

JAN 23 2014

A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX WHOLESALERE RATE IMPOSED UPON SALE
OF TANGIBLE PERSONAL PROPERTY.

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

1 SECTION 1. Section 3 of Act 135, Session Laws of Hawaii
2 2003, inadvertently repealed the one-half of one per cent
3 general excise tax rate imposed upon the wholesale sale of
4 tangible personal property. The purpose of this Act is to undo
5 the inadvertent repeal to clarify that the proper general excise
6 tax rate imposed upon the wholesale sale of tangible personal
7 property is one-half of one per cent.

8 SECTION 2. Section 237-13, Hawaii Revised Statutes, is
9 amended to read as follows:

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

16 (1) Tax on manufacturers.

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- 1 (A) Upon every person engaging or continuing within
2 the State in the business of manufacturing,
3 including compounding, canning, preserving,
4 packing, printing, publishing, milling,
5 processing, refining, or preparing for sale,
6 profit, or commercial use, either directly or
7 through the activity of others, in whole or in
8 part, any article or articles, substance or
9 substances, commodity or commodities, the amount
10 of the tax to be equal to the value of the
11 articles, substances, or commodities,
12 manufactured, compounded, canned, preserved,
13 packed, printed, milled, processed, refined, or
14 prepared for sale, as shown by the gross proceeds
15 derived from the sale thereof by the manufacturer
16 or person compounding, preparing, or printing
17 them, multiplied by one-half of one per cent.
- 18 (B) The measure of the tax on manufacturers is the
19 value of the entire product for sale, regardless
20 of the place of sale or the fact that deliveries
21 may be made to points outside the State.
- 22 (C) If any person liable for the tax on manufacturers
23 ships or transports the person's product, or any

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1 part thereof, out of the State, whether in a
2 finished or unfinished condition, or sells the
3 same for delivery to points outside the State
4 (for example, consigned to a mainland purchaser
5 via common carrier f.o.b. Honolulu), the value of
6 the products in the condition or form in which
7 they exist immediately before entering interstate
8 or foreign commerce, determined as hereinafter
9 provided, shall be the basis for the assessment
10 of the tax imposed by this paragraph. This tax
11 shall be due and payable as of the date of entry
12 of the products into interstate or foreign
13 commerce, whether the products are then sold or
14 not. The department shall determine the basis
15 for assessment, as provided by this paragraph, as
16 follows:

17 (i) If the products at the time of their entry
18 into interstate or foreign commerce already
19 have been sold, the gross proceeds of sale,
20 less the transportation expenses, if any,
21 incurred in realizing the gross proceeds for
22 transportation from the time of entry of the
23 products into interstate or foreign

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1 commerce, including insurance and storage in
2 transit, shall be the measure of the value
3 of the products;

4 (ii) If the products have not been sold at the
5 time of their entry into interstate or
6 foreign commerce, and in cases governed by
7 clause (i) in which the products are sold
8 under circumstances such that the gross
9 proceeds of sale are not indicative of the
10 true value of the products, the value of the
11 products constituting the basis for
12 assessment shall correspond as nearly as
13 possible to the gross proceeds of sales for
14 delivery outside the State, adjusted as
15 provided in clause (i), or if sufficient
16 data are not available, sales in the State,
17 of similar products of like quality and
18 character and in similar quantities, made by
19 the taxpayer (unless not indicative of the
20 true value) or by others. Sales outside the
21 State, adjusted as provided in clause (i),
22 may be considered when they constitute the
23 best available data. The department shall

1 prescribe uniform and equitable rules for
2 ascertaining the values;

3 (iii) At the election of the taxpayer and with the
4 approval of the department, the taxpayer may
5 make the taxpayer's returns under clause (i)
6 even though the products have not been sold
7 at the time of their entry into interstate
8 or foreign commerce; and

9 (iv) In all cases in which products leave the
10 State in an unfinished condition, the basis
11 for assessment shall be adjusted so as to
12 deduct the portion of the value as is
13 attributable to the finishing of the goods
14 outside the State.

15 (2) Tax on business of selling tangible personal property;
16 producing.

17 (A) Upon every person engaging or continuing in the
18 business of selling any tangible personal
19 property whatsoever (not including, however,
20 bonds or other evidence of indebtedness, or
21 stocks), there is likewise hereby levied, and
22 shall be assessed and collected, a tax equivalent
23 to four per cent of the gross proceeds of sales

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1 of the business; and in the case of a wholesaler,
2 notwithstanding the exemption provided under
3 section 237-29.55, the tax shall be equal to one-
4 half of one per cent of the gross proceeds of
5 sales of the business; provided that insofar as
6 the sale of tangible personal property is a
7 wholesale sale under section [†]237-4(a)(8)[†],
8 the sale shall be subject to section 237-13.3.
9 Upon every person engaging or continuing within
10 this State in the business of a producer, the tax
11 shall be equal to one-half of one per cent of the
12 gross proceeds of sales of the business, or the
13 value of the products, for sale, if sold for
14 delivery outside the State or shipped or
15 transported out of the State, and the value of
16 the products shall be determined in the same
17 manner as the value of manufactured products
18 covered in the cases under paragraph (1)(C).

19 (B) Gross proceeds of sales of tangible property in
20 interstate and foreign commerce shall constitute
21 a part of the measure of the tax imposed on
22 persons in the business of selling tangible
23 personal property, to the extent, under the

1 conditions, and in accordance with the provisions
2 of the Constitution of the United States and the
3 Acts of the Congress of the United States which
4 may be now in force or may be hereafter adopted,
5 and whenever there occurs in the State an
6 activity to which, under the Constitution and
7 Acts of Congress, there may be attributed gross
8 proceeds of sales, the gross proceeds shall be so
9 attributed.

10 (C) No manufacturer or producer, engaged in such
11 business in the State and selling the
12 manufacturer's or producer's products for
13 delivery outside of the State (for example,
14 consigned to a mainland purchaser via common
15 carrier f.o.b. Honolulu), shall be required to
16 pay the tax imposed in this chapter for the
17 privilege of so selling the products, and the
18 value or gross proceeds of sales of the products
19 shall be included only in determining the measure
20 of the tax imposed upon the manufacturer or
21 producer.

22 (D) When a manufacturer or producer, engaged in such
23 business in the State, also is engaged in selling

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1 the manufacturer's or producer's products in the
2 State at wholesale, retail, or in any other
3 manner, the tax for the privilege of engaging in
4 the business of selling the products in the State
5 shall apply to the manufacturer or producer as
6 well as the tax for the privilege of
7 manufacturing or producing in the State, and the
8 manufacturer or producer shall make the returns
9 of the gross proceeds of the wholesale, retail,
10 or other sales required for the privilege of
11 selling in the State, as well as making the
12 returns of the value or gross proceeds of sales
13 of the products required for the privilege of
14 manufacturing or producing in the State. The
15 manufacturer or producer shall pay the tax
16 imposed in this chapter for the privilege of
17 selling its products in the State, and the value
18 or gross proceeds of sales of the products, thus
19 subjected to tax, may be deducted insofar as
20 duplicated as to the same products by the measure
21 of the tax upon the manufacturer or producer for
22 the privilege of manufacturing or producing in
23 the State; provided that no producer of

1 agricultural products who sells the products to a
2 purchaser who will process the products outside
3 the State shall be required to pay the tax
4 imposed in this chapter for the privilege of
5 producing or selling those products.

6 (E) A taxpayer selling to a federal cost-plus
7 contractor may make the election provided for by
8 paragraph (3)(C), and in that case the tax shall
9 be computed pursuant to the election,
10 notwithstanding this paragraph or paragraph (1)
11 to the contrary.

12 (F) The department, by rule, may require that a
13 seller take from the purchaser of tangible
14 personal property a certificate, in a form
15 prescribed by the department, certifying that the
16 sale is a sale at wholesale; provided that:

17 (i) Any purchaser who furnishes a certificate
18 shall be obligated to pay to the seller,
19 upon demand, the amount of the additional
20 tax that is imposed upon the seller whenever
21 the sale in fact is not at wholesale; and

22 (ii) The absence of a certificate in itself shall
23 give rise to the presumption that the sale

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1 is not at wholesale unless the sales of the
2 business are exclusively at wholesale.

3 (3) Tax upon contractors.

4 (A) Upon every person engaging or continuing within
5 the State in the business of contracting, the tax
6 shall be equal to four per cent of the gross
7 income of the business.

8 (B) In computing the tax levied under this paragraph,
9 there shall be deducted from the gross income of
10 the taxpayer so much thereof as has been included
11 in the measure of the tax levied under
12 subparagraph (A), on:

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

15 (ii) A specialty contractor, duly licensed by the
16 department of commerce and consumer affairs
17 pursuant to section 444-9, in respect of the
18 specialty contractor's business; or

19 (iii) A specialty contractor who is not licensed
20 by the department of commerce and consumer
21 affairs pursuant to section 444-9, but who
22 performs contracting activities on federal

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1 military installations and nowhere else in
2 this State;

3 provided that any person claiming a deduction
4 under this paragraph shall be required to show in
5 the person's return the name and general excise
6 number of the person paying the tax on the amount
7 deducted by the person.

8 (C) In computing the tax levied under this paragraph
9 against any federal cost-plus contractor, there
10 shall be excluded from the gross income of the
11 contractor so much thereof as fulfills the
12 following requirements:

13 (i) The gross income exempted shall constitute
14 reimbursement of costs incurred for
15 materials, plant, or equipment purchased
16 from a taxpayer licensed under this chapter,
17 not exceeding the gross proceeds of sale of
18 the taxpayer on account of the transaction;
19 and

20 (ii) The taxpayer making the sale shall have
21 certified to the department that the
22 taxpayer is taxable with respect to the
23 gross proceeds of the sale, and that the

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1 taxpayer elects to have the tax on gross
2 income computed the same as upon a sale to
3 the state government.

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

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

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1 under a lease is taxed under section 237-16.5,
2 the tax shall be levied by section 237-16.5.

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

5 (A) Upon every person engaging or continuing within
6 the State in the business of operating a theater,
7 opera house, moving picture show, vaudeville,
8 amusement park, dance hall, skating rink, radio
9 broadcasting station, or any other place at which
10 amusements are offered to the public, the tax
11 shall be equal to four per cent of the gross
12 income of the business, and in the case of a sale
13 of an amusement at wholesale under section 237-
14 4(a)(13), the tax shall be subject to section
15 237-13.3.

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

21 (i) Any licensed seller who furnishes a
22 certificate shall be obligated to pay to the
23 person rendering the amusement, upon demand,

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1 the amount of additional tax that is imposed
2 upon the seller whenever the sale is not at
3 wholesale; and

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

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

18 (6) Tax on service business.

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

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1 collected a tax equal to four per cent of the
2 gross income of the business, and in the case of
3 a wholesaler under section 237-4(a)(10), the tax
4 shall be equal to one-half of one per cent of the
5 gross income of the business. Notwithstanding
6 the foregoing, a wholesaler under section 237-
7 4(a)(10) shall be subject to section 237-13.3.

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

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

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

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

21 (D) Where any person is engaged in the business of a
22 home service provider, the tax shall be imposed
23 on the gross income received or derived from

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1 providing interstate or foreign mobile
2 telecommunications services to a customer with a
3 place of primary use in this State when such
4 services originate in one state and terminate in
5 another state, territory, or foreign country;
6 provided that all charges for mobile
7 telecommunications services which are billed by
8 or for the home service provider are deemed to be
9 provided by the home service provider at the
10 customer's place of primary use, regardless of
11 where the mobile telecommunications originate,
12 terminate, or pass through; provided further that
13 the income from charges specifically derived from
14 interstate or foreign mobile telecommunications
15 services, as determined by books and records that
16 are kept in the regular course of business by the
17 home service provider in accordance with section
18 239-24, shall be apportioned under any
19 apportionment factor or formula adopted under
20 subparagraph (C). Gross income shall not
21 include:
22 (i) Gross receipts from mobile
23 telecommunications services provided to a

1 customer with a place of primary use outside
2 this State;

3 (ii) Gross receipts from mobile telecommunications
4 services that are subject to the tax imposed
5 by chapter 239;

6 (iii) Gross receipts from mobile telecommunications
7 services taxed under section 237-13.8; and

8 (iv) Gross receipts of a home service provider
9 acting as a serving carrier providing mobile
10 telecommunications services to another home
11 service provider's customer.

12 For the purposes of this paragraph, "charges for
13 mobile telecommunications services", "customer",
14 "home service provider", "mobile telecommunications
15 services", "place of primary use", and "serving
16 carrier" have the same meaning as in section 239-
17 22.

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

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- 1 (8) Tax on receipts of sugar benefit payments. Upon the
2 amounts received from the United States government by
3 any producer of sugar (or the producer's legal
4 representative or heirs), as defined under and by
5 virtue of the Sugar Act of 1948, as amended, or other
6 Acts of the Congress of the United States relating
7 thereto, there is hereby levied a tax of one-half of
8 one per cent of the gross amount received; provided
9 that the tax levied hereunder on any amount so
10 received and actually disbursed to another by a
11 producer in the form of a benefit payment shall be
12 paid by the person or persons to whom the amount is
13 actually disbursed, and the producer actually making a
14 benefit payment to another shall be entitled to claim
15 on the producer's return a deduction from the gross
16 amount taxable hereunder in the sum of the amount so
17 disbursed. The amounts taxed under this paragraph
18 shall not be taxable under any other paragraph,
19 subsection, or section of this chapter.
- 20 (9) Tax on other business. Upon every person engaging or
21 continuing within the State in any business, trade,
22 activity, occupation, or calling not included in the
23 preceding paragraphs or any other provisions of this

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1 chapter, there is likewise hereby levied and shall be
2 assessed and collected, a tax equal to four per cent
3 of the gross income thereof. In addition, the rate
4 prescribed by this paragraph shall apply to a business
5 taxable under one or more of the preceding paragraphs
6 or other provisions of this chapter, as to any gross
7 income thereof not taxed thereunder as gross income or
8 gross proceeds of sales or by taxing an equivalent
9 value of products, unless specifically exempted."

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

12 SECTION 4. This Act shall take effect upon its approval.

13
14
15
16
17 INTRODUCED BY:



18 BY REQUEST

Report Title:

General Excise Tax; Wholesale Rate Imposed Upon Sale of Tangible Personal Property

Description:

Clarifies that wholesale sales of tangible personal property are subject to the one-half of one per cent general excise tax rate.

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 GENERAL EXCISE TAX WHOLESALE RATE IMPOSED UPON SALE OF TANGIBLE PERSONAL PROPERTY.

PURPOSE: To clarify wholesale sales of tangible personal property are subject to the one half of one per cent rate unless exempted under section 237-29.55, Hawaii Revised Statutes (HRS).

MEANS: Amend section 237-13, HRS.

JUSTIFICATION: The wholesale rate of one half of one per cent on the sale of tangible personal property was inadvertently deleted by Act 135, Session Laws of Hawaii 2003.

Impact on the public: The public will have certainty that wholesale sales of tangible personal property are subject to the one half of one per cent rate unless exempted under section 237-29.55, HRS.

Impact on the department and other agencies: The Department will have an easier time administering Hawaii's general excise tax law and will be able to answer taxpayer inquiries with certainty.

GENERAL FUND: Pending.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.