
A BILL FOR AN ACT

RELATING TO THE IMPOSITION OF USE TAX ON IMPORTED CONTRACTING.

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

1 SECTION 1. Section 238-1 Hawaii Revised Statutes, is
2 amended by amending the definition of "use" to read as follows:
3 ""Use" (and any nounal, verbal, adjectival, adverbial, and
4 other equivalent form of the term) herein used interchangeably
5 means any use, whether the use is of such nature as to cause the
6 property, services, or contracting to be appreciably consumed or
7 not, or the keeping of the property or services for such use or
8 for sale, the exercise of any right or power over tangible or
9 intangible personal property incident to the ownership of that
10 property, and shall include control over tangible or intangible
11 property by a seller who is licensed or who should be licensed
12 under chapter 237, who directs the importation of the property
13 into the State for sale and delivery to a purchaser in the
14 State, liability and free on board (FOB) to the contrary
15 notwithstanding, regardless of where title passes, but the term
16 "use" shall not include:
17 (1) Temporary use of property, not of a perishable or
18 quickly consumable nature, where the property is

1 imported into the State for temporary use (not sale)
2 therein by the person importing the same and is not
3 intended to be, and is not, kept permanently in the
4 State. For example, without limiting the generality
5 of the foregoing language:

6 (A) In the case of a contractor importing permanent
7 equipment for the performance of a construction
8 contract, with intent to remove, and who does
9 remove, the equipment out of the State upon
10 completing the contract;

11 (B) In the case of moving picture films imported for
12 use in theaters in the State with intent or under
13 contract to transport the same out of the State
14 after completion of such use; and

15 (C) In the case of a transient visitor importing an
16 automobile or other belongings into the State to
17 be used by the transient visitor while therein
18 but which are to be used and are removed upon the
19 transient visitor's departure from the State;

20 (2) Use by the taxpayer of property acquired by the
21 taxpayer solely by way of gift;

22 (3) Use which is limited to the receipt of articles and
23 the return thereof, to the person from whom acquired,

1 immediately or within a reasonable time either after
2 temporary trial or without trial;

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

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

10 (A) Acquired them in another state, territory,
11 district, or country;

12 (B) At the time of the acquisition was a bona fide
13 resident of another state, territory, district,
14 or country;

15 (C) Acquired the property for use outside the State;
16 and

17 (D) Made actual and substantial use thereof outside
18 this State;

19 provided that as to an article acquired less than
20 three months prior to the time of its importation into
21 the State it shall be presumed, until and unless
22 clearly proved to the contrary, that it was acquired

H.B. NO. 959

1 for use in the State and that its use outside the
2 State was not actual and substantial;

3 (6) The leasing or renting of any aircraft or the keeping
4 of any aircraft solely for leasing or renting to
5 lessees or renters using the aircraft for commercial
6 transportation of passengers and goods or the
7 acquisition or importation of any such aircraft or
8 aircraft engines by any lessee or renter engaged in
9 interstate air transportation. For purposes of this
10 paragraph, "leasing" includes all forms of lease,
11 regardless of whether the lease is an operating lease
12 or financing lease. The definition of "interstate air
13 transportation" is the same as in 49 U.S.C. 40102;

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

18 (8) The use of material, parts, or tools imported or
19 purchased by a person licensed under chapter 237 which
20 are used for aircraft service and maintenance, or the
21 construction of an aircraft service and maintenance
22 facility as those terms are defined in section 237-
23 24.9;

1 (9) The use of services or contracting imported for resale
2 where the contracting or services are for resale,
3 consumption, or use outside the State pursuant to
4 section 237-29.53(a); and

5 ~~[(10) The use of contracting imported or purchased by a~~
6 ~~contractor as defined in section 237-6 who is:~~
7 ~~(A) Licensed under chapter 237;~~
8 ~~(B) Engaged in business as a contractor; and~~
9 ~~(C) Subject to the tax imposed under section 238-2.3;~~
10 and

11 ~~(11)]~~ (10) The use of property, services, or contracting
12 imported by foreign diplomats and consular officials
13 who are holding cards issued or authorized by the
14 United States Department of State granting them an
15 exemption from state taxes.

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 2. Section 238-2.3, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§238-2.3 Imposition of tax on imported services or**
22 **contracting; exemptions.** There is hereby levied an excise tax
23 on the value of services or contracting as defined in section

1 237-6 that are performed by an unlicensed seller at a point
2 outside the State and imported or purchased for use in this
3 State. The tax imposed by this chapter shall accrue when the
4 service or contracting as defined in section 237-6 is received
5 by the importer or purchaser and becomes subject to the taxing
6 jurisdiction of the State. The rates of the tax hereby imposed
7 and the exemptions from the tax are as follows:

8 (1) If the importer or purchaser is licensed under chapter
9 237 and is:

10 (A) Engaged in a service business or calling in which
11 the imported or purchased services or contracting
12 become identifiable elements, excluding overhead,
13 of the services rendered by the importer or
14 purchaser, and the gross income of the importer
15 or purchaser is subject to the tax imposed under
16 chapter 237 on services at the rate of one-half
17 of one per cent or the rate of tax imposed under
18 section 237-13.3; or

19 (B) A manufacturer importing or purchasing services
20 or contracting that become identifiable elements,
21 excluding overhead, of a finished or saleable
22 product (including the container or package in
23 which the product is contained) and the finished

H.B. NO. 959

1 or saleable product is to be sold in a manner
2 that results in a further tax on the manufacturer
3 as a wholesaler, and not a retailer; or
4 (C) A contractor importing or purchasing contracting
5 that become identifiable elements, excluding
6 overhead, of the finished work or project
7 required, under the contract, and where the gross
8 proceeds derived by the contractor are subject to
9 the tax under section 237-13(3) as a contractor,
10 there shall be no tax imposed on the value of the
11 imported or purchased services or contracting;
12 provided that if the manufacturer is also engaged in
13 business as a retailer as classified under chapter
14 237, paragraph (2) shall apply to the manufacturer,
15 but the director of taxation shall refund to the
16 manufacturer, in the manner provided under section
17 231-23(c), that amount of tax that the manufacturer,
18 to the satisfaction of the director, shall establish
19 to have been paid by the manufacturer to the director
20 with respect to services that have been used by the
21 manufacturer for the purposes stated in this
22 paragraph.

H.B. NO. 959

- 1 (2) If the importer or purchaser is a person licensed
2 under chapter 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 from those
8 services when sold by the importer or purchaser
9 is subject to the tax imposed under chapter 237
10 at the highest rate;
- 11 (B) A manufacturer importing or purchasing services
12 or contracting that become identifiable elements,
13 excluding overhead, of the finished or saleable
14 manufactured product (including the container or
15 package in which the product is contained) and
16 the finished or saleable product is to be sold in
17 a manner that results in a further tax under
18 chapter 237 on the activity of the manufacturer
19 as a retailer; or
- 20 (C) A contractor importing or purchasing services [~~or~~
21 ~~contracting~~] that become identifiable elements,
22 excluding overhead, of the finished work or
23 project required, under the contract, and where

H.B. NO. 959

1 the gross proceeds derived by the contractor are
2 subject to the tax under section 237-13(3) as a
3 contractor,

4 the tax shall be one-half of one per cent of the value
5 of the imported or purchased services or contracting;
6 and

7 (3) In all other cases, the importer or purchaser is
8 subject to the tax at the rate of four per cent on the
9 value of the imported or purchased services or
10 contracting."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act, upon its approval, shall take effect
14 on July 1, 2013; provided that deductions are allowed under
15 section 237-13(3)(B), Hawaii Revised Statutes, on that date.

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17
18
19

INTRODUCED BY: _____



BY REQUEST

JAN 22 2013

H.B. NO. 959

Report Title:

Use Tax Imposition on Imported Contracting

Description:

Clarifies taxation of contracting under use and general excise tax laws.

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

HB959

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO THE IMPOSITION OF USE TAX ON IMPORTED CONTRACTING.

PURPOSE: To amend Hawaii's use tax law in regards to contracting imported by a licensed contractor to clarify the law and create consistency with general excise tax law.

MEANS: Amend sections 238-1 and 238-2.3, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 238-1, HRS, excludes contracting from the definition of "use" if: (1) the contractor is licensed under chapter 237, HRS, (2) engaged in business as a contractor, and (3) subject to tax under section 238-2.3. This exclusion creates confusion as it would seem that importing contracting is excluded from use yet is subject to use tax under section 238-2.3. By striking the exclusion of contracting from the definition of "use" and amending section 238-2.3, HRS, imported contracting will be treated consistently under use tax and general excise tax.

Section 238-2.3, HRS, imposes use tax at a rate of 0.5 percent and 4 percent on imported contracting. In contrast, contracting is exempted from general excise tax or taxed at a rate of 4 percent. The amendment of section 238-2.3, HRS, to tax imported contracting at a rate of 0 percent or 4 percent will provide for consistent treatment under use tax and general excise tax.

This bill should only be made effective if the subcontractor deduction provided under section 237-13(3)(B), HRS, is allowed so that contracting is treated the same under chapters 237 and 238, HRS.

Impact on the public: Consistent treatment of contracting under use tax and general excise tax law will create a level playing field for the industry and consumers. The amendments also clarify the application of the use tax to imported contracting in general.

Impact on the department and other agencies: By amending the relevant use tax sections, the department will have an easier time administering and enforcing the use tax.

GENERAL FUND: Pending.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2013.