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## A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. Section 237-13, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§237-13 Imposition of tax.** There is hereby levied and  
4 shall be assessed and collected annually privilege taxes against  
5 persons on account of their business and other activities in the  
6 State measured by the application of rates against values of  
7 products, gross proceeds of sales, or gross income, whichever is  
8 specified, as follows:

9           (1) Tax on manufacturers.

10           (A) ~~Upon~~ Except as otherwise provided in paragraph  
11                 (9), upon every person engaging or continuing  
12                 within the State in the business of  
13                 manufacturing, including compounding, canning,  
14                 preserving, packing, printing, publishing,  
15                 milling, processing, refining, or preparing for  
16                 sale, profit, or commercial use, either directly  
17                 or through the activity of others, in whole or in



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

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

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



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]~~ Except as otherwise provided in paragraph  
18               (9), upon every person engaging or continuing in  
19               the business of selling any tangible personal  
20               property whatsoever (not including, however,  
21               bonds or other evidence of indebtedness, or



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



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

15 (C) No manufacturer or producer, engaged in such  
16 business in the State and selling the  
17 manufacturer's or producer's products for  
18 delivery outside of the State (for example,  
19 consigned to a mainland purchaser via common  
20 carrier f.o.b. Honolulu), shall be required to  
21 pay the tax imposed in this chapter for the



1 privilege of so selling the products, and the  
2 value or gross proceeds of sales of the products  
3 shall be included only in determining the measure  
4 of the tax imposed upon the manufacturer or  
5 producer.

6 (D) When a manufacturer or producer, engaged in such  
7 business in the State, also is engaged in selling  
8 the manufacturer's or producer's products in the  
9 State at wholesale, retail, or in any other  
10 manner, the tax for the privilege of engaging in  
11 the business of selling the products in the State  
12 shall apply to the manufacturer or producer as  
13 well as the tax for the privilege of  
14 manufacturing or producing in the State, and the  
15 manufacturer or producer shall make the returns  
16 of the gross proceeds of the wholesale, retail,  
17 or other sales required for the privilege of  
18 selling in the State, as well as making the  
19 returns of the value or gross proceeds of sales  
20 of the products required for the privilege of  
21 manufacturing or producing in the State. The





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

15 (E) A taxpayer selling to a federal cost-plus  
16 contractor may make the election provided for by  
17 paragraph (3)(C), and in that case the tax shall  
18 be computed pursuant to the election,  
19 notwithstanding this paragraph or paragraph (1)  
20 to the contrary.



- 1           (F) The department, by rule, may require that a
- 2           seller take from the purchaser of tangible
- 3           personal property 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 purchaser who furnishes a certificate
- 7           shall be obligated to pay to the seller,
- 8           upon demand, the amount of the additional
- 9           tax that is imposed upon the seller whenever
- 10          the sale in fact is not at wholesale; and
- 11          (ii) The absence of a certificate in itself shall
- 12          give rise to the presumption that the sale
- 13          is not at wholesale unless the sales of the
- 14          business are exclusively at wholesale.
- 15          (3) Tax upon contractors.
- 16          (A) Upon every person engaging or continuing within
- 17          the State in the business of contracting, the tax
- 18          shall be equal to four per cent of the gross
- 19          income of the business.
- 20          (B) In computing the tax levied under this paragraph,
- 21          there shall be deducted from the gross income of



1 the taxpayer so much thereof as has been included  
2 in the measure of the tax levied under  
3 subparagraph (A), on:

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

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

10 (iii) A specialty contractor who is not licensed  
11 by the department of commerce and consumer  
12 affairs pursuant to section 444-9, but who  
13 performs contracting activities on federal  
14 military installations and nowhere else in  
15 this State;

16 provided that any person claiming a deduction  
17 under this paragraph shall be required to show in  
18 the person's return the name and general excise  
19 number of the person paying the tax on the amount  
20 deducted by the person.



1           (C) In computing the tax levied under this paragraph  
2           against any federal cost-plus contractor, there  
3           shall be excluded from the gross income of the  
4           contractor so much thereof as fulfills the  
5           following requirements:  
6           (i) The gross income exempted shall constitute  
7           reimbursement of costs incurred for  
8           materials, plant, or equipment purchased  
9           from a taxpayer licensed under this chapter,  
10          not exceeding the gross proceeds of sale of  
11          the taxpayer on account of the transaction;  
12          and  
13          (ii) The taxpayer making the sale shall have  
14          certified to the department that the  
15          taxpayer is taxable with respect to the  
16          gross proceeds of the sale, and that the  
17          taxpayer elects to have the tax on gross  
18          income computed the same as upon a sale to  
19          the state government.  
20          (D) A person who, as a business or as a part of a  
21          business in which the person is engaged, erects,



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



1 construction, or improvement of such building or  
2 structure, or the making, constructing, or  
3 improving of the road, street, sidewalk, sewer,  
4 or water system, or other improvements. The  
5 measure of tax in respect of the improvements  
6 shall not exceed the amount which would have been  
7 taxable had the work been performed by another,  
8 subject as in other cases to the deductions  
9 allowed by subparagraph (B). Upon the election  
10 of the taxpayer, this paragraph may be applied  
11 notwithstanding that the improvements were not  
12 made by the taxpayer, or were not made as a  
13 business or as a part of a business, or were made  
14 with the intention of holding the same. However,  
15 this paragraph shall not apply in respect of any  
16 proceeds that constitute or are in the nature of  
17 rent; all such gross income shall be taxable  
18 under paragraph (9); provided that insofar as the  
19 business of renting or leasing real property  
20 under a lease is taxed under section 237-16.5,  
21 the tax shall be levied by section 237-16.5.



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

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

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

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



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





1 specifically taxed under this chapter, there is  
2 likewise hereby levied and shall be assessed and  
3 collected a tax equal to four per cent of the  
4 gross income of the business, and in the case of  
5 a wholesaler under section 237-4(a)(10), the tax  
6 shall be equal to one-half of one per cent of the  
7 gross income of the business. Notwithstanding  
8 the foregoing, a wholesaler under section 237-  
9 4(a)(10) shall be subject to section 237-13.3.

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

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



1           (ii) The absence of a certificate in itself shall  
2                           give rise to the presumption that the sale  
3                           is not at wholesale unless the person  
4                           rendering the sale is exclusively rendering  
5                           services at wholesale.

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



# H.B. NO. 748

1 gross income shall be apportioned as provided in  
2 section 237-21; provided that the apportionment  
3 factor and formula shall be the same for all  
4 persons providing those services in the State.

5 (D) Where any person is engaged in the business of a  
6 home service provider, the tax shall be imposed  
7 on the gross income received or derived from  
8 providing interstate or foreign mobile  
9 telecommunications services to a customer with a  
10 place of primary use in this State when such  
11 services originate in one state and terminate in  
12 another state, territory, or foreign country;  
13 provided that all charges for mobile  
14 telecommunications services which are billed by  
15 or for the home service provider are deemed to be  
16 provided by the home service provider at the  
17 customer's place of primary use, regardless of  
18 where the mobile telecommunications originate,  
19 terminate, or pass through; provided further that  
20 the income from charges specifically derived from  
21 interstate or foreign mobile telecommunications



1 services, as determined by books and records that  
2 are kept in the regular course of business by the  
3 home service provider in accordance with section  
4 239-24, shall be apportioned under any  
5 apportionment factor or formula adopted under  
6 subparagraph (C). Gross income shall not  
7 include:  
8 (i) Gross receipts from mobile  
9 telecommunications services provided to a  
10 customer with a place of primary use outside  
11 this State;  
12 (ii) Gross receipts from mobile  
13 telecommunications services that are subject  
14 to the tax imposed by chapter 239;  
15 (iii) Gross receipts from mobile  
16 telecommunications services taxed under  
17 section 237-13.8; and  
18 (iv) Gross receipts of a home service provider  
19 acting as a serving carrier providing mobile  
20 telecommunications services to another home  
21 service provider's customer.



1           For the purposes of this paragraph, "charges for  
2           mobile telecommunications services", "customer",  
3           "home service provider", "mobile  
4           telecommunications services", "place of primary  
5           use", and "serving carrier" have the same meaning  
6           as in section 239-22.

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

12          (8) Tax on receipts of sugar benefit payments. Upon the  
13          amounts received from the United States government by  
14          any producer of sugar (or the producer's legal  
15          representative or heirs), as defined under and by  
16          virtue of the Sugar Act of 1948, as amended, or other  
17          Acts of the Congress of the United States relating  
18          thereto, there is hereby levied a tax of one-half of  
19          one per cent of the gross amount received; provided  
20          that the tax levied hereunder on any amount so  
21          received and actually disbursed to another by a



1 producer in the form of a benefit payment shall be  
2 paid by the person or persons to whom the amount is  
3 actually disbursed, and the producer actually making a  
4 benefit payment to another shall be entitled to claim  
5 on the producer's return a deduction from the gross  
6 amount taxable hereunder in the sum of the amount so  
7 disbursed. The amounts taxed under this paragraph  
8 shall not be taxable under any other paragraph,  
9 subsection, or section of this chapter.

10 (9) Tax on the manufacturing of and business of selling  
11 tangible personal property containing nicotine.

12 (A) Upon every person engaging or continuing within  
13 the State in the business of manufacturing,  
14 including compounding, canning, preserving,  
15 packing, printing, publishing, milling,  
16 processing, refining, or preparing for sale,  
17 profit, or commercial use, either directly or  
18 through the activity of others, in whole or in  
19 part, any article or articles, substance or  
20 substances, commodity or commodities, containing  
21 nicotine, the amount of the tax to be equal to



1           the value of the articles, substances, or  
2           commodities, manufactured, compounded, canned,  
3           preserved, packed, printed, milled, processed,  
4           refined, or prepared for sale, as shown by the  
5           gross proceeds derived from the sale thereof by  
6           the manufacturer or person compounding,  
7           preparing, or printing them, multiplied by ten  
8           per cent.

9           (B) Upon every person engaging or continuing in the  
10           business of selling any tangible personal  
11           property containing nicotine there is likewise  
12           hereby levied, and shall be assessed and  
13           collected, a tax equivalent to ten per cent of  
14           the gross proceeds of sales of the business at  
15           retail and wholesale.

16        ~~[(9)]~~ (10) Tax on other business. Upon every person  
17           engaging or continuing within the State in any  
18           business, trade, activity, occupation, or calling not  
19           included in the preceding paragraphs or any other  
20           provisions of this chapter, there is likewise hereby  
21           levied and shall be assessed and collected, a tax



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

9 SECTION 2. Section 237-31, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§237-31 **Remittances.** All remittances of taxes imposed by  
12 this chapter shall be made by money, bank draft, check,  
13 cashier's check, money order, or certificate of deposit to the  
14 office of the department of taxation to which the return was  
15 transmitted. The department shall issue its receipts therefor  
16 to the taxpayer and shall pay the moneys into the state treasury  
17 as a state realization, to be kept and accounted for as provided  
18 by law; provided that:

- 19 (1) A sum, not to exceed \$5,000,000, from all general  
20 excise tax revenues realized by the State shall be





# H.B. NO. 748

1 deposited in the state treasury in each fiscal year to  
 2 the credit of the compound interest bond reserve fund;  
 3 (2) A sum from all general excise tax revenues realized by  
 4 the State that is equal to one-half of the total  
 5 amount of funds appropriated or transferred out of the  
 6 hurricane reserve trust fund under sections 4 and 5 of  
 7 Act 62, Session Laws of Hawaii 2011, shall be  
 8 deposited into the hurricane reserve trust fund in  
 9 fiscal year 2013-2014 and in fiscal year 2014-2015;  
 10 provided that the deposit required in each fiscal year  
 11 shall be made by October 1 of that fiscal year; ~~and~~  
 12 [+](3) [+]  
 13 Commencing with fiscal year 2018-2019, a sum from  
 14 all general excise tax revenues realized by the State  
 15 that represents the difference between the state  
 16 public employer's annual required contribution for the  
 17 separate trust fund established under section 87A-42  
 18 and the amount of the state public employer's  
 19 contributions into that trust fund shall be deposited  
 20 to the credit of the State's annual required  
 21 contribution into that trust fund in each fiscal year,  
 as provided in section 87A-42 ~~[+]~~; and



# H.B. NO. 148

1        (4) A sum from all general excise tax revenues realized by  
 2        the State that is equal to the amount of revenues  
 3        generated and collected pursuant to section 237-13(9)  
 4        shall be deposited into the Hawaii cancer research  
 5        special fund."

6        SECTION 3. Section 304A-2168, Hawaii Revised Statutes, is  
 7 amended by amending subsection (c) to read as follows:

8        "(c) The following shall be deposited into the special  
 9 fund:

- 10        (1) Moneys collected pursuant to section 245-15;
- 11        (2) General excise tax revenues, as provided in section  
 12        237-31(4);
- 13        [~~2~~] (3) All other fees, charges, and other moneys  
 14        received in conjunction with programs of the cancer  
 15        research center of Hawaii;
- 16        [~~3~~] (4) Transfers from other accounts or funds; and
- 17        [~~4~~] (5) Interest earned or accrued on moneys in the  
 18        special fund."

19        SECTION 4. Statutory material to be repealed is bracketed  
 20 and stricken. New statutory material is underscored.

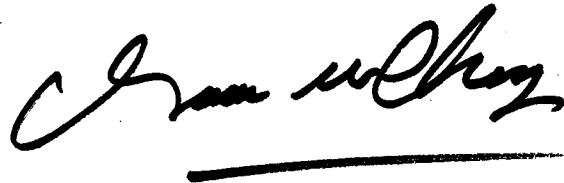
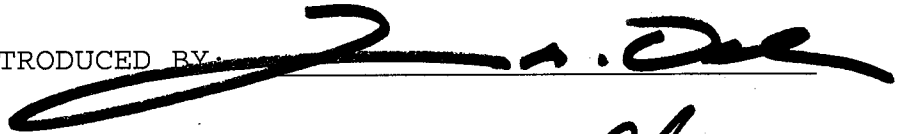


# H.B. NO. 748

1 SECTION 5. This Act shall take effect on July 1, 2015, and  
2 shall apply to gross income or gross proceeds received after  
3 December 31, 2016.

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INTRODUCED BY:



JAN 24 2015



# H.B. NO. 748

**Report Title:**

General Excise Tax; Nicotine

**Description:**

Applies the general excise tax on the manufacture and sale, at wholesale and retail, of all products containing nicotine, at a rate of 10%. Applies to gross income and gross proceeds received after 12/31/2016.

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

