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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

PART I

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§231- Information reporting. (a) Each retailer or vendor that makes sales of tangible personal property in an amount equal to or in excess of \$100,000 from a place of business outside the State for use in the State and that is not required to pay or collect general excise or use tax shall, by January 31 of each year, send notification to all purchasers in the State who purchase tangible personal property in an amount equal to or in excess of \$500 annually from the retailer or vendor. The notification shall include, if available:

- (1) Dates of each purchase made by the purchaser; and
- (2) The amount of each purchase;

provided that the notification shall state that the State requires a use tax return to be filed and use tax paid on certain purchases made by a purchaser in the State from the out-of-state retailer or vendor. The notification shall not contain any other information that would indicate, imply, or identify the class, type, description, or name of the products purchased. Any information that could indicate, imply, or identify the class, type, description, or name of the products purchased shall be considered strictly confidential.

(b) The notification pursuant to subsection (a) shall be sent separately to all purchasers by first-class mail and shall not be included with any other shipments. The notification shall include the words "Important Tax Document Enclosed" on the exterior of the mailing.

(c) Each retailer or vendor subject to this section shall file an annual statement showing the total amount paid for purchases during the preceding calendar year or any portion thereof for each purchaser to the department on such forms as are provided or approved by the department. The annual statement shall be filed on or before March 1 of each year.

(d) The director of taxation may require any retailer or vendor that makes \$100,000 a year or more in total sales in the State to file the annual statement pursuant to subsection (c) by magnetic media or another machine-readable form for that year.

(e) Failure to send notification to purchasers pursuant to this section shall subject the retailer or vendor to a penalty of \$10 for each failure, unless the retailer or vendor shows reasonable cause for the failure.

(f) Failure to file the annual statement required pursuant to this section shall subject the retailer or vendor to a penalty of \$10 for each purchaser that should have been included in the annual statement, unless the retailer shows good cause for not filing the statement.

(g) A retailer or vendor who voluntarily collects and pays the use tax owed to the department on tangible personal property sold from a place of business outside the State for use in the State shall not be subject to this section.

(h) The department shall not fine, charge interest on, or penalize in any other way, an individual who receives notification from a retailer or vendor about the individual's responsibility to pay the use tax as provided for in this section and shall only require payment of the use tax by the individual."

## PART II

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

**"§237-2 "Business", "engaging" in business, defined.** "Business" as used in this chapter, includes all

activities (personal, professional, or corporate), engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect, without regard to physical presence in the State, but does not include casual sales[-]; provided that a person with no physical presence in the State is engaged in "business" in this State if the person has gross receipts attributable to this State of \$100,000 or more and has a computer server physically present in this State that is used for gain or economic benefit.

The term "engaging" as used in this chapter with reference to engaging or continuing in business also includes the exercise of corporate or franchise powers."

### PART III

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

SECTION 4. This Act shall take effect on July 1, 2112.

**Report Title:**

Taxation; Sales; Out-of-State Retailers or Vendors;  
Notification; Reporting

**Description:**

Requires retailers or vendors that are not located in the State and not required to pay or collect general excise or use tax for sales to send certain information to purchasers in the State. Requires retailers or vendors to submit an annual report to the department of taxation. Exempts retailers or vendors who voluntarily collect and pay use tax to the department of taxation to be exempt from this requirement. Prohibits the department of taxation from assessing fines, charging interest, or penalizing in any way an individual who receives notification and does not pay the use tax. Amends the definition of business under Hawaii's general excise tax law. (SB 620 HD2)

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