
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 of
4 Hawaii faces in the biennium operating budget for fiscal years
5 2011-2013.

6 During the 2010 regular session, the state legislature
7 reduced government spending by over \$1,200,000,000 in general
8 fund budget cuts. In 2009, it reduced tax credits or imposed
9 new taxes in the amount of over \$550,000,000, added \$115,000,000
10 in federal stimulus funds, and made over \$150,000,000 worth of
11 transfers from special funds in order to tackle the original
12 \$2,100,000,000 revenue shortfall.

13 The legislature finds, however, that the range of
14 alternative solutions is severely limited during the 2011
15 session. The legislature has already relied on one-time revenue
16 enhancements and the reduction of government services through
17 furloughs and lay-offs in critically-needed areas. Given these



1 actions, reducing government spending by another \$1,200,000,000
2 in general fund cuts would be difficult.

3 **PART II**

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

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

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

18 "§237- Temporary suspension of exemption of certain
19 amounts; levy of tax. (a) Notwithstanding any other law to the
20 contrary, the exemption of the following amounts from taxation
21 under this chapter shall be suspended from January 1, 2012,
22 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 development grants
2 under section 206M-15 as described under section 237-
3 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 subsection (f) or
14 (g), there is levied, assessed, and collected annually against
15 the persons under subsection (a), a tax at the rate of four per
16 cent on the previously exempt gross income or gross proceeds of
17 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 exempted under subsection (a), against
4 whom the tax is levied and assessed under this section, shall be
5 responsible 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) The tax imposed under subsection (b) shall not apply
15 to any gross income or gross proceeds of sale that cannot
16 legally be so taxed under the Constitution or laws of the United
17 States, but only so long as, and only to the extent to which the
18 State is without power to impose the tax.

19 To the extent that any exemption, exclusion, or
20 apportionment is necessary to comply with the preceding
21 sentence, the director of taxation shall:



- 1 (1) Exempt or exclude the gross income or gross proceeds
2 of sale from the tax under subsection (b); or
- 3 (2) Apportion the gross income or gross proceeds of sale
4 derived within the State by persons engaged in
5 business both within and without the State to
6 determine the gross income or gross proceeds of sale
7 that are subject to taxation under this chapter for
8 the purposes of section 237-21.

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

11 The director of taxation may establish additional
12 requirements, procedures, and forms pursuant to rules adopted
13 under chapter 91, to effectuate this section.

14 §237- Information reporting. From January 1, 2012, the
15 director shall require information reporting on all exclusions
16 or exemptions of all amounts, persons, or transactions from this
17 chapter, except for the following:

- 18 (1) Amounts received that are exempt under section 237-
19 24(1) through (7); and
- 20 (2) Any other amounts, persons, or transactions as
21 determined by the director to be in the best interest



1 of tax administration and made by official
2 pronouncement."

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

6 "§238- Temporary suspension of exemption of certain
7 amounts; levy of tax. (a) Notwithstanding any other law to the
8 contrary, the exemption of the following from taxation under
9 this chapter shall be suspended from January 1, 2012, through
10 June 30, 2015:

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

18 (2) The use of oceangoing vehicles for passenger or
19 passenger and goods transportation from one point to
20 another within the State as a public utility, as
21 described under paragraph (7) of the definition of
22 "use" in section 238-1;



- 1 (3) The use of material, parts, or tools imported or
2 purchased by a person licensed under chapter 237 which
3 are used for aircraft service and maintenance or the
4 construction of an aircraft service and maintenance
5 facility, as described under paragraph (8) of the
6 definition of "use" in section 238-1;
- 7 (4) The use or sale of intoxicating liquor and cigarette
8 and tobacco products imported into the State and sold
9 to any person or common carrier in interstate
10 commerce, whether ocean-going or air, for consumption
11 out of State by the person, crew, or passengers on the
12 shipper's vessels or airplanes, as described under
13 section 238-3(g);
- 14 (5) The use of any vessel constructed under section 189-25
15 prior to July 1, 1969, as described under section
16 238-3(h); and
- 17 (6) The use of any air pollution control facility subject
18 to section 237-27.5 as described under section
19 238-3(k).
- 20 (b) Except as otherwise provided under subsection (f) or
21 (g), there is levied, assessed, and collected annually against
22 the persons under subsection (a), a tax at the rate of four per



1 cent on the previously exempt value of property, services, or
2 contracting that becomes subject to the State's taxing
3 jurisdiction from January 1, 2012, to June 30, 2015.

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

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

11 (e) Notwithstanding section 238-2.6, no county surcharge
12 shall be levied, assessed, or collected on any previously exempt
13 value of property, services, or contracting that is subject to
14 taxation under subsection (b).

15 (f) This section shall not apply to the value of property,
16 services, or contracting from binding written contracts entered
17 into prior to July 1, 2011, that do not permit the passing on of
18 increased rates of taxes.

19 (g) The tax imposed under subsection (b) shall not apply
20 to any property, services, or contracting or to any use of the
21 property, services, or contracting that cannot legally be so
22 taxed under the Constitution or laws of the United States, but



1 only so long as, and only to the extent to which the State is
2 without power to impose the tax.

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

6 (1) Exempt or exclude the property, services, or
7 contracting or the use of the property, services, or
8 contracting, from the tax under subsection (b); or

9 (2) Apportion the gross value of services or contracting
10 sold to customers within the State by persons engaged
11 in business both within and without the State to
12 determine the value of that portion of the services or
13 contracting that is subject to taxation under chapter
14 237 for the 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 §238- Information reporting. From January 1, 2012, the
21 director shall require information reporting on all exclusions
22 or exemptions of all amounts, persons, or transactions from this



1 chapter, except for any amounts, persons, or transactions as
2 determined by the director to be in the best interest of tax
3 administration and made by official pronouncement."

4 **PART III**

5 SECTION 5. The purpose of this part is to institute
6 temporary tax provisions for two years to raise revenue for the
7 State while lowering the total tax burden for working families
8 by:

- 9 (1) Doubling the standard deduction amounts;
10 (2) Doubling the tax credit for household and dependent
11 care services necessary for gainful employment;
12 (3) Doubling the income tax credit for low-income
13 household renters;
14 (4) Doubling the refundable food/excise tax credit;
15 (5) Increasing the capital goods excise tax credit;
16 (6) Raising the general excise and use tax rates; and
17 (7) Raising various public service company tax rates.

18 **PART IV**

19 SECTION 6. Section 235-2.4, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) Section 63 (with respect to taxable income defined)
2 of the Internal Revenue Code shall be operative for the purposes
3 of this chapter, subject to the following:

4 (1) Sections 63(c)(1)(B) (relating to the additional
5 standard deduction), 63(c)(1)(C) (relating to the real
6 property tax deduction), 63(c)(1)(D) (relating to the
7 disaster loss deduction), 63(c)(1)(E) (relating to the
8 motor vehicle sales tax deduction), 63(c)(4) (relating
9 to inflation adjustments), 63(c)(7) (defining the real
10 property tax deduction), 63(c)(8) (defining the
11 disaster loss deduction), 63(c)(9) (defining the motor
12 vehicle sales tax deduction), and 63(f) (relating to
13 additional amounts for the aged or blind) of the
14 Internal Revenue Code shall not be operative for
15 purposes of this chapter;

16 (2) Section 63(c)(2) (relating to the basic standard
17 deduction) of the Internal Revenue Code shall be
18 operative, except that the standard deduction amounts
19 provided therein shall instead mean:

20 (A) [~~\$4,400~~] \$8,800 in the case of:

21 (i) A joint return as provided by section

22 235-93; or



1 (ii) A surviving spouse (as defined in section
2 2(a) of the Internal Revenue Code);

3 (B) [~~\$3,212~~] \$6,424 in the case of a head of
4 household (as defined in section 2(b) of the
5 Internal Revenue Code);

6 (C) [~~\$2,200~~] \$4,400 in the case of an individual who
7 is not married and who is not a surviving spouse
8 or head of household; or

9 (D) [~~\$2,200~~] \$4,400 in the case of a married
10 individual filing a separate return;

11 (3) Section 63(c)(5) (limiting the basic standard
12 deduction in the case of certain dependents) of the
13 Internal Revenue Code shall be operative, except that
14 the limitation shall be the greater of \$500 or such
15 individual's earned income; and

16 (4) The standard deduction amount for nonresidents shall
17 be calculated pursuant to section 235-5."

18 SECTION 7. Act 60, Session Laws of Hawaii 2009, is amended
19 by amending section 6 to read as follows:

20 "SECTION 6. This Act shall take effect upon approval,
21 provided that:



1 (1) Section 2 shall apply to taxable years beginning after
2 December 31, 2008;

3 (2) [~~Sections 1 and~~] Section 3 shall apply to taxable
4 years beginning after December 31, 2010; [and]

5 (3) Section 1 shall apply to taxable years beginning after
6 December 31, 2013; and

7 [~~3~~] (4) On December 31, 2015, this Act shall be repealed
8 and sections 235-2.4(a), 235-51(a), (b), and (c), and
9 235-54(a), Hawaii Revised Statutes, shall be reenacted
10 in the form in which they read on the day before the
11 effective date of this Act."

12 **PART V**

13 SECTION 8. Section 235-55.6, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Allowance of credit.

16 (1) In general. For each resident taxpayer, who files an
17 individual income tax return for a taxable year, and
18 who is not claimed or is not otherwise eligible to be
19 claimed as a dependent by another taxpayer for federal
20 or Hawaii state individual income tax purposes, who
21 maintains a household which includes as a member one
22 or more qualifying individuals (as defined in



1 subsection (b) (1)), there shall be allowed as a credit
2 against the tax imposed by this chapter for the
3 taxable year an amount equal to the applicable
4 percentage of the employment-related expenses (as
5 defined in subsection (b) (2)) paid by such individual
6 during the taxable year. If the tax credit claimed by
7 a resident taxpayer exceeds the amount of income tax
8 payment due from the resident taxpayer, the excess of
9 the credit over payments due shall be refunded to the
10 resident taxpayer; provided that tax credit properly
11 claimed by a resident individual who has no income tax
12 liability shall be paid to the resident individual;
13 and provided further that no refunds or payment on
14 account of the tax credit allowed by this section
15 shall be made for amounts less than \$1.

16 (2) Applicable percentage defined. For purposes of
17 paragraph (1), the term "applicable percentage" [~~means~~
18 ~~twenty five per cent reduced (but not below fifteen~~
19 ~~per cent) by one percentage point of each \$2,000 (or~~
20 ~~fraction thereof) by which the taxpayer's adjusted~~
21 ~~gross income for the taxable year exceeds \$22,000.]~~

22 means:



1	<u>Adjusted gross income</u>	<u>Applicable percentage</u>
2	<u>\$0 through \$22,000</u>	<u>50%</u>
3	<u>\$22,001 through \$24,000</u>	<u>48%</u>
4	<u>\$24,001 through \$26,000</u>	<u>46%</u>
5	<u>\$26,001 through \$28,000</u>	<u>44%</u>
6	<u>\$28,001 through \$30,000</u>	<u>42%</u>
7	<u>\$30,001 through \$32,000</u>	<u>40%</u>
8	<u>\$32,001 through \$34,000</u>	<u>38%</u>
9	<u>\$34,001 through \$36,000</u>	<u>36%</u>
10	<u>\$36,001 through \$38,000</u>	<u>34%</u>
11	<u>\$38,001 through \$40,000</u>	<u>32%</u>
12	<u>\$40,001 and over</u>	<u>30%"</u>

PART VI

14 SECTION 9. Section 235-55.7, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

16 "(c) Each taxpayer with an adjusted gross income of less
17 than \$30,000 who has paid more than \$1,000 in rent during the
18 taxable year for which the credit is claimed may claim a tax
19 credit of [~~\$50~~] \$100 multiplied by the number of qualified
20 exemptions to which the taxpayer is entitled; provided each
21 taxpayer sixty-five years of age or over may claim double the
22 tax credit; and provided that a resident individual who has no



1 income or no income taxable under this chapter may also claim
2 the tax credit as set forth in this section."

3 PART VII

4 SECTION 10. Section 235-55.85, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Each resident individual taxpayer may claim a
7 refundable food/excise tax credit multiplied by the number of
8 qualified exemptions to which the taxpayer is entitled in
9 accordance with the table below; provided that a husband and
10 wife filing separate tax returns for a taxable year for which a
11 joint return could have been filed by them shall claim only the
12 tax credit to which they would have been entitled had a joint
13 return been filed.

	Adjusted gross income	Credit per exemption
15	Under \$5,000	[85] <u>\$170</u>
16	\$5,000 under \$10,000	[75] <u>150</u>
17	\$10,000 under \$15,000	[65] <u>130</u>
18	\$15,000 under \$20,000	[55] <u>110</u>
19	\$20,000 under \$30,000	[45] <u>90</u>
20	\$30,000 under \$40,000	[35] <u>70</u>
21	\$40,000 under \$50,000	[25] <u>50</u>
22	\$50,000 and over	0"



PART VIII

SECTION 11. Section 235-110.7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter a capital goods excise tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the tax credit shall be determined by the application of the following rates against the cost of the eligible depreciable tangible personal property used by the taxpayer in a trade or business and placed in service within Hawaii after December 31, 1987. For calendar years beginning after:

- (1) December 31, 1987, the applicable rate shall be three per cent;
- (2) December 31, 1988, the applicable rate shall be four per cent;
- (3) December 31, 2008, the applicable rate shall be zero per cent; [and]



1 (4) December 31, 2009, [~~and thereafter,~~] the applicable
2 rate shall be four per cent[-]; and

3 (5) October 1, 2011, and thereafter, the applicable rate
4 shall be five per cent.

5 For taxpayers with fiscal taxable years, the applicable
6 rate shall be the rate for the calendar year in which the
7 eligible depreciable tangible personal property used in the
8 trade or business is placed in service within Hawaii.

9 In the case of a partnership, S corporation, estate, or
10 trust, the tax credit allowable is for eligible depreciable
11 tangible personal property which is placed in service by the
12 entity. The cost upon which the tax credit is computed shall be
13 determined at the entity level. Distribution and share of
14 credit shall be determined by rules.

15 In the case of eligible depreciable tangible personal
16 property for which a credit for sales or use taxes paid to
17 another state is allowable under section 238-3(i), the amount of
18 the tax credit allowed under this section shall not exceed the
19 amount of use tax actually paid under chapter 238 relating to
20 such tangible personal property.

21 If a deduction is taken under section 179 (with respect to
22 election to expense certain depreciable business assets) of the



1 Internal Revenue Code of 1954, as amended, no tax credit shall
2 be allowed for that portion of the cost of property for which
3 the deduction was taken."

4 2. By amending subsection (e) to read:

5 "(e) As used in this section, the definition of section 38
6 property (with respect to investment in depreciable tangible
7 personal property) as defined by section 48(a)(1)(A), (a)(1)(B),
8 (a)(3), (a)(4), (a)(7), (a)(8), (a)(10)(A), (b), (c), (f), (l),
9 (m), and (s) of the Internal Revenue Code of 1954, as amended as
10 of December 31, 1984, is operative for the purposes of this
11 section only.

12 As used in this section:

13 "Cost" means (1) the actual invoice price of the tangible
14 personal property, or (2) the basis from which depreciation is
15 taken under section 167 (with respect to depreciation) or from
16 which a deduction may be taken under section 168 (with respect
17 to accelerated cost recovery system) of the Internal Revenue
18 Code of 1954, as amended, whichever is less.

19 "Eligible depreciable tangible personal property" is
20 section 38 property as defined by the operative provisions of
21 section 48 and having a depreciable life under section 167 or



1 for which a deduction may be taken under section 168 of the
2 federal Internal Revenue Code of 1954, as amended.

3 "Placed in service" means the earliest of the following
4 taxable years:

5 (1) The taxable year in which, under the:

6 (A) Taxpayer's depreciation practice, the period for
7 depreciation; or

8 (B) Accelerated cost recovery system, a claim for
9 recovery allowances; with respect to such
10 property begins; or

11 (2) The taxable year in which the property is placed in a
12 condition or state of readiness and availability for a
13 specifically assigned function.

14 "Purchase" means an acquisition of property.

15 "Tangible personal property" means tangible personal
16 property which is placed in service within Hawaii after
17 December 31, 1987, and the purchase or importation of which
18 resulted in a transaction which was subject to the imposition
19 and payment of tax at the rate of [~~four~~] five per cent under
20 chapter 237 or 238. "Tangible personal property" does not
21 include tangible personal property which is an integral part of



1 a building or structure or tangible personal property used in a
2 foreign trade zone, as defined under chapter 212."

3 SECTION 12. Section 237-13, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§237-13 **Imposition of tax.** There is hereby levied and
6 shall be assessed and collected annually privilege taxes against
7 persons on account of their business and other activities in the
8 State measured by the application of rates against values of
9 products, gross proceeds of sales, or gross income, whichever is
10 specified, as follows:

11 (1) Tax on manufacturers.

12 (A) Upon every person engaging or continuing within
13 the State in the business of manufacturing,
14 including compounding, canning, preserving,
15 packing, printing, publishing, milling,
16 processing, refining, or preparing for sale,
17 profit, or commercial use, either directly or
18 through the activity of others, in whole or in
19 part, any article or articles, substance or
20 substances, commodity or commodities, the amount
21 of the tax to be equal to the value of the
22 articles, substances, or commodities,



1 manufactured, compounded, canned, preserved,
2 packed, printed, milled, processed, refined, or
3 prepared for sale, as shown by the gross proceeds
4 derived from the sale thereof by the manufacturer
5 or person compounding, preparing, or printing
6 them, multiplied by one-half of one per cent.

7 (B) The measure of the tax on manufacturers is the
8 value of the entire product for sale, regardless
9 of the place of sale or the fact that deliveries
10 may be made to points outside the State.

11 (C) If any person liable for the tax on manufacturers
12 ships or transports the person's product, or any
13 part thereof, out of the State, whether in a
14 finished or unfinished condition, or sells the
15 same for delivery to points outside the State
16 (for example, consigned to a mainland purchaser
17 via common carrier f.o.b. Honolulu), the value of
18 the products in the condition or form in which
19 they exist immediately before entering interstate
20 or foreign commerce, determined as hereinafter
21 provided, shall be the basis for the assessment
22 of the tax imposed by this paragraph. This tax



1 shall be due and payable as of the date of entry
2 of the products into interstate or foreign
3 commerce, whether the products are then sold or
4 not. The department shall determine the basis
5 for assessment, as provided by this paragraph, as
6 follows:

7 (i) If the products at the time of their entry
8 into interstate or foreign commerce already
9 have been sold, the gross proceeds of sale,
10 less the transportation expenses, if any,
11 incurred in realizing the gross proceeds for
12 transportation from the time of entry of the
13 products into interstate or foreign
14 commerce, including insurance and storage in
15 transit, shall be the measure of the value
16 of the products;

17 (ii) If the products have not been sold at the
18 time of their entry into interstate or
19 foreign commerce, and in cases governed by
20 clause (i) in which the products are sold
21 under circumstances such that the gross
22 proceeds of sale are not indicative of the



1 true value of the products, the value of the
2 products constituting the basis for
3 assessment shall correspond as nearly as
4 possible to the gross proceeds of sales for
5 delivery outside the State, adjusted as
6 provided in clause (i), or if sufficient
7 data are not available, sales in the State,
8 of similar products of like quality and
9 character and in similar quantities, made by
10 the taxpayer (unless not indicative of the
11 true value) or by others. Sales outside the
12 State, adjusted as provided in clause (i),
13 may be considered when they constitute the
14 best available data. The department shall
15 prescribe uniform and equitable rules for
16 ascertaining the values;

17 (iii) At the election of the taxpayer and with the
18 approval of the department, the taxpayer may
19 make the taxpayer's returns under clause (i)
20 even though the products have not been sold
21 at the time of their entry into interstate
22 or foreign commerce; and



1 (iv) In all cases in which products leave the
2 State in an unfinished condition, the basis
3 for assessment shall be adjusted so as to
4 deduct the portion of the value as is
5 attributable to the finishing of the goods
6 outside the State.

7 (2) Tax on business of selling tangible personal property;
8 producing.

9 (A) Upon every person engaging or continuing in the
10 business of selling any tangible personal
11 property whatsoever (not including, however,
12 bonds or other evidence of indebtedness, or
13 stocks), there is likewise hereby levied, and
14 shall be assessed and collected, a tax equivalent
15 to [~~four~~] five per cent of the gross proceeds of
16 sales of the business; provided that insofar as
17 the sale of tangible personal property is a
18 wholesale sale under section [†]237-4(a)(8) [†],
19 the sale shall be subject to section 237-13.3.
20 Upon every person engaging or continuing within
21 this State in the business of a producer, the tax
22 shall be equal to one-half of one per cent of the



1 gross proceeds of sales of the business, or the
2 value of the products, for sale, if sold for
3 delivery outside the State or shipped or
4 transported out of the State, and the value of
5 the products shall be determined in the same
6 manner as the value of manufactured products
7 covered in the cases under paragraph (1)(C).

8 (B) Gross proceeds of sales of tangible property in
9 interstate and foreign commerce shall constitute
10 a part of the measure of the tax imposed on
11 persons in the business of selling tangible
12 personal property, to the extent, under the
13 conditions, and in accordance with the provisions
14 of the Constitution of the United States and the
15 Acts of the Congress of the United States which
16 may be now in force or may be hereafter adopted,
17 and whenever there occurs in the State an
18 activity to which, under the Constitution and
19 Acts of Congress, there may be attributed gross
20 proceeds of sales, the gross proceeds shall be so
21 attributed.



1 (C) No manufacturer or producer, engaged in such
2 business in the State and selling the
3 manufacturer's or producer's products for
4 delivery outside of the State (for example,
5 consigned to a mainland purchaser via common
6 carrier f.o.b. Honolulu), shall be required to
7 pay the tax imposed in this chapter for the
8 privilege of so selling the products, and the
9 value or gross proceeds of sales of the products
10 shall be included only in determining the measure
11 of the tax imposed upon the manufacturer or
12 producer.

13 (D) When a manufacturer or producer, engaged in such
14 business in the State, also is engaged in selling
15 the manufacturer's or producer's products in the
16 State at wholesale, retail, or in any other
17 manner, the tax for the privilege of engaging in
18 the business of selling the products in the State
19 shall apply to the manufacturer or producer as
20 well as the tax for the privilege of
21 manufacturing or producing in the State, and the
22 manufacturer or producer shall make the returns



1 of the gross proceeds of the wholesale, retail,
2 or other sales required for the privilege of
3 selling in the State, as well as making the
4 returns of the value or gross proceeds of sales
5 of the products required for the privilege of
6 manufacturing or producing in the State. The
7 manufacturer or producer shall pay the tax
8 imposed in this chapter for the privilege of
9 selling its products in the State, and the value
10 or gross proceeds of sales of the products, thus
11 subjected to tax, may be deducted insofar as
12 duplicated as to the same products by the measure
13 of the tax upon the manufacturer or producer for
14 the privilege of manufacturing or producing in
15 the State; provided that no producer of
16 agricultural products who sells the products to a
17 purchaser who will process the products outside
18 the State shall be required to pay the tax
19 imposed in this chapter for the privilege of
20 producing or selling those products.

21 (E) A taxpayer selling to a federal cost-plus
22 contractor may make the election provided for by



1 paragraph (3) (C), and in that case the tax shall
2 be computed pursuant to the election,
3 notwithstanding this paragraph or paragraph (1)
4 to the contrary.

5 (F) The department, by rule, may require that a
6 seller take from the purchaser of tangible
7 personal property a certificate, in a form
8 prescribed by the department, certifying that the
9 sale is a sale at wholesale; provided that:

10 (i) Any purchaser who furnishes a certificate
11 shall be obligated to pay to the seller,
12 upon demand, the amount of the additional
13 tax that is imposed upon the seller whenever
14 the sale in fact is not at wholesale; and

15 (ii) The absence of a certificate in itself shall
16 give rise to the presumption that the sale
17 is not at wholesale unless the sales of the
18 business are exclusively at wholesale.

19 (3) Tax upon contractors.

20 (A) Upon every person engaging or continuing within
21 the State in the business of contracting, the tax



1 shall be equal to [~~four~~] five per cent of the
2 gross income of the business.

3 (B) In computing the tax levied under this paragraph,
4 there shall be deducted from the gross income of
5 the taxpayer so much thereof as has been included
6 in the measure of the tax levied under
7 subparagraph (A), on:

8 (i) Another taxpayer who is a contractor, as
9 defined in section 237-6;

10 (ii) A specialty contractor, duly licensed by the
11 department of commerce and consumer affairs
12 pursuant to section 444-9, in respect of the
13 specialty contractor's business; or

14 (iii) A specialty contractor who is not licensed
15 by the department of commerce and consumer
16 affairs pursuant to section 444-9, but who
17 performs contracting activities on federal
18 military installations and nowhere else in
19 this State;

20 provided that any person claiming a deduction
21 under this paragraph shall be required to show in
22 the person's return the name and general excise



1 number of the person paying the tax on the amount
2 deducted by the person.

3 (C) In computing the tax levied under this paragraph
4 against any federal cost-plus contractor, there
5 shall be excluded from the gross income of the
6 contractor so much thereof as fulfills the
7 following requirements:

8 (i) The gross income exempted shall constitute
9 reimbursement of costs incurred for
10 materials, plant, or equipment purchased
11 from a taxpayer licensed under this chapter,
12 not exceeding the gross proceeds of sale of
13 the taxpayer on account of the transaction;
14 and

15 (ii) The taxpayer making the sale shall have
16 certified to the department that the
17 taxpayer is taxable with respect to the
18 gross proceeds of the sale, and that the
19 taxpayer elects to have the tax on gross
20 income computed the same as upon a sale to
21 the state government.



1 (D) A person who, as a business or as a part of a
2 business in which the person is engaged, erects,
3 constructs, or improves any building or
4 structure, of any kind or description, or makes,
5 constructs, or improves any road, street,
6 sidewalk, sewer, or water system, or other
7 improvements on land held by the person (whether
8 held as a leasehold, fee simple, or otherwise),
9 upon the sale or other disposition of the land or
10 improvements, even if the work was not done
11 pursuant to a contract, shall be liable to the
12 same tax as if engaged in the business of
13 contracting, unless the person shows that at the
14 time the person was engaged in making the
15 improvements the person intended, and for the
16 period of at least one year after completion of
17 the building, structure, or other improvements
18 the person continued to intend to hold and not
19 sell or otherwise dispose of the land or
20 improvements. The tax in respect of the
21 improvements shall be measured by the amount of
22 the proceeds of the sale or other disposition



1 that is attributable to the erection,
2 construction, or improvement of such building or
3 structure, or the making, constructing, or
4 improving of the road, street, sidewalk, sewer,
5 or water system, or other improvements. The
6 measure of tax in respect of the improvements
7 shall not exceed the amount which would have been
8 taxable had the work been performed by another,
9 subject as in other cases to the deductions
10 allowed by subparagraph (B). Upon the election
11 of the taxpayer, this paragraph may be applied
12 notwithstanding that the improvements were not
13 made by the taxpayer, or were not made as a
14 business or as a part of a business, or were made
15 with the intention of holding the same. However,
16 this paragraph shall not apply in respect of any
17 proceeds that constitute or are in the nature of
18 rent; all such gross income shall be taxable
19 under paragraph (9); provided that insofar as the
20 business of renting or leasing real property
21 under a lease is taxed under section 237-16.5,
22 the tax shall be levied by section 237-16.5.



1 (4) Tax upon theaters, amusements, radio broadcasting
2 stations, etc.

3 (A) Upon every person engaging or continuing within
4 the State in the business of operating a theater,
5 opera house, moving picture show, vaudeville,
6 amusement park, dance hall, skating rink, radio
7 broadcasting station, or any other place at which
8 amusements are offered to the public, the tax
9 shall be equal to [~~four~~] five per cent of the
10 gross income of the business, and in the case of
11 a sale of an amusement at wholesale under section
12 237-4(a)(13), the tax shall be subject to section
13 237-13.3.

14 (B) The department may require that the person
15 rendering an amusement at wholesale take from the
16 licensed seller a certificate, in a form
17 prescribed by the department, certifying that the
18 sale is a sale at wholesale; provided that:

19 (i) Any licensed seller who furnishes a
20 certificate shall be obligated to pay to the
21 person rendering the amusement, upon demand,
22 the amount of additional tax that is imposed



1 upon the seller whenever the sale is not at
2 wholesale; and

3 (ii) The absence of a certificate in itself shall
4 give rise to the presumption that the sale
5 is not at wholesale unless the person
6 rendering the sale is exclusively rendering
7 the amusement at wholesale.

8 (5) Tax upon sales representatives, etc. Upon every
9 person classified as a representative or purchasing
10 agent under section 237-1, engaging or continuing
11 within the State in the business of performing
12 services for another, other than as an employee, there
13 is likewise hereby levied and shall be assessed and
14 collected a tax equal to [~~four~~] five per cent of the
15 commissions and other compensation attributable to the
16 services so rendered by the person.

17 (6) Tax on service business.

18 (A) Upon every person engaging or continuing within
19 the State in any service business or calling
20 including professional services not otherwise
21 specifically taxed under this chapter, there is
22 likewise hereby levied and shall be assessed and



1 collected a tax equal to [~~four~~] five per cent of
2 the gross income of the business, and in the case
3 of a wholesaler under section 237-4(a)(10), the
4 tax shall be equal to one-half of one per cent of
5 the gross income of the business.

6 Notwithstanding the foregoing, a wholesaler under
7 section 237-4(a)(10) shall be subject to section
8 237-13.3.

9 (B) The department may require that the person
10 rendering a service at wholesale take from the
11 licensed seller a certificate, in a form
12 prescribed by the department, certifying that the
13 sale is a sale at wholesale; provided that:

14 (i) Any licensed seller who furnishes a
15 certificate shall be obligated to pay to the
16 person rendering the service, upon demand,
17 the amount of additional tax that is imposed
18 upon the seller whenever the sale is not at
19 wholesale; and

20 (ii) The absence of a certificate in itself shall
21 give rise to the presumption that the sale
22 is not at wholesale unless the person



1 rendering the sale is exclusively rendering
2 services at wholesale.

3 (C) Where any person is engaged in the business of
4 selling interstate or foreign common carrier
5 telecommunication services within and without the
6 State, other than as a home service provider, the
7 tax shall be imposed on that portion of gross
8 income received by a person from service which is
9 originated or terminated in this State and is
10 charged to a telephone number, customer, or
11 account in this State notwithstanding any other
12 state law (except for the exemption under section
13 237-23(a)(1)) to the contrary. If, under the
14 Constitution and laws of the United States, the
15 entire gross income as determined under this
16 paragraph of a business selling interstate or
17 foreign common carrier telecommunication services
18 cannot be included in the measure of the tax, the
19 gross income shall be apportioned as provided in
20 section 237-21; provided that the apportionment
21 factor and formula shall be the same for all
22 persons providing those services in the State.



1 (D) Where any person is engaged in the business of a
2 home service provider, the tax shall be imposed
3 on the gross income received or derived from
4 providing interstate or foreign mobile
5 telecommunications services to a customer with a
6 place of primary use in this State when such
7 services originate in one state and terminate in
8 another state, territory, or foreign country;
9 provided that all charges for mobile
10 telecommunications services which are billed by
11 or for the home service provider are deemed to be
12 provided by the home service provider at the
13 customer's place of primary use, regardless of
14 where the mobile telecommunications originate,
15 terminate, or pass through; provided further that
16 the income from charges specifically derived from
17 interstate or foreign mobile telecommunications
18 services, as determined by books and records that
19 are kept in the regular course of business by the
20 home service provider in accordance with section
21 239-24, shall be apportioned under any
22 apportionment factor or formula adopted under



1 subparagraph (C). Gross income shall not
2 include:

3 (i) Gross receipts from mobile
4 telecommunications services provided to a
5 customer with a place of primary use outside
6 this State;

7 (ii) Gross receipts from mobile
8 telecommunications services that are subject
9 to the tax imposed by chapter 239;

10 (iii) Gross receipts from mobile
11 telecommunications services taxed under
12 section 237-13.8; and

13 (iv) Gross receipts of a home service provider
14 acting as a serving carrier providing mobile
15 telecommunications services to another home
16 service provider's customer.

17 For the purposes of this paragraph, "charges for
18 mobile telecommunications services", "customer",
19 "home service provider", "mobile
20 telecommunications services", "place of primary
21 use", and "serving carrier" have the same meaning
22 as in section 239-22.



1 (7) Tax on insurance producers. Upon every person engaged
2 as a licensed producer pursuant to chapter 431, there
3 is hereby levied and shall be assessed and collected a
4 tax equal to 0.15 per cent of the commissions due to
5 that activity.

6 (8) Tax on receipts of sugar benefit payments. Upon the
7 amounts received from the United States government by
8 any producer of sugar (or the producer's legal
9 representative or heirs), as defined under and by
10 virtue of the Sugar Act of 1948, as amended, or other
11 Acts of the Congress of the United States relating
12 thereto, there is hereby levied a tax of one-half of
13 one per cent of the gross amount received; provided
14 that the tax levied hereunder on any amount so
15 received and actually disbursed to another by a
16 producer in the form of a benefit payment shall be
17 paid by the person or persons to whom the amount is
18 actually disbursed, and the producer actually making a
19 benefit payment to another shall be entitled to claim
20 on the producer's return a deduction from the gross
21 amount taxable hereunder in the sum of the amount so
22 disbursed. The amounts taxed under this paragraph



1 shall not be taxable under any other paragraph,
2 subsection, or section of this chapter.

3 (9) Tax on other business. Upon every person engaging or
4 continuing within the State in any business, trade,
5 activity, occupation, or calling not included in the
6 preceding paragraphs or any other provisions of this
7 chapter, there is likewise hereby levied and shall be
8 assessed and collected, a tax equal to [~~four~~] five per
9 cent of the gross income thereof. In addition, the
10 rate prescribed by this paragraph shall apply to a
11 business taxable under one or more of the preceding
12 paragraphs or other provisions of this chapter, as to
13 any gross income thereof not taxed thereunder as gross
14 income or gross proceeds of sales or by taxing an
15 equivalent value of products, unless specifically
16 exempted."

17 SECTION 13. Section 237-15, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§237-15 Technicians.** When technicians supply dentists or
20 physicians with dentures, orthodontic devices, braces, and
21 similar items which have been prepared by the technician in
22 accordance with specifications furnished by the dentist or



1 physician, and such items are to be used by the dentist or
2 physician in the dentist's or physician's professional practice
3 for a particular patient who is to pay the dentist or physician
4 for the same as a part of the dentist's or physician's
5 professional services, the technician shall be taxed as though
6 the technician were a manufacturer selling a product to a
7 licensed retailer, rather than at the rate of [~~four~~] five per
8 cent which is generally applied to professions and services."

9 SECTION 14. Section 237-16.5, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (a) to read:

12 "(a) This section relates to the leasing of real property
13 by a lessor to a lessee. There is hereby levied, and shall be
14 assessed and collected annually, a privilege tax against persons
15 engaging or continuing within the State in the business of
16 leasing real property to another, equal to [~~four~~] five per cent
17 of the gross proceeds or gross income received or derived from
18 the leasing; provided that where real property is subleased by a
19 lessee to a sublessee, the lessee, as provided in this section,
20 shall be allowed a deduction from the amount of gross proceeds
21 or gross income received from its sublease of the real property.
22 The deduction shall be in the amount allowed under this section.



1 All deductions under this section and the name and general
2 excise tax number of the lessee's lessor shall be reported on
3 the general excise tax return. Any deduction allowed under this
4 section shall only be allowed with respect to leases and
5 subleases in writing and relating to the same real property."

6 2. By amending subsection (f) to read:

7 "(f) This section shall not cause the tax upon a lessor,
8 with respect to any item of the lessor's gross proceeds or gross
9 income, to exceed [~~four~~] five per cent."

10 SECTION 15. Section 237-18, Hawaii Revised Statutes, is
11 amended by amending subsection (f) to read as follows:

12 "(f) Where tourism related services are furnished through
13 arrangements made by a travel agency or tour packager and the
14 gross income is divided between the provider of the services and
15 the travel agency or tour packager, the tax imposed by this
16 chapter shall apply to each such person with respect to such
17 person's respective portion of the proceeds, and no more.

18 As used in this subsection "tourism related services" means
19 catamaran cruises, canoe rides, dinner cruises, lei greetings,
20 transportation included in a tour package, sightseeing tours not
21 subject to chapter 239, admissions to luaus, dinner shows,
22 extravaganzas, cultural and educational facilities, and other



1 services rendered directly to the customer or tourist, but only
2 if the providers of the services other than air transportation
3 are subject to a [~~four~~] five per cent tax under this chapter or
4 chapter 239."

5 SECTION 16. Section 238-2, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§238-2 Imposition of tax on tangible personal property;
8 exemptions. There is hereby levied an excise tax on the use in
9 this State of tangible personal property which is imported by a
10 taxpayer in this State whether owned, purchased from an
11 unlicensed seller, or however acquired for use in this State.
12 The tax imposed by this chapter shall accrue when the property
13 is acquired by the importer or purchaser and becomes subject to
14 the taxing jurisdiction of the State. The rates of the tax
15 hereby imposed and the exemptions thereof are as follows:

- 16 (1) If the importer or purchaser is licensed under chapter
17 237 and is:
- 18 (A) A wholesaler or jobber importing or purchasing
19 for purposes of sale or resale; or
- 20 (B) A manufacturer importing or purchasing material
21 or commodities which are to be incorporated by
22 the manufacturer into a finished or saleable



1 product (including the container or package in
2 which the product is contained) wherein it will
3 remain in such form as to be perceptible to the
4 senses, and which finished or saleable product is
5 to be sold in such manner as to result in a
6 further tax on the activity of the manufacturer
7 as the manufacturer or as a wholesaler, and not
8 as a retailer,

9 there shall be no tax; provided that if the
10 wholesaler, jobber, or manufacturer is also engaged in
11 business as a retailer (so classed under chapter 237),
12 paragraph (2) shall apply to the wholesaler, jobber,
13 or manufacturer, but the director of taxation shall
14 refund to the wholesaler, jobber, or manufacturer, in
15 the manner provided under section 231-23(c) such
16 amount of tax as the wholesaler, jobber, or
17 manufacturer shall, to the satisfaction of the
18 director, establish to have been paid by the
19 wholesaler, jobber, or manufacturer to the director
20 with respect to property which has been used by the
21 wholesaler, jobber, or manufacturer for the purposes
22 stated in this paragraph;



1 (2) If the importer or purchaser is licensed under chapter
2 237 and is:

3 (A) A retailer or other person importing or
4 purchasing for purposes of sale or resale, not
5 exempted by paragraph (1);

6 (B) A manufacturer importing or purchasing material
7 or commodities which are to be incorporated by
8 the manufacturer into a finished or saleable
9 product (including the container or package in
10 which the product is contained) wherein it will
11 remain in such form as to be perceptible to the
12 senses, and which finished or saleable product is
13 to be sold at retail in this State, in such
14 manner as to result in a further tax on the
15 activity of the manufacturer in selling such
16 products at retail;

17 (C) A contractor importing or purchasing material or
18 commodities which are to be incorporated by the
19 contractor into the finished work or project
20 required by the contract and which will remain in
21 such finished work or project in such form as to
22 be perceptible to the senses;



1 (D) A person engaged in a service business or calling
2 as defined in section 237-7, or a person
3 furnishing transient accommodations subject to
4 the tax imposed by section 237D-2, in which the
5 import or purchase of tangible personal property
6 would have qualified as a sale at wholesale as
7 defined in section 237-4(a)(8) had the seller of
8 the property been subject to the tax in chapter
9 237; or

10 (E) A publisher of magazines or similar printed
11 materials containing advertisements, when the
12 publisher is under contract with the advertisers
13 to distribute a minimum number of magazines or
14 similar printed materials to the public or
15 defined segment of the public, whether or not
16 there is a charge to the persons who actually
17 receive the magazines or similar printed
18 materials,

19 the tax shall be one-half of one per cent of the
20 purchase price of the property, if the purchase and
21 sale are consummated in Hawaii; or, if there is no
22 purchase price applicable thereto, or if the purchase



1 or sale is consummated outside of Hawaii, then one-
2 half of one per cent of the value of such property;
3 and

4 (3) In all other cases, [~~four~~] five per cent of the value
5 of the property.

6 For purposes of this section, tangible personal property is
7 property that is imported by the taxpayer for use in this State,
8 notwithstanding the fact that title to the property, or the risk
9 of loss to the property, passes to the purchaser of the property
10 at a location outside this State."

11 SECTION 17. Section 238-2.3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§238-2.3 Imposition of tax on imported services or**
14 **contracting; exemptions.** There is hereby levied an excise tax
15 on the value of services or contracting as defined in section
16 237-6 that are performed by an unlicensed seller at a point
17 outside the State and imported or purchased for use in this
18 State. The tax imposed by this chapter shall accrue when the
19 service or contracting as defined in section 237-6 is received
20 by the importer or purchaser and becomes subject to the taxing
21 jurisdiction of the State. The rates of the tax hereby imposed
22 and the exemptions from the tax are as follows:



1 (1) If the importer or purchaser is licensed under chapter
2 237 and is:

3 (A) Engaged in a service business or calling in which
4 the imported or purchased services or contracting
5 become identifiable elements, excluding overhead,
6 of the services rendered by the importer or
7 purchaser, and the gross income of the importer
8 or purchaser is subject to the tax imposed under
9 chapter 237 on services at the rate of one-half
10 of one per cent or the rate of tax imposed under
11 section 237-13.3; or

12 (B) A manufacturer importing or purchasing services
13 or contracting that become identifiable elements,
14 excluding overhead, of a finished or saleable
15 product (including the container or package in
16 which the product is contained) and the finished
17 or saleable product is to be sold in a manner
18 that results in a further tax on the manufacturer
19 as a wholesaler, and not a retailer;

20 there shall be no tax imposed on the value of the
21 imported or purchased services or contracting;
22 provided that if the manufacturer is also engaged in



1 business as a retailer as classified under chapter
2 237, paragraph (2) shall apply to the manufacturer,
3 but the director of taxation shall refund to the
4 manufacturer, in the manner provided under section
5 231-23(c), that amount of tax that the manufacturer,
6 to the satisfaction of the director, shall establish
7 to have been paid by the manufacturer to the director
8 with respect to services that have been used by the
9 manufacturer for the purposes stated in this
10 paragraph.

11 (2) If the importer or purchaser is a person licensed
12 under chapter 237 and is:

13 (A) Engaged in a service business or calling in which
14 the imported or purchased services or contracting
15 become identifiable elements, excluding overhead,
16 of the services rendered by the importer or
17 purchaser, and the gross income from those
18 services when sold by the importer or purchaser
19 is subject to the tax imposed under chapter 237
20 at the highest rate;

21 (B) A manufacturer importing or purchasing services
22 or contracting that become identifiable elements,



1 excluding overhead, of the finished or saleable
2 manufactured product (including the container or
3 package in which the product is contained) and
4 the finished or saleable product is to be sold in
5 a manner that results in a further tax under
6 chapter 237 on the activity of the manufacturer
7 as a retailer; or

8 (C) A contractor importing or purchasing services or
9 contracting that become identifiable elements,
10 excluding overhead, of the finished work or
11 project required, under the contract, and where
12 the gross proceeds derived by the contractor are
13 subject to the tax under section 237-13(3) as a
14 contractor,

15 the tax shall be one-half of one per cent of the value
16 of the imported or purchased services or contracting;
17 and

18 (3) In all other cases, the importer or purchaser is
19 subject to the tax at the rate of [~~four~~] five per cent
20 on the value of the imported or purchased services or
21 contracting."



1 SECTION 18. Section 239-5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) There shall be levied and assessed upon each public
4 utility, except airlines, motor carriers, common carriers by
5 water, and contract carriers taxed by section 239-6, a tax of
6 such rate per cent of its gross income each year from its public
7 utility business as shall be determined in the manner
8 hereinafter provided. The tax imposed by this section is in
9 lieu of all taxes other than those below set out, and is a means
10 of taxing the personal property of the public utility, tangible
11 and intangible, including going concern value. In addition to
12 the tax imposed by this chapter there also are imposed income
13 taxes, the specific taxes imposed by chapter 249, the fees
14 prescribed by chapter 269, any tax specifically imposed by the
15 terms of the public utility's franchise or under chapter 240,
16 the use or consumption tax imposed by chapter 238, and
17 employment taxes.

18 The rate of the tax upon the gross income of the public
19 utility shall be [~~four~~] five per cent; provided that if:

20 (1) A county provides by ordinance for a real property tax
21 exemption for real property used by a public utility
22 in its public utility business and owned by the public



1 utility (or leased to it by a lease under which the
2 public utility is required to pay the taxes upon the
3 property), and

4 (2) The county has not denied the exemption to the public
5 utility, but excluding a denial based upon a dispute
6 as to the ownership, lease, or use of a specific
7 parcel of real property,

8 then there shall be levied and assessed a tax in excess of the
9 [~~four~~] five per cent rate determined in the manner hereinafter
10 provided upon the gross income allocable to such county. The
11 revenues generated from the tax in excess of the [~~four~~] five per
12 cent rate hereinbefore established shall be paid by the public
13 utility directly to such county based upon the proportion of
14 gross income from its public utility business attributable to
15 such county, based upon the allocation made in the public
16 utility's filings with the State of Hawaii; provided that if the
17 gross income from the public utility business attributable to
18 such county is not so allocated in the public utility's State
19 filings, then the gross income from the public utility business
20 shall be equitably allocated to each county. The relative
21 number of access lines in each county shall be deemed an



1 acceptable basis of equitable allocation for telecommunication
2 companies.

3 The rate of the tax in excess of the [~~four~~] five per cent
4 rate hereinbefore established upon the gross income from the
5 public utility business shall be determined as follows:

6 If the ratio of the net income of the company to its gross
7 income is fifteen per cent or less, the rate of tax in excess of
8 the [~~four~~] five per cent rate on gross income shall be 1.885 per
9 cent; for all companies having net income in excess of fifteen
10 per cent of the gross, the rate of the tax on gross income shall
11 increase continuously in proportion to the increase in ratio of
12 net income to gross, at such rate that for each increase of one
13 per cent in the ratio of net income to gross, there shall be an
14 increase of .2675 per cent in the rate of the tax.

15 The following formula may be used to determine the rate, in
16 which formula the term "R" is the ratio of net income to gross
17 income, and "X" is the required rate of the tax on gross income
18 for the utility in question:

19
$$X = (26.75R - 2.1275)\%;$$

20 provided that in no case governed by the formula shall "X" be
21 less than 1.885 per cent or more than 4.2 per cent.



1 However, if the gross income is apportioned under section
2 239-8(b) or (c), there shall be no adjustment of the rate of tax
3 on the amount of gross income so apportioned to the State on
4 account of the ratio of the net income to the gross income being
5 in excess of fifteen per cent, and it shall be assumed in such
6 case that the ratio is fifteen per cent or less."

7 SECTION 19. Section 239-6, Hawaii Revised Statutes, is
8 amended by amending subsections (a) and (b) to read as follows:

9 "(a) There shall be levied and assessed upon each airline
10 a tax of [~~four~~] five per cent of its gross income each year from
11 the airline business; provided that if an airline adopts a rate
12 schedule for students in grade twelve or below traveling in
13 school groups providing such students at reasonable hours a rate
14 less than one-half of the regular adult fare, the tax shall be
15 three per cent of its gross income each year from the airline
16 business.

17 (b) There shall be levied and assessed upon each motor
18 carrier, each common carrier by water, and upon each contract
19 carrier other than a motor carrier, a tax of [~~four~~] five per
20 cent of its gross income each year from the motor carrier or
21 contract carrier business."



1 SECTION 20. Section 239-7, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) The tax imposed by this chapter shall be assessed
5 against each public service company in the manner provided by
6 this chapter, and shall be paid to the department of taxation at
7 the times and in the manner (in installments or otherwise)
8 provided by this section, except as provided in section
9 239-5(a), where there is levied and assessed a tax in excess of
10 [~~four~~] five per cent upon gross income, the revenues generated
11 from the tax in excess of the [~~four~~] five per cent rate shall be
12 paid to the respective county director of finance at the times
13 and in the manner (in installments or otherwise) provided by
14 this section."

15 2. By amending subsection (c) to read:

16 "(c) The department shall prescribe the forms in which
17 returns shall be made so as to reflect clearly the liability of
18 each public service company subject to this tax, and may provide
19 in the forms for such additional information as it may deem
20 necessary. All provisions of the laws, not inapplicable and not
21 inconsistent with this chapter, relating to returns for income
22 tax purposes, the assessment (including additional assessments),



1 collection, and payment (in installments or otherwise) of income
2 taxes and the powers and duties of the department and the state
3 director of finance in connection therewith, and relating to
4 appeals from or other adjustments of such assessments,
5 limitation periods for assessments, enforcement of attendance of
6 witnesses, and the production of evidence, examination of
7 witnesses and records, the effect of assessments, tax books, and
8 lists and other official tax records as evidence, delinquent
9 dates and penalties, and the rights and liabilities (civil and
10 criminal) of taxpayers and other persons in connection with any
11 matters dealt with by chapter 235, are made applicable (1) to
12 the taxes and the assessment, payment, and collection thereof,
13 provided by this chapter, and (2) to the department and the
14 state director of finance in connection with the taxes and the
15 assessment, payment, or enforcement of payment and collection
16 thereof, and (3) to taxpayers and other persons affected by this
17 chapter, as the case may be. The provisions of chapter 235
18 regarding the limitation period for assessment and refunds shall
19 run from the filing of the return for the taxable year, or the
20 due date prescribed for the filing of the return, whichever is
21 later. With respect to payments due to a county of the revenues
22 generated from the tax in excess of the [~~four~~] five per cent



1 rate imposed under section 239-5(a), a county director of
2 finance shall be afforded such rights and procedures of the
3 department in the enforcement of payment and collection of the
4 taxes assessed and levied under this chapter."

5 SECTION 21. Section 239-9, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) First year of doing business. The measure of the tax
8 for the year in which the company begins business is an estimate
9 of the gross income of the public service company for that year
10 or for the part of that year in which it is in business.

11 The tax thereon for the year in which the company begins
12 business shall be at the following rate:

13 (1) If subsection (a) (2) applies, at the rate of [~~four~~]
14 five per cent, or

15 (2) If subsection (a) (1) applies but the company though in
16 business at the commencement of the calendar year was
17 not in business during any part of the preceding year,
18 the tax shall be at the rate provided by sections
19 239-5 and 239-6, except that there shall be no
20 adjustment of the rate of tax on account of the ratio
21 of the net income to the gross income being in excess
22 of fifteen per cent and it shall be assumed for



1 purposes of this subsection and subsection (e) that
2 the ratio is fifteen per cent or less.

3 The estimate shall be made and the tax returned on or
4 before the twentieth day of the third month after the month in
5 which the company begins business and shall be subject to
6 adjustment by the filing of an amended return as provided in
7 subsection (e). Payment of the tax shall accompany the return
8 unless time for payment is extended by the director of taxation.
9 The extension may be granted by the director in order to provide
10 for payment of the tax in installments during the remainder of
11 the taxable year."

12 SECTION 22. Section 239-10, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§239-10 Disposition of revenues. All taxes collected
15 under this chapter shall be state realizations; provided that
16 where a tax in excess of the [~~four~~] five per cent rate upon
17 gross income is levied and assessed under section 239-5(a), such
18 tax revenues to be paid to the county shall be realizations of
19 such county."

20 **PART IX**

21 SECTION 23. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2011-2012 for
2 the department of taxation to implement procedures necessary to
3 expedite the tax provisions of this Act.

4 The sum appropriated shall be expended by the department of
5 taxation for the purposes of this Act.

6 **PART X**

7 SECTION 24. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 25. This Act shall take effect on July 1, 2011,
10 and shall be repealed on June 30, 2015; provided that:

11 (1) The department of taxation shall have the authority to
12 postpone the payment of the tax imposed under this Act
13 until the deadline to file the general excise or use
14 tax annual return and reconciliation form, as
15 applicable, without regard to any extension;

16 (2) The suspension of the exemption from taxation of
17 amounts described under section 237-24(14), Hawaii
18 Revised Statutes, pursuant to section 3 of this Act,
19 shall not be affected by the repeal and reenactment of
20 that section on December 31, 2013, pursuant to Act 70,
21 Session Laws of Hawaii 2009;



- 1 (3) The suspension of certain exemptions from taxation of
2 amounts described under sections 237-24.3 and 237-
3 24.7, Hawaii Revised Statutes, pursuant to section 3
4 of this Act, shall not be affected by the repeal and
5 reenactment of those sections on December 31, 2014,
6 pursuant to Act 91, Session Laws of Hawaii 2010;
- 7 (4) Sections 6, 8, 9, and 10 shall apply to taxable years
8 beginning after December 31, 2011, and shall be
9 repealed on December 31, 2013, and sections
10 235-55.6(a), 235-55.7(c), and 235-55.85(b), Hawaii
11 Revised Statutes, shall be reenacted in the form in
12 which they read on the day before the effective date
13 of this Act; and
- 14 (5) Sections 11 through 22 shall take effect on October 1,
15 2011, and shall be repealed on September 30, 2013, and
16 sections 235-110.7(a), 235-110.7(e), 237-13, 237-15,
17 237-16.5(a), 237-16.5(f), 237-18(f), 238-2, 238-2.3,
18 239-5(a), 239-6(a), 239-6(b), 239-7(a), 239-7(c),
19 239-9(c), and 239-10, Hawaii Revised Statutes, shall
20 be reenacted in the form in which they read on the day
21 before the effective date of this Act.
- 22



Report Title:

Taxation

Description:

Suspends from January 1, 2012, to June 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 graduated rate. For two years: doubles the standard deduction amounts, the tax credit for household and dependent care services necessary for gainful employment, the income tax credit for low-income household renters, and the refundable food/excise tax credit; increases the capital goods excise tax credit, general excise and use tax rates, and various public service company tax rates by one per cent; appropriates funds to expedite implementation. (Proposed SD1)

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

