

JAN 27 2016

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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. The sale and provision of services by  
2 businesses based and domiciled in Hawaii to the federal  
3 government are a vital part of our state and local economy that  
4 provides jobs, economic development, and opportunities for local  
5 residents to establish well-paying careers in Hawaii to sustain  
6 themselves and their families.

7           Although federal contracting is a highly lucrative field  
8 which can greatly benefit our local businesses and economy, it  
9 has become increasingly apparent that small businesses domiciled  
10 and based in Hawaii are finding themselves at a huge competitive  
11 disadvantage in bidding for and being awarded federal contracts  
12 because of the Hawaii general excise tax. Of the approximately  
13 \$2,000,000,000 of federal contracts that are available for bid  
14 annually in Hawaii, approximately \$900,000,000 of that is set  
15 aside on a competitive basis for small businesses. Most of  
16 these small business contracts are being awarded to businesses  
17 that are not domiciled or based in Hawaii.



1           The effective Hawaii general excise tax rate for sales and  
2 services taking place in the City and County of Honolulu is  
3 4.712 per cent and applies to the sale of goods and services to  
4 the federal government by and through Hawaii businesses, even  
5 though the sale of goods alone to the federal government is not  
6 subject to the general excise tax. Hawaii is one of only three  
7 states in the nation -- the others being Washington and  
8 Vermont -- that apply the general excise tax to the provision  
9 and sale of goods and services by businesses based in their  
10 states to the federal government.

11           Businesses domiciled and based in Hawaii must always  
12 include the general excise tax on their federal bids as a matter  
13 of their compliance with state law while out-of-state  
14 contractors do not because they are not domiciled or based in  
15 Hawaii. This unequal treatment of in-state verses out-of-state  
16 businesses is further exacerbated by the manner in which federal  
17 agencies oversee the federal bidding process and has opined that  
18 since the sale of goods to the federal government in Hawaii is  
19 not subject to the general excise tax, it will not require  
20 insertion or enforcement of this tax on bids for goods and  
21 services submitted to it. When coupled with the "lowest price



1 technically accepted" rubric used by the federal government to  
2 select contract bidders who bid the lowest amount, Hawaii  
3 domiciled businesses routinely find themselves at a 4.712 per  
4 cent disadvantage.

5       The impact of this competitive disadvantage to Hawaii-based  
6 businesses reduces the amount of economic activity in the State  
7 and transfers business opportunities and jobs off-shore to out-  
8 of-state competitors. It decreases the amount of tax revenues  
9 the State is able to collect for personal and business income  
10 taxes from employees and businesses located in Hawaii. It also  
11 has the cascading effect of creating an incentive for Hawaii  
12 based businesses who are engaged in federal contracting to move  
13 out of Hawaii to maintain their competitiveness and to be  
14 successful in obtaining federal contracts.

15       The purpose of this Act is to remove the competitive  
16 disadvantage that businesses domiciled and located in Hawaii  
17 face when dealing with the federal government by providing these  
18 businesses with an exemption from the Hawaii general excise tax  
19 for the sale of goods and services to the federal government.

20       SECTION 2. Section 237-25, Hawaii Revised Statutes, is  
21 amended to read as follows:



# S.B. NO. 3095

1           "§237-25 Exemptions of sales and gross proceeds of sales  
2 to federal government, and credit unions. (a) Any provision of  
3 law to the contrary notwithstanding, there shall be exempted  
4 from, and excluded from the measures of, the tax imposed by  
5 chapter 237 all sales, and the gross proceeds of all sales, of:

6           (1) Intoxicating liquor, as defined in chapter 281,  
7                 hereafter sold by any person licensed under chapter  
8                 281 to the United States (including any agency or  
9                 instrumentality of the United States that is wholly  
10                owned or otherwise so constituted as to be immune from  
11                the levy of a tax under chapter 238 or 244D but not  
12                including national banks), or to any organization to  
13                which that sale is permitted by the proviso of "Class  
14                3" of section 281-31, located on any Army, Navy, or  
15                Air Force reservation, but the person making the sale  
16                shall nevertheless, within the meaning of chapters  
17                237, 244D, and 281 be deemed to be a licensed seller;

18           (2) Tobacco products and cigarettes, as defined in chapter  
19                245, sold by any person licensed under the chapter to  
20                the United States (including any agency or  
21                instrumentality thereof that is wholly owned or



# S.B. NO. 3095

1 otherwise so constituted as to be immune from the levy  
2 of a tax under chapter 238 or 245 but not including  
3 national banks), but the person making the sale shall  
4 nevertheless, within the meaning of chapters 237 and  
5 245, be deemed to be a licensed seller;

6 (3) ~~[Other]~~ Services or tangible personal property sold by  
7 any person licensed under this chapter to the United  
8 States (including any agency, instrumentality, or  
9 federal credit union thereof but not including  
10 national banks), ~~[and to any state-chartered credit~~  
11 ~~union,]~~ but the person making such sale shall  
12 nevertheless, within the meaning of this chapter, be  
13 deemed a licensed seller; ~~[and]~~

14 (4) Other tangible personal property sold by any person  
15 licensed under this chapter to any state-chartered  
16 credit union, but the person making such sale shall  
17 nevertheless, within the meaning of this chapter, be  
18 deemed a licensed seller; and

19 ~~[-(4)-]~~ (5) When the amount of property sold by a licensee  
20 turns upon the amount of the property sold through a  
21 vending machine or similar device to the customer



1 using the device, there shall not be deemed to have  
2 occurred any sale covered by an exemption under  
3 paragraph (1), (2), or (3).

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

12 ~~[(c) Nothing in this section shall be deemed to exempt any~~  
13 ~~person engaging or continuing in a service business or calling~~  
14 ~~from any part of the tax imposed upon the person for such~~  
15 ~~activity, and the person shall not be entitled to deduct any~~  
16 ~~amount for tangible personal property furnished in conjunction~~  
17 ~~therewith even though the person separately bills or otherwise~~  
18 ~~shows the amount of the gross income of the business derived~~  
19 ~~from the furnishing of the property.~~

20 ~~(d)]~~ (c) The exemption granted by this section shall apply  
21 to the seller of products sold in the State as provided in



# S.B. NO. 3095

1 subsection (a) in respect of the privilege of manufacturing or  
 2 producing, as well as the privilege of selling, and the value or  
 3 gross proceeds of sales of the products so sold shall be  
 4 excluded from the measure of the tax imposed by chapter 237 upon  
 5 the seller as a manufacturer or producer."

6 SECTION 3. Statutory material to be repealed is bracketed  
 7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act, upon its approval, shall apply to  
 9 taxable years beginning after December 31, 2015.

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INTRODUCED BY: \_\_\_\_\_



# S.B. NO. 3095

**Report Title:**

General Excise Tax; Federal Sales of Services and Products

**Description:**

Exempts sales of services or tangible personal property to the federal government from the general excise tax.

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