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# 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,

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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

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;

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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

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.

- 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



**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.*

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.