSE: To eliminate redundant language in the use tax law exempting stevedoring and other similar activities.

MEANS: Amend section 238-3(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The purpose of this measure is to clarify the current application of the use tax by eliminating overbroad and redundant language in a provision relating to interstate commerce activities.

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

Since the passing of Act 74, the tax laws have been amended to expressly exempt the particular stevedoring and other interstate commerce activities originally intended to be exempted by the Legislature by Act 74. Because other provisions now expressly exempt these activities, Act 74's language in the use tax law is now redundant and unnecessary. With regard to the use tax, no express exemption for stevedoring is

necessary because the use tax law automatically exempts any transaction exempt under the general excise tax law. Section 237-24.3(4), HRS, exempts from the general excise tax those activities Act 74 intended to exempt, which by operation of section 238-3, HRS, automatically applies to use tax activities. As a result of this analysis, amendments by Act 74 to the use tax law are surplusage.

Impact on the public: No material impacts on the public are anticipated because general excise tax and reciprocal use tax exemptions for stevedoring and other interstate commerce activities of common carriers exist elsewhere in the law.

Impact on the department and other agencies: The Department of Taxation is charged with administering the use tax law.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: Not applicable.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.