
A BILL FOR AN ACT

RELATING TO INTRA-STATE AVIATION.

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

1 SECTION 1. The legislature finds that a healthy
2 interisland airline industry is vital to the State's economy.
3 Hawaii's interisland airlines continue to face severe financial
4 challenges.

5 Sales of fuel sold from a foreign-trade zone for use by
6 airlines traveling out of the State are exempt from general
7 excise and use taxes. However, interisland flights are not
8 exempt. To the extent that the Hawaii general excise and use
9 taxes are being applied to interisland flights, the Federal
10 Aviation Act, which includes interisland flights in the
11 definition of "interstate air transportation," is being
12 violated.

13 The legislature finds that exempting common carriers from
14 the general excise and use taxes for sales of fuel from a
15 foreign-trade zone for interisland flights would level the
16 playing field and create a fairer market for all airlines.

17 The purpose of this Act is to exempt common carriers from
18 the general excise and use taxes for fuel sold from a foreign-



1 trade zone to common carriers for use in interisland air
2 transportation.

3 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§237- Aviation fuel for air transportation. This
7 chapter shall not apply to amounts received from the sale of
8 aviation fuel, as defined in section 243-1, categorized as
9 privileged foreign merchandise, nonprivileged foreign
10 merchandise, domestic merchandise, or zone-restricted
11 merchandise that is admitted into a foreign-trade zone and
12 purchased by a common carrier for consumption or use in air
13 transportation between two points in the State."

14 SECTION 3. Section 238-1, Hawaii Revised Statutes, is
15 amended by amending the definition of "use" to read as follows:

16 ""Use" (and any nounal, verbal, adjectival, adverbial, and
17 other equivalent form of the term) herein used interchangeably
18 means any use, whether the use is of such nature as to cause the
19 property, services, or contracting to be appreciably consumed or
20 not, or the keeping of the property or services for such use or
21 for sale, the exercise of any right or power over tangible or
22 intangible personal property incident to the ownership of that



1 property, and shall include control over tangible or intangible
2 property by a seller who is licensed or who should be licensed
3 under chapter 237, who directs the importation of the property
4 into the State for sale and delivery to a purchaser in the State
5 liability and free on board (FOB) to the contrary
6 notwithstanding, regardless of where title passes, but the term
7 "use" shall not include:

8 (1) Temporary use of property, not of a perishable or
9 quickly consumable nature, where the property is
10 imported into the State for temporary use (not sale)
11 therein by the person importing the same and is not
12 intended to be, and is not, kept permanently in the
13 State. For example, without limiting the generality
14 of the foregoing language:

15 (A) In the case of a contractor importing permanent
16 equipment for the performance of a construction
17 contract, with intent to remove, and who does
18 remove, the equipment out of the State upon
19 completing the contract;

20 (B) In the case of moving picture films imported for
21 use in theaters in the State with intent or under



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1 contract to transport the same out of the State
2 after completion of such use; and

3 (C) In the case of a transient visitor importing an
4 automobile or other belongings into the State to
5 be used by the transient visitor while therein
6 but [~~which~~] that are to be used and are removed
7 upon the transient visitor's departure from the
8 State;

9 (2) Use by the taxpayer of property acquired by the
10 taxpayer solely by way of gift;

11 (3) Use [~~which~~] that is limited to the receipt of articles
12 and the return thereof, to the person from whom
13 acquired, immediately or within a reasonable time
14 either after temporary trial or without trial;

15 (4) Use of goods imported into the State by the owner of a
16 vessel or vessels engaged in interstate or foreign
17 commerce and held for and used only as ship stores for
18 the vessels;

19 (5) The use or keeping for use of household goods,
20 personal effects, and private automobiles imported
21 into the State for nonbusiness use by a person who:



- 1 (A) Acquired them in another state, territory,
- 2 district, or country;
- 3 (B) At the time of the acquisition was a bona fide
- 4 resident of another state, territory, district,
- 5 or country;
- 6 (C) Acquired the property for use outside the State;
- 7 and
- 8 (D) Made actual and substantial use thereof outside
- 9 this State;
- 10 provided that as to an article acquired less than
- 11 three months prior to the time of its importation into
- 12 the State it shall be presumed, until and unless
- 13 clearly proved to the contrary, that it was acquired
- 14 for use in the State and that its use outside the
- 15 State was not actual and substantial;
- 16 (6) The leasing or renting of any aircraft or the keeping
- 17 of any aircraft solely for leasing or renting to
- 18 lessees or renters using the aircraft for commercial
- 19 transportation of passengers and goods or the
- 20 acquisition or importation of any such aircraft or
- 21 aircraft engines by any lessee or renter engaged in
- 22 interstate air transportation. For purposes of this



1 paragraph, "leasing" includes all forms of lease,
2 regardless of whether the lease is an operating lease
3 or financing lease. The definition of "interstate air
4 transportation" is the same as in [~~49 U.S.C. 40102~~]
5 title 49 United States Code section 40102;

6 (7) The use of oceangoing vehicles for passenger or
7 passenger and goods transportation from one point to
8 another within the State as a public utility as
9 defined in chapter 269;

10 (8) The use of material, parts, or tools imported or
11 purchased by a person licensed under chapter 237
12 [~~which~~] that are used for aircraft service and
13 maintenance, or the construction of an aircraft
14 service and maintenance facility as those terms are
15 defined in section 237-24.9;

16 (9) The use of services or contracting imported for resale
17 where the contracting or services are for resale,
18 consumption, or use outside the State pursuant to
19 section 237-29.53(a);

20 (10) The use of contracting imported or purchased by a
21 contractor as defined in section 237-6 who is:

22 (A) Licensed under chapter 237;



- 1 (B) Engaged in business as a contractor; and
- 2 (C) Subject to the tax imposed under section 238-2.3;
- 3 [and]

4 (11) The use of property, services, or contracting imported
5 by foreign diplomats and consular officials who are
6 holding cards issued or authorized by the United
7 States Department of State granting them an exemption
8 from state taxes[-]; and

9 (12) The use of aviation fuel, as defined in section 243-1,
10 categorized as privileged foreign merchandise,
11 nonprivileged foreign merchandise, domestic
12 merchandise, or zone-restricted merchandise that is
13 admitted into a foreign-trade zone and is used by a
14 common carrier for consumption or use in air
15 transportation between two points in the State.

16 With regard to purchases made and distributed under the
17 authority of chapter 421, a cooperative association shall be
18 deemed the user thereof."

19 SECTION 4. This Act shall not be construed to imply that
20 any law prior to the effective date of this Act is inconsistent
21 with this Act.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2011.

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JAN 20 2011



Report Title:

Taxes; Intrastate Aviation; Foreign Trade Zone; Exemption

Description:

Exempts the general excise and use taxes on fuel sold from a foreign-trade zone to common carriers for use in interisland air transportation. Effective 07/01/2011.

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