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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 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) or  
20       (g), there is levied, assessed, and collected annually against a  
21       taxpayer receiving or deriving previously exempt gross income or  
22       gross proceeds of sale from July 1, 2011, to June 30, 2013, a



1 tax at the rate of four per cent on that previously exempt gross  
2 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) The tax imposed under subsection (b) shall not apply  
22 to any gross income or gross proceeds of sale that cannot



1 legally be so taxed under the Constitution or laws of the United  
2 States, but only so long as, and only to the extent to which the  
3 State is without power to impose the tax.

4 To the extent that any exemption, exclusion, or  
5 apportionment is necessary to comply with the preceding  
6 sentence, the director of taxation shall:

- 7 (1) Exempt or exclude the gross income or gross proceeds  
8 of sale from the tax under subsection (b); or  
9 (2) Apportion the gross income or gross proceeds of sale  
10 derived within the State by persons engaged in  
11 business both within and without the State to  
12 determine the gross income or gross proceeds of sale  
13 that is subject to taxation under this chapter for the  
14 purposes of section 237-21.

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

17 The director of taxation may establish additional  
18 requirements, procedures, and forms pursuant to rules adopted  
19 under chapter 91, to effectuate this section.

20 **§237- Information reporting.** Beginning July 1, 2011,  
21 the director of taxation shall require information reporting on





1 all exclusions or exemptions of all amounts, persons, or  
2 transactions from this chapter, except for the following:

3 (1) Amounts received that are exempt under section 237-  
4 24(1) through (7); and

5 (2) Any other amounts, persons, or transactions as  
6 determined by the director to be in the best interest  
7 of tax administration and made by official  
8 pronouncement."

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

12 **"§238- Temporary suspension of exemption of certain**  
13 **amounts; levy of tax. (a) Notwithstanding any other law to the**  
14 **contrary, the exemption of the following from taxation under**  
15 **this chapter shall be suspended from July 1, 2011, through June**  
16 **30, 2013:**

17 (1) The leasing or renting of aircraft or keeping of  
18 aircraft solely for leasing or renting for commercial  
19 transportation of passengers and goods or the  
20 acquisition or importation of aircraft or aircraft  
21 engines by a lessee or renter engaged in interstate



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



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

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

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

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

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

21       (e) Notwithstanding section 238-2.6, no county surcharge  
22       shall be levied, assessed, or collected on the value of any



1 previously exempt property, services, or contracting that is  
2 subject to taxation under subsection (b).

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

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

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

16 (1) Exempt or exclude the property, services, or  
17 contracting or the use of the property, services, or  
18 contracting, from the tax under subsection (b); or

19 (2) Apportion the gross value of services or contracting  
20 sold to customers within the State by persons engaged  
21 in business both within and without the State to  
22 determine the value of that portion of the services or



1           contracting that is subject to taxation under chapter  
2           237 for the purposes of section 237-21.

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

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

8           §238- Information reporting. Beginning July 1, 2011,  
9           the director of taxation shall require information reporting on  
10           all exclusions or exemptions of all amounts, persons, or  
11           transactions from this chapter, except for any amounts, persons,  
12           or transactions as determined by the director to be in the best  
13           interest of tax administration and made by official  
14           pronouncement."

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

20           SECTION 5. New statutory material is underscored.

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



**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 both taxes at a four per cent rate. Effective July 1, 2011, and sunsets on June 30, 2013. (SB754 HD1)

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