
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 **PART I**

2 SECTION 1. The purpose of this Act is to address the
3 projected \$1,200,000,000 revenue shortfall that the State faces
4 in the biennium operating budget for fiscal years 2011-2013.

5 During the 2010 regular session, the legislature reduced
6 government spending by over \$1,200,000,000 in general fund
7 budget cuts. In 2009, it reduced tax credits or imposed new
8 taxes in the amount of over \$550,000,000, added \$115,000,000 in
9 federal stimulus funds, and made over \$150,000,000 worth of
10 transfers from special funds in order to tackle the original
11 \$2,100,000,000 revenue shortfall.

12 The legislature finds, however, that the range of
13 alternative solutions is severely limited during the 2011
14 regular session. The legislature has already relied on one-time
15 revenue enhancements and the reduction of government services
16 through furloughs and lay-offs in critically-needed areas.
17 Given these actions, reducing government spending by another
18 \$1,200,000,000 in general fund cuts would be difficult.



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PART II

SECTION 2. The purpose of this part is to temporarily suspend the general excise and use tax exemptions for certain amounts received by certain persons and, instead, require those persons to pay the applicable tax on those amounts at a specified rate. The suspension of the exemptions and imposition of the tax commences on January 1, 2012, and ends on June 30, 2015.

This part does not suspend the existing general excise tax exemption for nonprofit organizations, with the exception of the value or gross income received by nonprofit organizations from certain conventions, conferences, trade shows, or display spaces.

SECTION 3. Chapter 237, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§237- Temporary suspension of exemption of certain amounts; levy of tax. (a) Notwithstanding any other law to the contrary, the exemption of the following amounts from taxation under this chapter shall be suspended from January 1, 2012, through June 30, 2015:



- 1 (1) Amounts deducted from the gross income received by
2 contractors as described under section 237-13(3) (B);
- 3 (2) Reimbursements received by federal cost-plus
4 contractors for the costs of purchased materials,
5 plant, and equipment as described under section 237-
6 13(3) (C);
- 7 (3) Gross receipts of home service providers acting as
8 service carriers providing mobile telecommunications
9 services to other home service providers as described
10 under section 237-13(6) (D);
- 11 (4) Amounts deducted from the gross income of real
12 property lessees because of receipt from sublessees as
13 described under section 237-16.5;
- 14 (5) The value or gross income received by nonprofit
15 organizations from certain conventions, conferences,
16 trade shows, or display spaces as described under
17 section 237-16.8;
- 18 (6) Amounts received by sugarcane producers as described
19 under section 237-24(14);
- 20 (7) Amounts received from the loading, transportation, and
21 unloading of agricultural commodities shipped
22 interisland as described under section 237-24.3(1);



- 1 (8) Amounts received from the sale of intoxicating liquor,
2 cigarettes and tobacco products, and agricultural,
3 meat, or fish products to persons or common carriers
4 engaged in interstate or foreign commerce as described
5 under section 237-24.3(2);
- 6 (9) Amounts received or accrued from the loading or
7 unloading of cargo as described under section 237-
8 24.3(4)(A);
- 9 (10) Amounts received or accrued from tugboat and towage
10 services as described under section 237-24.3(4)(B);
- 11 (11) Amounts received or accrued from the transportation of
12 pilots or government officials and other maritime-
13 related services as described under section 237-
14 24.3(4)(C);
- 15 (12) Amounts received by labor organizations for real
16 property leases as described under section 237-
17 24.3(10);
- 18 (13) Amounts received as rent for aircraft or aircraft
19 engines used for interstate air transportation as
20 described under section 237-24.3(12);
- 21 (14) Amounts received by exchanges and exchange members as
22 described under section 237-24.5;



- 1 (15) Amounts received as high technology research and
2 development grants under section 206M-15 as described
3 under section 237-24.7(10);
- 4 (16) Amounts received from the servicing and maintenance of
5 aircraft or construction of aircraft service and
6 maintenance facilities as described under section 237-
7 24.9;
- 8 (17) Amounts received by petroleum product refiners from
9 other refiners for further refining of petroleum
10 products as described under section 237-27;
- 11 (18) Gross proceeds received from the construction,
12 reconstruction, erection, operation, use, maintenance,
13 or furnishing of air pollution control facilities, as
14 described under section 237-27.5, that do not have
15 valid certificates of exemption on January 1, 2012;
- 16 (19) Gross proceeds received from shipbuilding and ship
17 repairs as described under section 237-28.1;
- 18 (20) Amounts received by telecommunications common carriers
19 from call center operators for interstate or foreign
20 telecommunications services as described under section
21 237-29.8;



1 (21) Gross proceeds received by qualified businesses in
2 enterprise zones, as described under section 209E-11,
3 that do not have valid certificates of qualification
4 from the department of business, economic development,
5 and tourism on January 1, 2012; and

6 (22) Gross proceeds received by contractors licensed under
7 chapter 444 for construction within enterprise zones
8 performed for qualified businesses within the
9 enterprise zones or businesses approved by the
10 department of business, economic development, and
11 tourism to enroll into the enterprise zone program, as
12 described under section 209E-11.

13 (b) Except as otherwise provided under subsections (f),
14 (g), or (h), there is levied, assessed, and collected annually
15 against the persons under subsection (a), a tax at the rate of
16 four per cent on the previously exempt gross income or gross
17 proceeds of sale derived from January 1, 2012, to June 30, 2015.

18 (c) As used in this section, "previously exempt gross
19 income or gross proceeds of sale" means the amount of the gross
20 income or gross proceeds of sale, the exemption for which is
21 suspended under subsection (a). The term also includes the
22 value received by a nonprofit organization from conventions,



1 conferences, trade show exhibits, and display spaces, the
2 exemption for which is suspended under subsection (a)(5).

3 (d) The persons under subsection (a), against whom the tax
4 is levied and assessed under this section, shall be responsible
5 for payment of the tax to the director of taxation.

6 (e) Notwithstanding section 237-8.6, no county surcharge
7 shall be levied, assessed, or collected on any previously exempt
8 gross income or gross proceeds of sale that is subject to
9 taxation under subsection (b).

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

14 (g) This section shall not apply to gross income or gross
15 proceeds from services furnished to a company by its wholly
16 owned subsidiary.

17 (h) The tax imposed under subsection (b) shall not apply
18 to any gross income or gross proceeds of sale that cannot
19 legally be so taxed under the Constitution or laws of the United
20 States, but only so long as, and only to the extent to which the
21 State is without power to impose the tax.



1 To the extent that any exemption, exclusion, or
2 apportionment is necessary to comply with the preceding
3 sentence, the director of taxation shall:

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

6 (2) Apportion the gross income or gross proceeds of sale
7 derived within the State by persons engaged in
8 business both within and without the State to
9 determine the gross income or gross proceeds of sale
10 that are subject to taxation under this chapter for
11 the purposes of section 237-21.

12 (i) This chapter shall apply to the payment, collection,
13 enforcement, and appeal of the tax levied under this section.

14 The director of taxation may establish additional
15 requirements, procedures, and forms pursuant to rules adopted
16 under chapter 91, to effectuate this section.

17 §237- Information reporting. From January 1, 2012, the
18 director of taxation shall require information reporting on all
19 exclusions or exemptions of all amounts, persons, or
20 transactions from this chapter, except for the following:

21 (1) Amounts received that are exempt under section 237-
22 24(1) through (7); and



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

5 SECTION 4. Chapter 238, Hawaii Revised Statutes, is
6 amended by adding two new sections to be appropriately
7 designated and to read as follows:

8 "§238- Temporary suspension of exemption of certain
9 amounts; levy of tax. (a) Notwithstanding any other law to the
10 contrary, the exemption of the following from taxation under
11 this chapter shall be suspended from January 1, 2012, through
12 June 30, 2015:

13 (1) The leasing or renting of aircraft or keeping of
14 aircraft solely for leasing or renting for commercial
15 transportation of passengers and goods or the
16 acquisition or importation of aircraft or aircraft
17 engines by a lessee or renter engaged in interstate
18 air transportation, as described under paragraph (6)
19 of the definition of "use" in section 238-1;

20 (2) The use of oceangoing vehicles for passenger or
21 passenger and goods transportation from one point to
22 another within the State as a public utility, as



1 described under paragraph (7) of the definition of
2 "use" in section 238-1;

3 (3) The use of material, parts, or tools imported or
4 purchased by a person licensed under chapter 237 which
5 are used for aircraft service and maintenance or the
6 construction of an aircraft service and maintenance
7 facility, as described under paragraph (8) of the
8 definition of "use" in section 238-1;

9 (4) The use or sale of intoxicating liquor and cigarette
10 and tobacco products imported into the State and sold
11 to any person or common carrier in interstate
12 commerce, whether ocean-going or air, for consumption
13 out-of-state by the person, crew, or passengers on the
14 shipper's vessels or airplanes, as described under
15 section 238-3(g);

16 (5) The use of any vessel constructed under section 189-25
17 prior to July 1, 1969, as described under section
18 238-3(h); and

19 (6) The use of any air pollution control facility subject
20 to section 237-27.5 as described under section
21 238-3(k).



1 (b) Except as otherwise provided under subsection (f) or
2 (g), there is levied, assessed, and collected annually against
3 the persons under subsection (a), a tax at the rate of four per
4 cent on the previously exempt value of property, services, or
5 contracting that becomes subject to the State's taxing
6 jurisdiction from January 1, 2012, to June 30, 2015.

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

11 (d) The persons under subsection (a), against whom the tax
12 is levied and assessed under this section, shall be responsible
13 for payment of the tax 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 SECTION 7. This Act shall take effect on July 1, 2011, and
2 shall be repealed on June 30, 2015; provided that:

3 (1) The department of taxation shall have the authority to
4 postpone the payment of the tax imposed under this Act
5 until the deadline to file the general excise or use
6 tax annual return and reconciliation form, as
7 applicable, without regard to any extension;

8 (2) The suspension of the exemption from taxation of
9 amounts described under section 237-24(14), Hawaii
10 Revised Statutes, pursuant to section 3 of this Act,
11 shall not be affected by the repeal and reenactment of
12 that section on December 31, 2013, pursuant to Act 70,
13 Session Laws of Hawaii 2009; and

14 (3) The suspension of certain exemptions from taxation of
15 amounts described under sections 237-24.3 and 237-
16 24.7, Hawaii Revised Statutes, pursuant to section 3
17 of this Act, shall not be affected by the repeal and
18 reenactment of those sections on December 31, 2014,
19 pursuant to Act 91, Session Laws of Hawaii 2010.



Report Title:

Taxation; Exemptions; Suspension; Appropriation

Description:

Suspends from 1/1/2012, to 6/30/2015, 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 a rate of 4%. Appropriates funds to expedite implementation. (SD1)

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