

# TAXBILLSERVICE

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**SUBJECT:** USE, Clarify law relating to stevedoring activities

**BILL NUMBER:** SB 1318; HB 1091 (Identical)

**INTRODUCED BY:** SB by Tsustui by request; HB by Say by request

**BRIEF SUMMARY:** Amends HRS section 238-3 to delete the provision preventing the application of the general excise or use tax law on stevedoring activities before April 1, 1978.

**EFFECTIVE DATE:** Upon approval

**STAFF COMMENTS:** This is an administration measure submitted by the department of taxation TAX-04(11). The legislature by Act 74, SLH 1979, adopted this provision to ensure that stevedoring activities would not be subject to the general excise tax or use tax law in response to a United States Supreme Court opinion (in re Department of Revenue of Washington v. Association of Washington Stevedoring Companies, 55 L.Ed.2d.682 (1978)) that expanded the state's ability to tax interstate commerce by specifying that stevedoring activities were not protected by the federal interstate commerce clause and, therefore, could be taxed by state and local governments.

While the department did not have any objection to the original law, it did note that the broadness of the language of the original exemption went far beyond what had been exempt from the law prior to the Supreme Court decision. As a result, legislation was introduced in 1987 to specifically highlight those stevedoring activities that were presumed to be exempt before the 1979 legislation. At that time, this Service questioned the necessity of the proposed amendment to HRS Section 238-3 (a) as the service it attempts to exempt is already covered in the amendment that had been proposed to the general excise tax. However, Act 292 SLH 1987, was adopted with the amendment to the use tax that this measure now proposes to delete.

Since HRS Section 237-24.3 (4) specifically enumerates the types of stevedoring activities which remain exempt from the general excise tax, the exemption also applies to the complementary use tax. Thus, the language eliminated in this proposal is justified.

Digested 2/2/11