
A BILL FOR AN ACT

1
2
3
4 RELATING TO TAXATION.
5
6

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**
8

9 SECTION 1. Section 237-1, Hawaii Revised Statutes, is
10 amended by amending the definition of "representative" to read
11 as follows:

12 "Representative" means any salesperson, commission agent,
13 manufacturer's representative, broker or other person who is
14 authorized or employed by an unlicensed seller to ~~[assist such~~
15 ~~seller in]~~ conduct activities in this State that are
16 significantly associated with the seller's ability to establish
17 or maintain a market in this State for the seller's sales,
18 including selling property for use in the State, [by] procuring
19 orders for [such] sales [or otherwise, and who carries on such
20 activities in the State], and making collections or deliveries,
21 it being immaterial whether such activities are regular or
22 intermittent ~~[, but the term "representative" does not include a~~
23 ~~manufacturer's representative whose functions are wholly~~
24 ~~promotional and to act as liaison between an unlicensed seller~~
25 ~~and a seller or sellers, and which do not include the procuring,~~



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

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

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

17 (1) Tax on manufacturers.

18 (A) Upon every person engaging or continuing within
19 the State in the business of manufacturing,
20 including compounding, canning, preserving,
21 packing, printing, publishing, milling,



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

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

18 (C) If any person liable for the tax on manufacturers
19 ships or transports the person's product, or any
20 part thereof, out of the State, whether in a
21 finished or unfinished condition, or sells the



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

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



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),



1 may be considered when they constitute the
2 best available data. The department shall
3 prescribe uniform and equitable rules for
4 ascertaining the values;

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

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

17 (2) Tax on business of selling tangible personal property;
18 producing.

19 (A) Upon every person engaging or continuing within
20 this State in the business of selling any
21 tangible personal property whatsoever (not



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

20 (B) Gross proceeds of sales of tangible property in
21 interstate and foreign commerce shall constitute



1 a part of the measure of the tax imposed on
2 persons in the business of selling tangible
3 personal property, to the extent, under the
4 conditions, and in accordance with the provisions
5 of the Constitution of the United States and the
6 Acts of the Congress of the United States which
7 may be now in force or may be hereafter adopted,
8 and whenever there occurs in the State an
9 activity to which, under the Constitution and
10 Acts of Congress, there may be attributed gross
11 proceeds of sales, the gross proceeds shall be so
12 attributed.

13 (C) For purposes of this section, a seller is
14 "engaging or continuing within this State in
15 business" within the meaning of subparagraph
16 (2) (A) if the seller, regularly or
17 intermittently, owns any property, maintains any
18 place of business, or uses any representative in
19 the State, irrespective of whether the person has
20 qualified to do business in the State.



1 (D) For purposes of this section, a seller shall be
2 presumed to be "engaging or continuing within
3 this State in business" within the meaning of
4 subparagraph (A) if an affiliated person has
5 substantial nexus in the state or if any person,
6 other than a person acting in its capacity as a
7 common carrier, that has substantial nexus in
8 this State:

9 (i) Sells a similar line of products as the
10 seller and does so under the same or a
11 similar business name;

12 (ii) Maintains an office, distribution facility,
13 warehouse, storage place, or similar place
14 of business in the State to facilitate the
15 delivery of property or services sold by the
16 seller to the seller's customers;

17 (iii) Uses trademarks, service marks, or trade
18 names in the State that are the same or
19 substantially similar to those used by the
20 seller;



- 1 (iv) Delivers, installs, assembles, or performs
- 2 maintenance services for the seller's
- 3 customers within the State;
- 4 (v) Facilitates the seller's delivery of
- 5 property to customers in the State by
- 6 allowing the seller's customers to pick up
- 7 property sold by the seller at an office,
- 8 distribution facility, warehouse, storage
- 9 place, or similar place of business
- 10 maintained by the person in the State; or
- 11 (vi) Conducts any other activities in the State
- 12 that are significantly associated with the
- 13 seller's ability to establish and maintain a
- 14 market in the State for the seller's sales.
- 15 (E) The presumption that a seller is "engaging or
- 16 continuing in business within this State" within
- 17 the meaning of subparagraph (D) of this section
- 18 may be rebutted by demonstrating that the
- 19 activities of the person or affiliated person in
- 20 the State are not significantly associated with



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

3 (F) For purposes of this section, a seller shall be
4 presumed to be "engaging or continuing in
5 business within this State" if the seller enters
6 into an agreement with one or more residents of
7 this State under which the resident, for a
8 commission or other consideration, directly or
9 indirectly refers potential customers, whether by
10 a link on an internet website, by telemarketing,
11 by an in-person oral presentation, or otherwise,
12 to the seller, if the cumulative gross receipts
13 from sales by the seller to customers in the
14 State who are referred to the seller by all
15 residents with this type of an agreement with the
16 seller is in excess of \$10,000 during the
17 preceding twelve months.

18 (G) The presumption that a seller is "engaging or
19 continuing in business within this State" within
20 the meaning of subparagraph (F) may be rebutted
21 by submitting proof that the residents with whom



1 the seller has an agreement did not engage in any
2 activity within the State that was significantly
3 associated with the seller's ability to establish
4 or maintain the seller's market in this State
5 during the preceding twelve months. Such proof
6 may consist of sworn written statements from all
7 of the residents with whom the seller has an
8 agreement stating that they did not engage in any
9 solicitation in this State on behalf of the
10 seller during the preceding year; provided that
11 such statements were provided and obtained in
12 good faith. Subparagraph (F) shall take effect
13 ninety days after the effective date of this Act
14 and shall apply to sales made, uses occurring,
15 and services rendered on or after the effective
16 date of this Act in accordance with the
17 applicable transition provisions and without
18 regard to the date the seller and the resident
19 entered into the agreement described in
20 subparagraph (F); provided that the term "the
21 preceding twelve months" as used in subparagraph



1 (F) may include the twelve months commencing
2 prior to the effective date of this Act.

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

13 (I) For purposes of this section, the term
14 "affiliated person" means any person that is a
15 member of the same "controlled group of
16 corporations" as defined in section 1563(a) of
17 the Internal Revenue Code as the seller or any
18 other entity that, notwithstanding its form of
19 organization, bears the same ownership
20 relationship to the seller as a corporation that
21 is a member of the same "controlled group of



1 corporations" as defined in section 1563(a) of
2 the Internal Revenue Code.

3 ~~[(C)]~~ (J) No manufacturer or producer, engaged in such
4 business in the State and selling the
5 manufacturer's or producer's products for
6 delivery outside of the State (for example,
7 consigned to a mainland purchaser via common
8 carrier f.o.b. Honolulu), shall be required to
9 pay the tax imposed in this chapter for the
10 privilege of so selling the products, and the
11 value or gross proceeds of sales of the products
12 shall be included only in determining the measure
13 of the tax imposed upon the manufacturer or
14 producer.

15 ~~[(D)]~~ (K) When a manufacturer or producer, engaged in
16 such business in the State, also is engaged in
17 selling the manufacturer's or producer's products
18 in the State at wholesale, retail, or in any
19 other manner, the tax for the privilege of
20 engaging in the business of selling the products
21 in the State shall apply to the manufacturer or



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



1 imposed in this chapter for the privilege of
2 producing or selling those products.

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

9 ~~[(F)]~~ (M) The department, by rule, may require that a
10 seller take from the purchaser of tangible
11 personal property a certificate, in a form
12 prescribed by the department, certifying that the
13 sale is a sale at wholesale; provided that:

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

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



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



1 performs contracting activities on federal
2 military installations and nowhere else in
3 this State;

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

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

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



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

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



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



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

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

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



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

7 (6) Tax on service business.

8 (A) Upon every person engaging or continuing within
9 the State in any service business or calling
10 including professional services not otherwise
11 specifically taxed under this chapter, there is
12 likewise hereby levied and shall be assessed and
13 collected a tax equal to four per cent of the
14 gross income of the business, and in the case of
15 a wholesaler under section 237-4(a)(10), the tax
16 shall be equal to one-half of one per cent of the
17 gross income of the business. [~~Notwithstanding~~
18 ~~the foregoing, a wholesaler under section~~
19 ~~237-4(a)(10) shall be subject to section~~
20 ~~237-13.3.~~]



- 1 (B) The department may require that the person
2 rendering a service at wholesale take from the
3 licensed seller a certificate, in a form
4 prescribed by the department, certifying that the
5 sale is a sale at wholesale; provided that:
- 6 (i) Any licensed seller who furnishes a
7 certificate shall be obligated to pay to the
8 person rendering the service, upon demand,
9 the amount of additional tax that is imposed
10 upon the seller whenever the sale is not at
11 wholesale; and
- 12 (ii) The absence of a certificate in itself shall
13 give rise to the presumption that the sale
14 is not at wholesale unless the person
15 rendering the sale is exclusively rendering
16 services at wholesale.
- 17 (C) Where any person is engaged in the business of
18 selling interstate or foreign common carrier
19 telecommunication services within and without the
20 State, other than as a home service provider, the
21 tax shall be imposed on that portion of gross



1 income received by a person from service which is
2 originated or terminated in this State and is
3 charged to a telephone number, customer, or
4 account in this State notwithstanding any other
5 state law (except for the exemption under section
6 237-23(a)(1)) to the contrary. If, under the
7 Constitution and laws of the United States, the
8 entire gross income as determined under this
9 paragraph of a business selling interstate or
10 foreign common carrier telecommunication services
11 cannot be included in the measure of the tax, the
12 gross income shall be apportioned as provided in
13 section 237-21; provided that the apportionment
14 factor and formula shall be the same for all
15 persons providing those services in the State.

16 (D) Where any person is engaged in the business of a
17 home service provider, the tax shall be imposed
18 on the gross income received or derived from
19 providing interstate or foreign mobile
20 telecommunications services to a customer with a
21 place of primary use in this State when such



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



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

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

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

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

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

19 (7) Tax on insurance producers. Upon every person engaged
20 as a licensed producer pursuant to chapter 431, there
21 is hereby levied and shall be assessed and collected a

1 tax equal to 0.15 per cent of the commissions due to
2 that activity.

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



1 (9) Tax on other business. Upon every person engaging or
2 continuing within the State in any business, trade,
3 activity, occupation, or calling not included in the
4 preceding paragraphs or any other provisions of this
5 chapter, there is likewise hereby levied and shall be
6 assessed and collected, a tax equal to four per cent
7 of the gross income thereof. In addition, the rate
8 prescribed by this paragraph shall apply to a business
9 taxable under one or more of the preceding paragraphs
10 or other provisions of this chapter, as to any gross
11 income thereof not taxed thereunder as gross income or
12 gross proceeds of sales or by taxing an equivalent
13 value of products, unless specifically exempted."

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

16 "(b) Nothing in this section shall be deemed to exempt any
17 sales to or by a federal cost-plus contractor, as defined in
18 chapter 237, or the gross proceeds thereof; with respect to all
19 such activities and transactions, taxes shall be levied,
20 returned, computed, and assessed the same as if this section had
21 not been enacted, and in the case of an election made under



1 sections [~~237-13(2)(F)~~] 237-13(2)(M) and 237-13(3)(C)(ii), the
2 tax shall be computed the same as upon a sale to the state
3 government."

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

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

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

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

20 ~~(3) A seller having in the State a person upon whom~~
21 ~~process directed to the seller from the courts of the~~



1 ~~State may be served, including the director of~~
2 ~~commerce and consumer affairs and the deputy director~~
3 ~~in the cases provided in section 414-64]."~~

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

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

9 (1) Regularly or intermittently, owning any property,
10 ~~[tangible or intangible,~~ maintaining any place of
11 business, or using any representation as hereinabove
12 defined~~[,]~~ in the State (and irrespective of the
13 seller's having or not having qualified to do business
14 in the State); or

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

17 shall, if the seller is described under paragraph (1) and makes
18 sales of property, services, or contracting for use in the State
19 (whether or not the sales are made in the State), or if the
20 seller is described under paragraph (2) and makes sales of
21 tangible personal property for use in the State as described in



1 section 238-2, collect from the purchaser the taxes imposed by
2 sections 238-2 and 238-2.3, on the use of the property,
3 services, or contracting, as applicable, so sold by the seller,
4 if the seller is not subject to the use tax under this chapter
5 on the importation of the property into the State. The
6 collection shall be made within twenty days after the accrual of
7 the tax or within such other period as shall be fixed by the
8 director of taxation upon the application of the seller, and the
9 seller shall give to the purchaser a receipt therefor in the
10 manner and form prescribed by the director; provided that this
11 subsection shall not apply to vehicles registered under section
12 286-50.

13 (b) The director, in the director's discretion, upon
14 application therefor and under terms and conditions prescribed
15 by the director, may relieve any seller of the duty of
16 collecting and paying over the tax imposed by subsection (a)
17 above, if the director is satisfied that the tax can be
18 effectively collected by other means. Exemption from the duty
19 of collecting the tax may be canceled at any time when the
20 director finds that the tax cannot be effectively collected by
21 other means. The director likewise may terminate the duty and



1 authority of any seller to collect and pay over the tax imposed
2 by subsection (a) above if the director finds, as to such
3 seller, that the tax cannot be effectively collected by such
4 means.

5 (c) The director, in the director's discretion, upon
6 application therefor and under terms and conditions prescribed
7 by the director, may authorize the collection of the tax imposed
8 by this chapter by a seller not otherwise required to collect
9 the tax. The seller, when so authorized, shall have the duty of
10 collecting and paying over the tax in the same manner and
11 subject to the same requirements as set out in subsection (a).
12 The authority may be canceled at any time when, in the judgment
13 of the director, the tax can more effectively be collected by
14 other means.

15 (d) In case any seller required or authorized to collect
16 the tax under this chapter fails to collect the same, or having
17 collected the tax fails to pay over the same as provided by this
18 chapter, the seller shall nevertheless be personally liable to
19 the State for the amount of the tax, but it shall be a defense
20 to such liability that the indebtedness for the price is a
21 worthless account actually charged off for income tax purposes,



1 if and to the extent that the collections of the price do not
2 equal the tax.

3 (e) Every seller required or authorized to collect the tax
4 shall make returns and payments of the tax at the same time and
5 in the same manner as is provided with respect to taxpayer by
6 section 238-5. All provisions of this chapter with respect to
7 returns, reports, records, payments, penalties, and interest,
8 appeals, investigations, and audits, assessments, tax
9 collections procedure, criminal offenses, and the general
10 administrative powers and duties of the director, shall apply to
11 such sellers the same as to taxpayers.

12 (f) The tax collected pursuant to this section shall be
13 held in trust for the State and for payment to the proper
14 collecting officer in the manner and at the time required by
15 this chapter. Any person collecting such tax who appropriates
16 or converts the same to the person's own use or to any use other
17 than the payment of the tax as herein provided, and who fails to
18 pay over the amount of tax so collected at the time required by
19 this chapter, shall be deemed guilty of an embezzlement of
20 property of the State and shall be fined more than five times
21 the amount of money so embezzled or imprisoned at hard labor not



1 more than ten years, and any failure by the person so collecting
2 the tax to pay the same over within the time provided by this
3 chapter, after demand therefor, shall be taken and held to be
4 prima facie evidence of the embezzlement.

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

7 (1) Any person, other than a person acting in its capacity
8 as a common carrier, that has substantial nexus in
9 this State:

10 (A) Sells a similar line of products as the seller
11 and does so under the same or a similar business
12 name;

13 (B) Maintains an office, distribution facility,
14 warehouse, storage place, or similar place of
15 business in the State to facilitate the delivery
16 of property or services sold by the seller to the
17 seller's customers;

18 (C) Uses trademarks, service marks, or trade names in
19 the State that are the same or substantially
20 similar to those used by the seller;



- 1 (D) Delivers, installs, assembles, or performs
2 maintenance services for the seller's customers
3 within the State;
- 4 (E) Facilitates the seller's delivery of property to
5 customers in the State by allowing the seller's
6 customers to pick up property sold by the seller
7 at an office, distribution facility, warehouse,
8 storage place, or similar place of business
9 maintained by the person in the State; or
- 10 (F) Conducts any other activities in the State that
11 are significantly associated with the seller's
12 ability to establish and maintain a market in the
13 State for the seller's sales; or
- 14 (2) An affiliated person has substantial nexus in the
15 State.
- 16 (h) The presumption that a seller is "engaged in business
17 in the State" within the meaning of subsection (g) may be
18 rebutted by demonstrating that the activities of the person or
19 affiliated person in the State are not significantly associated
20 with the seller's ability to establish or maintain a market in
21 this State for the seller's sales.



1 (i) For purposes of this section, "engaged in business in
2 the State" is also presumed to include every seller that has
3 entered into an agreement with one or more residents of this
4 State under which the resident, for a commission or other
5 consideration, directly or indirectly refers potential
6 customers, whether by a link on an internet website, by
7 telemarketing, by an in-person oral presentation, or otherwise,
8 to the seller, if the cumulative gross receipts from sales by
9 the seller to customers in the State who are referred to the
10 seller by all residents with this type of an agreement with the
11 seller is in excess of \$10,000 during the preceding twelve
12 months.

13 (j) The presumption that a seller is "engaged in business
14 in the State" within the meaning of subsection (i) may be
15 rebutted by submitting proof that the residents with whom the
16 seller has an agreement did not engage in any activity within
17 the State that was significantly associated with the seller's
18 ability to establish or maintain the seller's market in this
19 State during the preceding twelve months. Such proof may
20 consist of sworn written statements from all of the residents
21 with whom the seller has an agreement stating that they did not



1 engage in any solicitation in this State of behalf of the seller
2 during the preceding year; provided that such statements were
3 provided and obtained in good faith. Subsection (i) shall take
4 effect ninety days after the effective date of this Act and
5 shall apply to sales made, uses occurring, and services rendered
6 on or after the effective date of this Act in accordance with
7 the applicable transition provisions and without regard to the
8 date the seller and the resident entered into the agreement
9 described in subsection (i); provided that the term "the
10 preceding twelve months" as used in subsection (i) may include
11 the twelve months commencing prior to the effective date of this
12 Act.

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



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

9 SECTION 6. The revisor of statutes shall insert the
10 effective date of this Act in the appropriate places within this
11 Act.

12 SECTION 7. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 8. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 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. (SB 948 Proposed HD1)

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