

# TAXBILLSERVICE

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SUBJECT: USE, Tax on imported contracting

BILL NUMBER: SB 1190; HB 959 (Identical)

INTRODUCED BY: SB by Kim by request; HB by Souki by request

BRIEF SUMMARY: Amends HRS section 238-1 to amend the definition of “use” to delete paragraph (10) which provides that the use of contracting imported or purchased by a contractor as defined in section 237-6 who is: (1) licensed under HRS chapter 237; (2) engaged in business as a contractor; and (3) subject to the tax imposed under HRS section 238-2.3, shall not be subject to the use tax.

Amends HRS section 238-2.3 to provide that no use tax shall be imposed if a contractor importing or purchasing contracting that become identifiable elements, excluding overhead, of the finished work or project required, under the contract, and where the gross proceeds derived by the contractor are subject to HRS section 237-13(3).

EFFECTIVE DATE: July 1, 2013

STAFF COMMENTS: This is an administration measure submitted by the department of taxation TAX-08 (13). This measure attempts to clarify the use tax exemption for the value of imported contracting services if such services are subject to taxation under the general excise tax. As the exemption stands currently under the use tax law, imported contracting services are exempt from the term “Use” and are subsequently subject to the use tax law if subject to the use tax at either the 0.5% or 4% rate.

This measure attempts to apply the same treatment that is accorded in the general excise tax law where amounts received are exempt when received by a contractor and subsequently paid out to a subcontractor who is then responsible for the general excise tax at the 4% rate on the amount received from the general contractor. Since the purchase of imported contract services is being made from an unlicensed contractor outside the state, there is no one to pay the 4% general excise tax on the amount paid for the imported services except the importing contractor. Thus, the exemption from the use tax is extended to the imported contracting services as long as the importing contractor pays the 4% general excise tax when that imported contracted service is sold to the customer of the contractor. Thus, this amendment provides parallel treatment to what is known as the contractor/subcontractor deduction.

This confusing dilemma could have been avoided had contracting and subcontracting been subject to what is known as the de-pyramiding treatment accorded services purchased for resale. Consideration might be given to subjecting contracting services to the pyramiding treatment accorded other services purchased for resale.

Digested 1/29/13