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

4           "§231-           Businesses domiciled out-of-state; nexus  
5 presumption. (a) Notwithstanding any law to the contrary, a  
6 person or entity conducting business in this State that has its  
7 commercial domicile in another state is presumed to be  
8 systematically and regularly engaging in business in this State  
9 and taxable under title 14 if, during any year:

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

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

15           (b) Notwithstanding any requirement under title 14 that a  
16 person or entity remit tax on a monthly basis, if a person is  
17 taxable in this State by reason of this section, the person or  
18 entity may petition the director of taxation to allow the



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

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

8 "§237- **Businesses domiciled out-of-state; annual**  
9 statement. (a) Any person or entity conducting business in  
10 this State that:

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

20 (b) The annual statement required by this section shall be  
21 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 and addresses of residents of this State to whom  
4 the out-of-state business sold tangible personal  
5 property during 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 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 and addresses of residents of this State to whom  
2        the business in this State sold tangible personal  
3        property during 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."

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 2011, and  
17 shall apply to taxable years beginning after December 31, 2010.



**Report Title:**

GET; Out-of-State Business; In-State Business; Nexus Standard

**Description:**

Creates a nexus standard for taxing out-of-state businesses on their business activities in Hawaii. Includes local affiliate agreements under the General Excise Tax (GET). Allows out-of-state and in-state businesses to file information regarding sales to residents of the State instead of collecting GET. Effective July 1, 2011. (SB1355 HD2)

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

