
A BILL FOR AN ACT

RELATING TO MEDICAL MARIJUANA.

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 every person engaging or continuing within
11 the State in the business of manufacturing,
12 including compounding, canning, preserving,
13 packing, printing, publishing, milling,
14 processing, refining, or preparing for sale,
15 profit, or commercial use, either directly or
16 through the activity of others, in whole or in
17 part, any article or articles, substance or



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

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

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



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

11 (i) If the products at the time of their entry
12 into interstate or foreign commerce already
13 have been sold, the gross proceeds of sale,
14 less the transportation expenses, if any,
15 incurred in realizing the gross proceeds for
16 transportation from the time of entry of the
17 products into interstate or foreign
18 commerce, including insurance and storage in
19 transit, shall be the measure of the value
20 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 every person engaging or continuing in the
18 business of selling any tangible personal
19 property whatsoever (not including, however,
20 bonds or other evidence of indebtedness, or
21 stocks), there is likewise hereby levied, and



1 shall be assessed and collected, a tax equivalent
2 to four per cent of the gross proceeds of sales
3 of the business; provided that, in the case of a
4 wholesaler, the tax shall be equal to one-half of
5 one per cent of the gross proceeds of sales of
6 the business; and provided further that insofar
7 as the sale of tangible personal property is a
8 wholesale sale under section 237-4(a)(8), the tax
9 shall be one-half of one per cent of the gross
10 proceeds. Upon every person engaging or
11 continuing within this State in the business of a
12 producer, the tax shall be equal to one-half of
13 one per cent of the gross proceeds of sales of
14 the business, or the value of the products, for
15 sale, if sold for delivery outside the State or
16 shipped or transported out of the State, and the
17 value of the products shall be determined in the
18 same manner as the value of manufactured products
19 covered in the cases under 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) No manufacturer or producer, engaged in such
14 business in the State and selling the
15 manufacturer's or producer's products for
16 delivery outside of the State (for example,
17 consigned to a mainland purchaser via common
18 carrier f.o.b. Honolulu), shall be required to
19 pay the tax imposed in this chapter for the
20 privilege of so selling the products, and the
21 value or gross proceeds of sales of the products



1 shall be included only in determining the measure
2 of the tax imposed upon the manufacturer or
3 producer.

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



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

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

19 (F) The department, by rule, may require that a
20 seller take from the purchaser of tangible
21 personal property a certificate, in a form



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

- 3 (i) Any purchaser who furnishes a certificate
4 shall be obligated to pay to the seller,
5 upon demand, the amount of the additional
6 tax that is imposed upon the seller whenever
7 the sale in fact is not at wholesale; and
8 (ii) The absence of a certificate in itself shall
9 give rise to the presumption that the sale
10 is not at wholesale unless the sales of the
11 business are exclusively at wholesale.

12 (3) Tax upon contractors.

13 (A) Upon every person engaging or continuing within
14 the State in the business of contracting, the tax
15 shall be equal to four per cent of the gross
16 income of the business.

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



- 1 (i) Another taxpayer who is a contractor, as
- 2 defined in section 237-6;
- 3 (ii) A specialty contractor, duly licensed by the
- 4 department of commerce and consumer affairs
- 5 pursuant to section 444-9, in respect of the
- 6 specialty contractor's business; or
- 7 (iii) A specialty contractor who is not licensed
- 8 by the department of commerce and consumer
- 9 affairs pursuant to section 444-9, but who
- 10 performs contracting activities on federal
- 11 military installations and nowhere else in
- 12 this State;
- 13 provided that any person claiming a deduction
- 14 under this paragraph shall be required to show in
- 15 the person's return the name and general excise
- 16 number of the person paying the tax on the amount
- 17 deducted by the person.
- 18 (C) In computing the tax levied under this paragraph
- 19 against any federal cost-plus contractor, there
- 20 shall be excluded from the gross income of the



1 contractor so much thereof as fulfills the
2 following requirements:

3 (i) The gross income exempted shall constitute
4 reimbursement of costs incurred for
5 materials, plant, or equipment purchased
6 from a taxpayer licensed under this chapter,
7 not exceeding the gross proceeds of sale of
8 the taxpayer on account of the transaction;
9 and

10 (ii) The taxpayer making the sale shall have
11 certified to the department that the
12 taxpayer is taxable with respect to the
13 gross proceeds of the sale, and that the
14 taxpayer elects to have the tax on gross
15 income computed the same as upon a sale to
16 the state government.

17 (D) A person who, as a business or as a part of a
18 business in which the person is engaged, erects,
19 constructs, or improves any building or
20 structure, of any kind or description, or makes,
21 constructs, or improves any road, street,



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



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

- 19 (4) Tax upon theaters, amusements, radio broadcasting
20 stations, etc.



- 1 (A) Upon every person engaging or continuing within
2 the State in the business of operating a theater,
3 opera house, moving picture show, vaudeville,
4 amusement park, dance hall, skating rink, radio
5 broadcasting station, or any other place at which
6 amusements are offered to the public, the tax
7 shall be equal to four per cent of the gross
8 income of the business, and in the case of a sale
9 of an amusement at wholesale under section 237-
10 4(a)(13), the tax shall be one-half of one per
11 cent of the gross income.
- 12 (B) The department may require that the person
13 rendering an amusement at wholesale take from the
14 licensed seller a certificate, in a form
15 prescribed by the department, certifying that the
16 sale is a sale at wholesale; provided that:
- 17 (i) Any licensed seller who furnishes a
18 certificate shall be obligated to pay to the
19 person rendering the amusement, upon demand,
20 the amount of additional tax that is imposed



1 upon the seller whenever the sale is not at
2 wholesale; and
3 (ii) The absence of a certificate in itself shall
4 give rise to the presumption that the sale
5 is not at wholesale unless the person
6 rendering the sale is exclusively rendering
7 the amusement at wholesale.
8 (5) Tax upon sales representatives, etc. Upon every
9 person classified as a representative or purchasing
10 agent under section 237-1, engaging or continuing
11 within the State in the business of performing
12 services for another, other than as an employee, there
13 is likewise hereby levied and shall be assessed and
14 collected a tax equal to four per cent of the
15 commissions and other compensation attributable to the
16 services so rendered by the person.
17 (6) Tax on service business.
18 (A) Upon every person engaging or continuing within
19 the State in any service business or calling
20 including professional services not otherwise
21 specifically taxed under this chapter, there is

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

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

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

18 (ii) The absence of a certificate in itself shall
19 give rise to the presumption that the sale
20 is not at wholesale unless the person



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1 rendering the sale is exclusively rendering
2 services at wholesale.

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



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



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1 home service provider in accordance with section
2 239-24, shall be apportioned under any
3 apportionment factor or formula adopted under
4 subparagraph (C). Gross income shall not
5 include:

6 (i) Gross receipts from mobile
7 telecommunications services provided to a
8 customer with a place of primary use outside
9 this State;

10 (ii) Gross receipts from mobile
11 telecommunications services that are subject
12 to the tax imposed by chapter 239;

13 (iii) Gross receipts from mobile
14 telecommunications services taxed under
15 section 237-13.8; and

16 (iv) Gross receipts of a home service provider
17 acting as a serving carrier providing mobile
18 telecommunications services to another home
19 service provider's customer.

20 For the purposes of this paragraph, "charges for
21 mobile telecommunications services", "customer",



1 "home service provider", "mobile
2 telecommunications services", "place of primary
3 use", and "serving carrier" have the same meaning
4 as in section 239-22.

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

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

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

8 (9) Tax on licensed medical marijuana dispensaries. Upon
9 every person engaged as a licensed medical marijuana
10 dispensary by the State pursuant to chapter 329D,
11 there is hereby levied and shall be assessed and
12 collected a tax equal to per cent of the gross
13 proceeds or gross income derived from sales on any
14 marijuana or manufactured marijuana product dispensed.

15 ~~[(9)]~~ (10) Tax on other business. Upon every person
16 engaging or continuing within the State in any
17 business, trade, activity, occupation, or calling not
18 included in the preceding paragraphs or any other
19 provisions of this chapter, there is likewise hereby
20 levied and shall be assessed and collected, a tax
21 equal to four per cent of the gross income thereof.



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

8 SECTION 2. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 3. This Act shall take effect on July 1, 2017.

11

INTRODUCED BY: *Sen. Ron*

JAN 20 2017



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Report Title:
Marijuana Tax

Description:
Establishes a tax on all marijuana and marijuana related products sold by licensed medical marijuana dispensaries.

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