
A BILL FOR AN ACT

RELATING TO TAX ON INTANGIBLE PROPERTY.

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

1 SECTION 1. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§237- Exemption for intangible property used outside
5 the State. (a) All of the value or gross proceeds arising from
6 the use of intangible property outside the State shall be
7 exempted from, and excluded from the measure of, the taxes
8 imposed by this chapter.

9 (b) For the purposes of this section, the seller or
10 licensor shall take from the purchaser a certificate, in a form
11 prescribed by the department, certifying that the intangible
12 property is to be used outside the State. Any purchaser who
13 furnishes the certificate shall be obligated to pay to the
14 seller or licensor, upon demand, the amount of the additional
15 tax that is imposed upon the seller or licensor, if the
16 intangible property is used in this State."



1 SECTION 2. Chapter 238, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§238- Imposition of tax on intangible property. There
5 is hereby levied an excise tax on the value of intangible
6 property acquired from an unlicensed seller and imported or used
7 in the State. The tax imposed by this chapter shall accrue when
8 the intangible property is acquired by the importer or purchaser
9 and becomes subject to the taxing jurisdiction of the State.
10 The rate of the tax hereby imposed shall be four per cent of the
11 value of the intangible property."

12 SECTION 3. Section 238-1, Hawaii Revised Statutes, is
13 amended as follows:

- 14 1. By amending the definition of "import" to read:
15 ""Import" (or any nounal, verbal, adverbial, adjective, or
16 other equivalent of the term) includes:
17 (1) The importation into the State of [~~tangible~~] property,
18 services, or contracting owned, purchased from an
19 unlicensed seller, or however acquired, from any other
20 part of the United States or its possessions or from



1 any foreign country, whether in interstate or foreign
2 commerce, or both; and

3 (2) The sale and delivery of [~~tangible personal~~] property
4 owned, purchased from an unlicensed seller, or however
5 acquired, by a seller who is or should be licensed
6 under the general excise tax law from an out-of-state
7 location to an in-state purchaser, regardless of the
8 free on board point or the place where title to the
9 property transfers to the purchaser."

10 2. By amending the definition of "price" to read:

11 ""Price" means the total amount for which [~~tangible~~
12 ~~personal~~] property, services, or contracting are purchased,
13 valued in money, whether paid in money or otherwise, and
14 wheresoever paid; provided that cash discounts allowed and taken
15 on sales shall not be included."

16 3. By amending the definition of "property" to read:

17 ""Property" means tangible personal property, intangible
18 property, and prepaid telephone calling services but does not
19 include [~~newspapers~~]:

20 (1) Newspapers or other periodical publications purchased
21 on the subscription plan, issued at stated intervals



1 as frequently as four times a year, and of the class
2 admitted to the United States mails as second class
3 matter under the laws and regulations governing the
4 postal service on January 1, 1965[-];

5 (2) Securities as defined in title 15 United States Code
6 section 78c or similar laws of jurisdictions outside
7 the United States;

8 (3) Commodities for future delivery and other agreements,
9 options, and rights as defined in title 7 United
10 States Code section 2 that are permitted to be traded
11 on a board of trade designated by the Commodities
12 Futures Trading Commission under the Commodity
13 Exchange Act;

14 (4) Evidence of indebtedness;

15 (5) Interest in land; or

16 (6) Dividends as defined by chapter 235."

17 4. By amending the definition of "'purchase' and 'sale'"
18 to read:

19 "Purchase" and "sale" means any transfer, exchange, or
20 barter, conditional or otherwise, in any manner or by any means,



1 wheresoever consummated, of [~~tangible personal~~] property,
2 services, or contracting for a consideration."

3 5. By amending the definition of "seller" to read:

4 "Seller" means any person engaged in the business of
5 selling [~~tangible personal~~] property, services, or contracting,
6 wheresoever engaged, but does not include the United States or
7 its wholly owned agencies or instrumentalities other than
8 national banks, the State or a political subdivision thereof, or
9 wholly owned agencies or instrumentalities of the State or a
10 political subdivision."

11 6. By amending the definition of "service business or
12 calling" to read:

13 "Service business or calling" includes all activities
14 engaged in for other persons for a consideration that involve
15 the rendering of a service as distinguished from the sale of
16 [~~tangible personal~~] property or the production and sale of
17 [~~tangible~~] property. "Service business or calling" includes
18 professional services, but does not include services rendered by
19 an employee to the employee's employer."

20 SECTION 4. Section 238-2.6, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) The county surcharge on state tax, upon the adoption
2 of a county ordinance and in accordance with the requirements of
3 section 46-16.8, shall be levied, assessed, and collected as
4 provided in this section on the value of property and services
5 taxable under this chapter. No county shall set the surcharge
6 on state tax at a rate greater than one-half per cent of the
7 value of property taxable under this chapter. All provisions of
8 this chapter shall apply to the county surcharge on state tax.
9 With respect to the surcharge, the director shall have all the
10 rights and powers provided under this chapter. In addition, the
11 director of taxation shall have the exclusive rights and power
12 to determine the county or counties in which a person imports or
13 purchases [~~tangible personal~~] property and, in the case of a
14 person importing or purchasing [~~tangible~~] property in more than
15 one county, the director shall determine, through apportionment
16 or other means, that portion of the surcharge on state tax
17 attributable to the importation or purchase in each county."

18 SECTION 5. Section 238-3, Hawaii Revised Statutes, is
19 amended by amending subsection (i) to read as follows:

20 "(i) Each taxpayer liable for the tax imposed by this
21 chapter on [~~tangible personal~~] property, services, or



1 contracting shall be entitled to full credit for the combined
2 amount or amounts of legally imposed sales or use taxes paid by
3 the taxpayer with respect to the same transaction and property,
4 services, or contracting to another state and any subdivision
5 thereof, but [~~such~~] the credit shall not exceed the amount of
6 the use tax imposed under this chapter on account of the
7 transaction and property, services, or contracting. The
8 director of taxation may require the taxpayer to produce the
9 necessary receipts or vouchers indicating the payment of the
10 sales or use tax to another state or subdivision as a condition
11 for the allowance of the credit."

12 SECTION 6. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval
15 and shall apply to taxable years beginning after December 31,
16 2018.



Report Title:

General Excise Tax; Use Tax; Intangible Property

Description:

Clarifies that intangible property shall be exempt from the general excise tax used outside the State. Subjects intangible property acquired from an unlicensed seller and used in the State to the use tax at 4 percent of the value of the property.
(HB2416 CD1)

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