
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 237-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "representative" to read
3 as follows:
4 "Representative" means any salesperson, commission agent,
5 manufacturer's representative, broker or other person who is
6 authorized or employed by an unlicensed seller to ~~[assist such~~
7 ~~seller in]~~ conduct activities in the State that are
8 significantly associated with the seller's ability to establish
9 or maintain a market in the State for the seller's sales,
10 including selling property for use in the State, [by] procuring
11 orders for [such] sales [or otherwise, and who carries on such
12 activities in the State], and making collections or deliveries,
13 it being immaterial whether [such] the activities are regular or
14 intermittent[; but the term "representative" does not include a
15 manufacturer's representative whose functions are wholly
16 promotional and to act as liaison between an unlicensed seller
17 and a seller or sellers, and which do not include the procuring,
18 soliciting or accepting of orders for property or the making of



1 ~~deliveries of property, or the collecting of payment for~~
2 ~~deliveries of property, or the keeping of books of account~~
3 ~~concerning property orders, deliveries or collections~~
4 ~~transpiring between an unlicensed seller and a seller or~~
5 ~~sellers]. Any unlicensed seller who in person carries on any~~
6 such activity in the State shall also be classed as a
7 representative."

8 SECTION 2. Section 237-13, Hawaii Revised Statutes, is
9 amended 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.

17 (A) Upon every person engaging or continuing within
18 the State in the business of manufacturing,
19 including compounding, canning, preserving,
20 packing, printing, publishing, milling,
21 processing, refining, or preparing for sale,
22 profit, or commercial use, either directly or



1 through the activity of others, in whole or in
2 part, any article or articles, substance or
3 substances, commodity or commodities, the amount
4 of the tax to be equal to the value of the
5 articles, substances, or commodities,
6 manufactured, compounded, canned, preserved,
7 packed, printed, milled, processed, refined, or
8 prepared for sale, as shown by the gross proceeds
9 derived from the sale thereof by the manufacturer
10 or person compounding, preparing, or printing
11 them, multiplied by one-half of one per cent.

12 (B) The measure of the tax on manufacturers is the
13 value of the entire product for sale, regardless
14 of the place of sale or the fact that deliveries
15 may be made to points outside the State.

16 (C) If any person liable for the tax on manufacturers
17 ships or transports the person's product, or any
18 part thereof, out of the State, whether in a
19 finished or unfinished condition, or sells the
20 same for delivery to points outside the State
21 (for example, consigned to a mainland purchaser
22 via common carrier f.o.b. Honolulu), the value of



1 the products in the condition or form in which
2 they exist immediately before entering interstate
3 or foreign commerce, determined as hereinafter
4 provided, shall be the basis for the assessment
5 of the tax imposed by this paragraph. This tax
6 shall be due and payable as of the date of entry
7 of the products into interstate or foreign
8 commerce, whether the products are then sold or
9 not. The department shall determine the basis
10 for assessment, as provided by this paragraph, as
11 follows:

12 (i) If the products at the time of their entry
13 into interstate or foreign commerce already
14 have been sold, the gross proceeds of sale,
15 less the transportation expenses, if any,
16 incurred in realizing the gross proceeds for
17 transportation from the time of entry of the
18 products into interstate or foreign
19 commerce, including insurance and storage in
20 transit, shall be the measure of the value
21 of the products;



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



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

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

13 (2) Tax on business of selling tangible personal property;
14 producing.

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



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

14 (B) Gross proceeds of sales of tangible property in
15 interstate and foreign commerce shall constitute
16 a part of the measure of the tax imposed on
17 persons in the business of selling tangible
18 personal property, to the extent, under the
19 conditions, and in accordance with the provisions
20 of the Constitution of the United States and the
21 Acts of the Congress of the United States which
22 may be now in force or may be hereafter adopted,



1 and whenever there occurs in the State an
2 activity to which, under the Constitution and
3 Acts of Congress, there may be attributed gross
4 proceeds of sales, the gross proceeds shall be so
5 attributed.

6 (C) For purposes of this section, a seller is
7 "engaging or continuing within the State in the
8 business" within the meaning of subparagraph (A)
9 if the seller, regularly or intermittently:

10 (i) Owns any property;

11 (ii) Maintains any place of business; or

12 (iii) Uses any representative in the State,
13 regardless of whether the seller has qualified to
14 do business in the State.

15 (D) For purposes of this section, a seller shall be
16 presumed to be "engaging or continuing within the
17 State in the business" within the meaning of
18 subparagraph (A) if an affiliated person has
19 substantial nexus in the State or if any person,
20 other than a person acting in its capacity as a
21 common carrier, that has substantial nexus in the
22 State:



- 1 (i) Sells a similar line of products as the
2 seller and does so under the same or a
3 similar business name;
- 4 (ii) Maintains an office, distribution facility,
5 warehouse, storage place, or similar place
6 of business in the State to facilitate the
7 delivery of property or services sold by the
8 seller to the seller's customers;
- 9 (iii) Uses trademarks, service marks, or trade
10 names in the State that are the same or
11 substantially similar to those used by the
12 seller;
- 13 (iv) Delivers, installs, assembles, or performs
14 maintenance services for the seller's
15 customers within the State;
- 16 (v) Facilitates the seller's delivery of
17 property to customers in the State by
18 allowing the seller's customers to pick up
19 property sold by the seller at an office,
20 distribution facility, warehouse, storage
21 place, or similar place of business
22 maintained by the person in the State; or



1 (vi) Conducts any other activities in the State
2 that are significantly associated with the
3 seller's ability to establish and maintain a
4 market in the State for the seller's sales.

5 (E) The presumption that a seller is "engaging or
6 continuing within the State in the business"
7 within the meaning of subparagraph (D) may be
8 rebutted by demonstrating that the activities of
9 the person or affiliated person in the State are
10 not significantly associated with the seller's
11 ability to establish or maintain a market in the
12 State for the seller's sales.

13 (F) For purposes of this section, a seller shall be
14 presumed to be "engaging or continuing within the
15 State in the business" if the seller enters into
16 an agreement with one or more residents of the
17 State under which the resident, for a commission
18 or other consideration, directly or indirectly
19 refers potential customers, whether by a link on
20 an internet website, telemarketing, an in-person
21 oral presentation, or otherwise, to the seller;
22 provided that the cumulative gross receipts from



1 sales by the seller to customers in the State who
2 are referred to the seller by all residents who
3 are party to this type of agreement with the
4 seller is in excess of \$10,000 during the
5 preceding twelve months.

6 (G) The presumption that a seller is "engaging or
7 continuing within the State in the business"
8 within the meaning of subparagraph (F) may be
9 rebutted by submitting proof that the residents
10 with whom the seller has an agreement did not
11 engage in any activity within the State that was
12 significantly associated with the seller's
13 ability to establish or maintain the seller's
14 market in this State during the preceding twelve
15 months. Proof may consist of sworn written
16 statements from all of the residents with whom
17 the seller has an agreement stating that they did
18 not engage in any solicitation in the State on
19 behalf of the seller during the preceding twelve
20 months; provided that the statements are provided
21 and obtained in good faith. Subparagraph (F)
22 shall take effect ninety days after the effective



1 date of Act , Session Laws of Hawaii 2013,
2 and shall apply to sales made, uses occurring,
3 and services rendered on or after the effective
4 date of Act , Session Laws of Hawaii 2013,
5 in accordance with the applicable transition
6 provisions and without regard to the date the
7 seller and the resident entered into the
8 agreement described in subparagraph (F); provided
9 that the term "the preceding twelve months" as
10 used in subparagraph (F) may include the twelve
11 months commencing prior to the effective date of
12 this Act , Session Laws of Hawaii 2013.

13 (H) If any person sells or leases tangible personal
14 property to the State, a state department, a
15 state agency, or an agent thereof, that person
16 and any affiliated person, as a prerequisite for
17 the sale or lease, shall register with the
18 department of taxation as a seller required to
19 collect and remit the tax imposed by this chapter
20 and comply with all legal requirements imposed on
21 sellers.



1 (I) For purposes of this section, the term
2 "affiliated person" means any person that is a
3 member of the same "controlled group of
4 corporations," as defined in section 1563(a) of
5 the Internal Revenue Code of 1986, as amended, as
6 the seller or any other entity that,
7 notwithstanding its form of organization, bears
8 the same ownership relationship to the seller as
9 a corporation that is a member of the same
10 controlled group of corporations.

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



1 [~~D~~] (K) When a manufacturer or producer, engaged in such
2 business as a manufacturer or producer in the
3 State, also is engaged in selling the
4 manufacturer's or producer's products in the
5 State at wholesale, retail, or in any other
6 manner, the tax for the privilege of engaging in
7 the business of selling the products in the State
8 shall apply to the manufacturer or producer as
9 well as the tax for the privilege of
10 manufacturing or producing in the State, and the
11 manufacturer or producer shall make the returns
12 of the gross proceeds of the wholesale, retail,
13 or other sales required for the privilege of
14 selling in the State, as well as making the
15 returns of the value or gross proceeds of sales
16 of the products required for the privilege of
17 manufacturing or producing in the State. The
18 manufacturer or producer shall pay the tax
19 imposed in this chapter for the privilege of
20 selling its products in the State, and the value
21 or gross proceeds of sales of the products, thus
22 subjected to tax, may be deducted insofar as



1 duplicated as to the same products by the measure
2 of the tax upon the manufacturer or producer for
3 the privilege of manufacturing or producing in
4 the State; provided that no producer of
5 agricultural products who sells the products to a
6 purchaser who will process the products outside
7 the State shall be required to pay the tax
8 imposed in this chapter for the privilege of
9 producing or selling those products.

10 [~~E~~](L) A taxpayer selling to a federal cost-plus
11 contractor may make the election provided for by
12 paragraph (3)(C), and in that case the tax shall
13 be computed pursuant to the election,
14 notwithstanding this paragraph or paragraph (1)
15 to the contrary.

16 [~~F~~](M) The department, by rule, may require that a
17 seller take from the purchaser of tangible
18 personal property 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 purchaser who furnishes a certificate
22 shall be obligated to pay to the seller,



1 upon demand, the amount of the additional
2 tax that is imposed upon the seller whenever
3 the sale in fact is not at 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 sales of the
7 business are exclusively at wholesale.

8 (3) Tax upon contractors.

9 (A) Upon every person engaging or continuing within
10 the State in the business of contracting, the tax
11 shall be equal to four per cent of the gross
12 income of the business.

13 (B) In computing the tax levied under this paragraph,
14 there shall be deducted from the gross income of
15 the taxpayer so much thereof as has been included
16 in the measure of the tax levied under
17 subparagraph (A), on:

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

20 (ii) A specialty contractor, duly licensed by the
21 department of commerce and consumer affairs



1 pursuant to section 444-9, in respect of the
2 specialty contractor's business; or

3 (iii) A specialty contractor who is not licensed
4 by the department of commerce and consumer
5 affairs pursuant to section 444-9, but who
6 performs contracting activities on federal
7 military installations and nowhere else in
8 this State;

9 provided that any person claiming a deduction
10 under this paragraph shall be required to show in
11 the person's return the name and general excise
12 number of the person paying the tax on the amount
13 deducted by the person.

14 (C) In computing the tax levied under this paragraph
15 against any federal cost-plus contractor, there
16 shall be excluded from the gross income of the
17 contractor so much thereof as fulfills the
18 following requirements:

19 (i) The gross income exempted shall constitute
20 reimbursement of costs incurred for
21 materials, plant, or equipment purchased
22 from a taxpayer licensed under this chapter,



1 not exceeding the gross proceeds of sale of
2 the taxpayer on account of the transaction;
3 and

4 (ii) The taxpayer making the sale shall have
5 certified to the department that the
6 taxpayer is taxable with respect to the
7 gross proceeds of the sale, and that the
8 taxpayer elects to have the tax on gross
9 income computed the same as upon a sale to
10 the state government.

11 (D) A person who, as a business or as a part of a
12 business in which the person is engaged, erects,
13 constructs, or improves any building or
14 structure, of any kind or description, or makes,
15 constructs, or improves any road, street,
16 sidewalk, sewer, or water system, or other
17 improvements on land held by the person (whether
18 held as a leasehold, fee simple, or otherwise),
19 upon the sale or other disposition of the land or
20 improvements, even if the work was not done
21 pursuant to a contract, shall be liable to the
22 same tax as if engaged in the business of



1 contracting, unless the person shows that at the
2 time the person was engaged in making the
3 improvements the person intended, and for the
4 period of at least one year after completion of
5 the building, structure, or other improvements
6 the person continued to intend to hold and not
7 sell or otherwise dispose of the land or
8 improvements. The tax in respect of the
9 improvements shall be measured by the amount of
10 the proceeds of the sale or other disposition
11 that is attributable to the erection,
12 construction, or improvement of such building or
13 structure, or the making, constructing, or
14 improving of the road, street, sidewalk, sewer,
15 or water system, or other improvements. The
16 measure of tax in respect of the improvements
17 shall not exceed the amount [~~which~~] that would
18 have been taxable had the work been performed by
19 another, subject as in other cases to the
20 deductions allowed by subparagraph (B). Upon the
21 election of the taxpayer, this paragraph may be
22 applied notwithstanding that the improvements



1 were not made by the taxpayer, or were not made
2 as a business or as a part of a business, or were
3 made with the intention of holding the same.

4 However, this paragraph shall not apply in
5 respect of any proceeds that constitute or are in
6 the nature of rent; all such gross income shall
7 be taxable under paragraph (9); provided that
8 insofar as the business of renting or leasing
9 real property under a lease is taxed under
10 section 237-16.5, the tax shall be levied by
11 section 237-16.5.

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

14 (A) Upon every person engaging or continuing within
15 the State in the business of operating a theater,
16 opera house, moving picture show, vaudeville,
17 amusement park, dance hall, skating rink, radio
18 broadcasting station, or any other place at which
19 amusements are offered to the public, the tax
20 shall be equal to four per cent of the gross
21 income of the business [~~and in the case of a~~
22 ~~sale of an amusement at wholesale under section~~



1 ~~237-4(a)(13), the tax shall be subject to section~~
2 ~~237-13.3].~~

3 (B) The department may require that the person
4 rendering an amusement at wholesale take from the
5 licensed seller a certificate, in a form
6 prescribed by the department, certifying that the
7 sale is a sale at wholesale; provided that:

8 (i) Any licensed seller who furnishes a
9 certificate shall be obligated to pay to the
10 person rendering the amusement, upon demand,
11 the amount of additional tax that is imposed
12 upon the seller whenever the sale is not at
13 wholesale; and

14 (ii) The absence of a certificate in itself shall
15 give rise to the presumption that the sale
16 is not at wholesale unless the person
17 rendering the sale is exclusively rendering
18 the amusement at wholesale.

19 (5) Tax upon sales representatives, etc. Upon every
20 person classified as a representative or purchasing
21 agent under section 237-1, engaging or continuing
22 within the State in the business of performing

1 services for another, other than as an employee, there
2 is likewise hereby levied and shall be assessed and
3 collected a tax equal to four per cent of the
4 commissions and other compensation attributable to the
5 services so rendered by the person.

6 (6) Tax on service business.

7 (A) Upon every person engaging or continuing within
8 the State in any service business or calling
9 including professional services not otherwise
10 specifically taxed under this chapter, there is
11 likewise hereby levied and shall be assessed and
12 collected a tax equal to four per cent of the
13 gross income of the business, and in the case of
14 a wholesaler under section 237-4(a)(10), the tax
15 shall be equal to one-half of one per cent of the
16 gross income of the business. [~~Notwithstanding~~
17 ~~the foregoing, a wholesaler under section~~
18 ~~237-4(a)(10) shall be subject to section~~
19 ~~237-13.3.~~]

20 (B) The department may require that the person
21 rendering a service at wholesale take from the
22 licensed seller a certificate, in a form



1 prescribed by the department, certifying that the
2 sale is a sale at wholesale; provided that:

3 (i) Any licensed seller who furnishes a
4 certificate shall be obligated to pay to the
5 person rendering the service, upon demand,
6 the amount of additional tax that is imposed
7 upon the seller whenever the sale is not at
8 wholesale; and

9 (ii) The absence of a certificate in itself shall
10 give rise to the presumption that the sale
11 is not at wholesale unless the person
12 rendering the [~~sale~~] service is exclusively
13 rendering services at wholesale.

14 (C) Where any person is engaged in the business of
15 selling interstate or foreign common carrier
16 telecommunication services within and without the
17 State, other than as a home service provider, the
18 tax shall be imposed on that portion of gross
19 income received by a person from service [~~which~~
20 ~~is~~] that originated or terminated in this State
21 and is charged to a telephone number, customer,
22 or account in this State notwithstanding any



1 other state law (except for the exemption under
2 section 237-23(a)(1)) to the contrary. If, under
3 the Constitution and laws of the United States,
4 the entire gross income as determined under this
5 paragraph of a business selling interstate or
6 foreign common carrier telecommunication services
7 cannot be included in the measure of the tax, the
8 gross income shall be apportioned as provided in
9 section 237-21; provided that the apportionment
10 factor and formula shall be the same for all
11 persons providing those services in the State.

12 (D) Where any person is engaged in the business of a
13 home service provider, the tax shall be imposed
14 on the gross income received or derived from
15 providing interstate or foreign mobile
16 telecommunications services to a customer with a
17 place of primary use in this State when [~~such~~]
18 these services originate in one state and
19 terminate in another state, territory, or foreign
20 country; provided that all charges for mobile
21 telecommunications services [~~which~~] that are
22 billed by or for the home service provider are



1 deemed to be provided by the home service
2 provider at the customer's place of primary use,
3 regardless of where the mobile telecommunications
4 originate, terminate, or pass through; provided
5 further that the income from charges specifically
6 derived from interstate or foreign mobile
7 telecommunications services, as determined by
8 books and records that are kept in the regular
9 course of business by the home service provider
10 in accordance with section 239-24, shall be
11 apportioned under any apportionment factor or
12 formula adopted under subparagraph (C). Gross
13 income shall not include:

- 14 (i) Gross receipts from mobile
15 telecommunications services provided to a
16 customer with a place of primary use outside
17 this State;
- 18 (ii) Gross receipts from mobile
19 telecommunications services that are subject
20 to the tax imposed by chapter 239;



- 1 (iii) Gross receipts from mobile
2 telecommunications services taxed under
3 section 237-13.8; and
4 (iv) Gross receipts of a home service provider
5 acting as a serving carrier providing mobile
6 telecommunications services to another home
7 service provider's customer.

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

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

19 (8) Tax on receipts of sugar benefit payments. Upon the
20 amounts received from the United States government by
21 any producer of sugar (or the producer's legal
22 representative or heirs), as defined under and by



1 virtue of the Sugar Act of 1948, as amended, or other
2 Acts of the Congress of the United States relating
3 thereto, there is hereby levied a tax of one-half of
4 one per cent of the gross amount received; provided
5 that the tax levied hereunder on any amount so
6 received and actually disbursed to another by a
7 producer in the form of a benefit payment shall be
8 paid by the person or persons to whom the amount is
9 actually disbursed, and the producer actually making a
10 benefit payment to another shall be entitled to claim
11 on the producer's return a deduction from the gross
12 amount taxable hereunder in the sum of the amount so
13 disbursed. The amounts taxed under this paragraph
14 shall not be taxable under any other paragraph,
15 subsection, or section of this chapter.

- 16 (9) Tax on other business. Upon every person engaging or
17 continuing within the State in any business, trade,
18 activity, occupation, or calling not included in the
19 preceding paragraphs or any other provisions of this
20 chapter, there is likewise hereby levied and shall be
21 assessed and collected, a tax equal to four per cent
22 of the gross income thereof. In addition, the rate



1 prescribed by this paragraph shall apply to a business
2 taxable under one or more of the preceding paragraphs
3 or other provisions of this chapter, as to any gross
4 income thereof not taxed thereunder as gross income or
5 gross proceeds of sales or by taxing an equivalent
6 value of products, unless specifically exempted."

7 SECTION 3. Section 237-25, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) Nothing in this section shall be deemed to exempt any
10 sales to or by a federal cost-plus contractor, as defined in
11 chapter 237, or the gross proceeds thereof; with respect to all
12 such activities and transactions, taxes shall be levied,
13 returned, computed, and assessed the same as if this section had
14 not been enacted, and in the case of an election made under
15 sections [~~237-13(2)(F)~~] 237-13(2)(M) and 237-13(3)(C)(ii), the
16 tax shall be computed the same as upon a sale to the state
17 government."

18 SECTION 4. Section 238-1, Hawaii Revised Statutes, is
19 amended by amending the definition of "representation" to read
20 as follows:

21 "Representation" refers to any or all of the following:

22 (1) A seller being present in the State; and



1 (2) A seller having in the State a salesperson, commission
 2 agent, manufacturer's representative, broker, or other
 3 person who is authorized or employed by the seller to
 4 [assist] conduct activities in the State that are
 5 significantly associated with the seller's ability to
 6 establish or maintain a market in this State for the
 7 seller's sales, including assisting the seller in
 8 selling property, services, or contracting for use or
 9 consumption in the State, ~~[by]~~ procuring orders for
 10 the sales, and making collections or deliveries~~[, or~~
 11 otherwise~~, and~~

12 ~~(3) A seller having in the State a person upon whom~~
 13 ~~process directed to the seller from the courts of the~~
 14 ~~State may be served, including the director of~~
 15 ~~commerce and consumer affairs and the deputy director~~
 16 ~~in the cases provided in section 414-64]."~~

17 SECTION 5. Section 238-6, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "**§238-6 Collection of tax by seller; penalty.** (a) For
 20 purposes of the taxes due under sections 238-2 and 238-2.3,
 21 every seller ~~[having in the State, regularly]:~~

22 (1) Regularly or intermittently~~[,]~~:

1 (A) Owning any property~~[tangible or intangible]~~;

2 (B) Maintaining any place of business[]; or

3 (C) Using any representation as hereinabove
4 defined[]

5 in the State (and irrespective of the seller's having
6 or not having qualified to do business in the State);
7 or

8 (2) Who is otherwise engaged in business in the State as
9 defined in subsection (g);

10 shall, if the seller is described under paragraph (1) and makes
11 sales of property, services, or contracting for use in the State
12 (whether or not the sales are made in the State), or if the
13 seller is described under paragraph (2) and makes sales of
14 tangible personal property for use in the State, as described in
15 section 238-2, collect from the purchaser the taxes imposed by
16 sections 238-2 and 238-2.3, on the use of the property,
17 services, or contracting, as applicable, so sold by the seller,
18 if the seller is not subject to the use tax under this chapter
19 on the importation of the property into the State. The
20 collection shall be made within twenty days after the accrual of
21 the tax or within [~~such~~] any other period as shall be fixed by
22 the director of taxation upon the application of the seller, and



1 the seller shall give to the purchaser a receipt therefor in the
2 manner and form prescribed by the director; provided that this
3 subsection shall not apply to vehicles registered under section
4 286-50.

5 (b) The director, in the director's discretion, upon
6 application therefor and under terms and conditions prescribed
7 by the director, may relieve any seller of the duty of
8 collecting and paying over the tax imposed by subsection (a)
9 above, if the director is satisfied that the tax can be
10 effectively collected by other means. Exemption from the duty
11 of collecting the tax may be canceled at any time when the
12 director finds that the tax cannot be effectively collected by
13 other means. The director likewise may terminate the duty and
14 authority of any seller to collect and pay over the tax imposed
15 by subsection (a) above if the director finds, as to [~~such~~] the
16 seller, that the tax cannot be effectively collected by [~~such~~]
17 the means.

18 (c) The director, in the director's discretion, upon
19 application therefor and under terms and conditions prescribed
20 by the director, may authorize the collection of the tax imposed
21 by this chapter by a seller not otherwise required to collect
22 the tax. The seller, when so authorized, shall have the duty of



1 collecting and paying over the tax in the same manner and
2 subject to the same requirements as set out in subsection (a).
3 The authority may be canceled at any time when, in the judgment
4 of the director, the tax can more effectively be collected by
5 other means.

6 (d) In case any seller required or authorized to collect
7 the tax under this chapter fails to collect the same, or having
8 collected the tax fails to pay over the same as provided by this
9 chapter, the seller shall nevertheless be personally liable to
10 the State for the amount of the tax, but it shall be a defense
11 to [~~such~~] the liability that the indebtedness for the price is a
12 worthless account actually charged off for income tax purposes,
13 if and to the extent that the collections of the price do not
14 equal the tax.

15 (e) Every seller required or authorized to collect the tax
16 shall make returns and payments of the tax at the same time and
17 in the same manner as is provided with respect to taxpayer by
18 section 238-5. All provisions of this chapter with respect to
19 returns, reports, records, payments, penalties, and interest,
20 appeals, investigations, and audits, assessments, tax
21 collections procedure, criminal offenses, and the general



1 administrative powers and duties of the director, shall apply to
2 [~~such~~] the sellers the same as to taxpayers.

3 (f) The tax collected pursuant to this section shall be
4 held in trust for the State and for payment to the proper
5 collecting officer in the manner and at the time required by
6 this chapter. Any person collecting [~~such~~] the tax who
7 appropriates or converts the same to the person's own use or to
8 any use other than the payment of the tax as herein provided,
9 and who fails to pay over the amount of tax so collected at the
10 time required by this chapter, shall be [~~deemed~~] guilty of an
11 embezzlement of property of the State and shall be fined more
12 than five times the amount of money so embezzled or imprisoned
13 [~~at hard labor~~] for not more than ten years, and any failure by
14 the person so collecting the tax to pay the same over within the
15 time provided by this chapter, after demand therefor, shall be
16 taken and held to be prima facie evidence of the embezzlement.

17 (g) For purposes of this section, a seller shall be
18 presumed to be "engaged in business in the State" if:

19 (1) Any person, other than a person acting in its capacity
20 as a common carrier, that has substantial nexus in the
21 State:



- 1 (A) Sells a similar line of products as the seller
2 and does so under the same or a similar business
3 name;
- 4 (B) Maintains an office, distribution facility,
5 warehouse, storage place, or similar place of
6 business in the State to facilitate the delivery
7 of property or services sold by the seller to the
8 seller's customers;
- 9 (C) Uses trademarks, service marks, or trade names in
10 the State that are the same or substantially
11 similar to those used by the seller;
- 12 (D) Delivers, installs, assembles, or performs
13 maintenance services for the seller's customers
14 within the State;
- 15 (E) Facilitates the seller's delivery of property to
16 customers in the State by allowing the seller's
17 customers to pick up property sold by the seller
18 at an office, distribution facility, warehouse,
19 storage place, or similar place of business
20 maintained by the person in the State; or
- 21 (F) Conducts any other activities in the State that
22 are significantly associated with the seller's



1 ability to establish and maintain a market in the
2 State for the seller's sales; or

3 (2) An affiliated person has substantial nexus in the
4 State.

5 (h) The presumption that a seller is "engaged in business
6 in the State," within the meaning of subsection (g), may be
7 rebutted by demonstrating that the activities of the person or
8 affiliated person in the State are not significantly associated
9 with the seller's ability to establish or maintain a market in
10 the State for the seller's sales.

11 (i) For purposes of this section, a seller shall be
12 presumed to be "engaged in business in the State" if the seller
13 enters into an agreement with one or more residents of the State
14 under which the resident, for a commission or other
15 consideration, directly or indirectly refers potential
16 customers, whether by a link on an internet website,
17 telemarketing, an in-person oral presentation, or otherwise, to
18 the seller; provided that the cumulative gross receipts from
19 sales by the seller to customers in the State who are referred
20 to the seller by all residents who are a party to this type of
21 agreement with the seller is in excess of \$10,000 during the
22 preceding twelve months.



1 (j) The presumption that a seller is "engaged in business
2 in the State" within the meaning of subsection (i) may be
3 rebutted by submitting proof that the residents with whom the
4 seller has an agreement did not engage in any activity within
5 the State that was significantly associated with the seller's
6 ability to establish or maintain the seller's market in the
7 State during the preceding twelve months. Proof may consist of
8 sworn written statements from all of the residents with whom the
9 seller has an agreement stating that they did not engage in any
10 solicitation in this State of behalf of the seller during the
11 preceding twelve months; provided that the statements are
12 provided and obtained in good faith. Subsection (i) shall take
13 effect ninety days after the effective date of Act _____,
14 Session Laws of Hawaii 2013, and shall apply to sales made, uses
15 occurring, and services rendered on or after the effective date
16 of Act _____, Session Laws of Hawaii 2013, in accordance with
17 the applicable transition provisions and without regard to the
18 date the seller and the resident entered into the agreement
19 described in subsection (i); provided that the term "the
20 preceding twelve months" as used in subsection (i) may include
21 the twelve months commencing prior to the effective date of this
22 Act _____, Session Laws of Hawaii 2013.



1 (k) If any person sells or leases tangible personal
2 property or services to the State, a state department, a state
3 agency, or an agent thereof, that person and any affiliated
4 person, as a prerequisite for the sale or lease, shall register
5 with the department of taxation as a seller required to collect
6 and remit the tax and comply with all legal requirements imposed
7 on such sellers imposed by this chapter.

8 (l) For purposes of this section, "affiliated person"
9 means any person that is a member of the same "controlled group
10 of corporations," as defined in section 1563(a) of the Internal
11 Revenue Code of 1986, as amended, as the seller or any other
12 entity that, notwithstanding its form of organization, bears the
13 same ownership relationship to the seller as a corporation that
14 is a member of the same controlled group of corporations."

15 SECTION 6. The revisor of statutes shall insert the
16 effective date of this Act in the appropriate places in sections
17 2 and 3 of this Act.

18 SECTION 7. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 8. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect on July 1, 2030.



Report Title:

General Excise Tax; Use Tax

Description:

Expands application of the general excise tax to business activities in the State that are significantly associated with a seller's ability to establish or maintain a market in the State. Creates a presumption under the general excise tax law for sellers of tangible personal property where the seller's activities in the State demonstrate a significant business nexus with the State. Creates a presumption under the use tax law that a seller is engaged in business in the State if the seller's activities in the State demonstrate a significant business nexus with the State. Effective July 1, 2030. (SB948 HD1)

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

