

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, USE, Impose Tax on Intangible Property

BILL NUMBER: HB 2416, HD-1

INTRODUCED BY: House Committee on Finance

LATE

EXECUTIVE SUMMARY: Imposes GET and Use Tax on intangible property used in the State, while exempting revenues from using intangible property outside the State. We urge caution on this bill because of potentially far-reaching impact.

SYNOPSIS: Adds a new section to chapter 237, HRS, allowing an exemption for intangible property used out of State. Allows the purchaser to certify the out-of-state use (similar to the current G-61 export certificate).

Adds a new section to chapter 238, HRS, imposing use tax on imported tangible property at 4%.

Makes conforming amendments.

EFFECTIVE DATE: July 1, 2030

STAFF COMMENTS: This bill has far-reaching implications and needs to be thought through carefully. It could apply, for example, if a Hawaii resident bought stocks or bonds, because the transfer of ownership of the stocks or bonds could be seen as importation of the stocks or bonds, which are intangible property. Income from such instruments is explicitly exempt from the GET under HRS section 237-3(b), but that exemption wouldn't be worth much if the value of the instrument is immediately taxed under this bill.

In prior testimony, the Department stated that this bill is consistent with its position on custom software. Custom software, however, is generally treated as services because of the exercise of labor or skill needed to craft the software to the customer's specification. That is why states with a sales tax will tax sales of "canned software" while "custom" software is often characterized as a nontaxable service transaction. See generally L. J. Kutten, *Software Taxation and the OEM Agreement*, ©Software Taxation Institute (1995); Paul S. Hoffman, *State Sales/Use Taxation of Software*, ©Shafer Books, Inc. (1994); Arthur Andersen & Co., S.C., *Software Services State Tax Report*, ©ITAA and Arthur Andersen LLP.

Digested 3/12/2018