

**ACT 198**

S.B. NO. 2945

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 237-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed producer or cooperative association of materials or commodities that are to be incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;
- (4) Sales to a licensed contractor, of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in such finished work or project in such form as to be perceptible to the senses;
- (5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer’s own consumption of the meat, poultry, eggs, or milk so produced; provided that in the

case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

- (6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);
- (7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);
- (8) Sales of tangible personal property:
  - (A) To a licensed seller engaged in a service business or calling; provided that:
    - (i) The property is not consumed or incidental to the performance of the services;
    - (ii) There is a resale of the article at the retail rate of four per cent; and
    - (iii) The resale of the article is separately charged or billed by the person rendering the services; [and]
  - (B) Where:
    - (i) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling, or upon the order or request of a person[,] subject to tax under section 237D-2[,] for the purpose of furnishing transient accommodations;
    - (ii) The tangible personal property becomes or is used as an identifiable element of the service rendered; and
    - (iii) The cost of the tangible personal property does not constitute overhead to the licensed seller;
  - (C) Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A). [Subparagraph] Subparagraphs (A) and (C) shall be repealed on January 1, 2006[.];
- (9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;

- (10) Sales of services to a licensed seller engaging in a business or calling whenever:
- (A) Either:
    - (i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;
    - (ii) In the context of a [service-to-goods] service-to-tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing[, or acquiring] tangible personal property to be sold;
    - (iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor [in executing a contract]; or
    - (iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;
  - (B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations; [and]
  - (C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations[.];
  - (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, contractor, or person furnishing transient accommodations for imposition of the tax under this chapter;
  - (E) The gross income of the licensed seller is not subject to a deduction under this chapter or chapter 237D; and
  - (F) The resale of the service, tangible personal property, contracting, or transient accommodations is subject to the tax imposed under this chapter at the highest tax rate.
- Sales subject to this paragraph shall be subject to section 237-13.3;
- (11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller; [and]
- (12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller[.]; and

- (13) Sales of amusements subject to taxation under section 237-13(4) to a licensed seller engaging in a business or calling whenever:
- (A) Either:
- (i) In the context of an amusement-to-service transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;
  - (ii) In the context of an amusement-to-tangible personal property transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of selling tangible personal property; or
  - (iii) In the context of an amusement-to-amusement transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another amusement in the course of the person's amusement business;
- (B) The benefit of the amusement passes to the customer of the licensed seller as an identifiable element of the other service, tangible personal property to be sold, or amusement;
- (C) The cost of the amusement does not constitute overhead to the licensed seller;
- (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, person furnishing transient accommodations, or person rendering an amusement for imposition of the tax under chapter 237;
- (E) The gross income of the licensed seller is not subject to a deduction under this chapter; and
- (F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter at the highest rate.

As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge. Sales subject to this paragraph shall be subject to section 237-13.3."

SECTION 2. Section 237-6, Hawaii Revised Statutes, is amended to read as follows:

**"§237-6 "Contractor", "contracting", "federal cost-plus contractor", defined. "Contracting" means the business activities of a contractor.**

"Contractor" includes, for purposes of this chapter:

- (1) Every person engaging in the business of contracting to erect, construct, repair, or improve buildings or structures, of any kind or description, including any portion thereof, or to make any installation therein, or to make, construct, repair, or improve any highway, road, street, sidewalk, ditch, excavation, fill, bridge, shaft, well, culvert, sewer, water system, drainage system, dredging or harbor improvement project, electric or steam rail, lighting or power system, transmission line, tower, dock, wharf, or other improvements;
- (2) Every person engaging in the practice of architecture, professional engineering, land surveying, and landscape architecture, as defined in section 464-1; and
- (3) Every person engaged in the practice of pest control or fumigation as a pest control operator as defined in section 460J-1.

"Federal cost-plus contractor" means a contractor having a contract with the United States or an instrumentality thereof, excluding national banks, where, by the

terms of the contract, the United States or such instrumentality, excluding national banks, agrees to reimburse the contractor for the cost of material, plant, or equipment used in the performance of the contract and for taxes which the contractor may be required to pay with respect to such material, plant, or equipment, whether the contractor's profit is computed in the form of a fixed fee or on a percentage basis; and also means a subcontractor under such a contract, who also operates on a cost-plus basis."

SECTION 3. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

**"§237-13 Imposition of tax.** There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

- (1) Tax on manufacturers.
  - (A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.
  - (B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.
  - (C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:
    - (i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products;

- (ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values;
  - (iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce; and
  - (iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.
- (2) Tax on business of selling tangible personal property; producing.
- (A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as certain retailing is taxed by section 237-16, the tax shall be that levied by section 237-16, and in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business [and]; provided that insofar as the [sales] sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the sale shall be subject to section 237-13.3. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).
  - (B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts

- of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.
- (C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.
  - (D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; [except] provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.
  - (E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.
  - (F) The department, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
    - (i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the additional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and
    - (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.
- (3) Tax upon contractors.
- (A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business; provided that insofar as the business of contracting is taxed by section 237-16, which relates to certain retailing, the tax shall be that levied by section 237-16.

- (B) In computing the tax levied under this paragraph or section 237-16, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A) or section 237-16, on:
- (i) Another taxpayer who is a contractor, as defined in section 237-6;
  - (ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or
  - (iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State;
- [but] provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.
- (C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:
- (i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and
  - (ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.
- (D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements the person intended, and for the period of at least one year after completion of the building, structure, or other improvements the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of



- the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.
- (4) Tax upon theaters, amusements, radio broadcasting stations, etc.
- (A) Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business[.], and in the case of a sale of an amusement at wholesale under section 237-4(a)(13), the tax shall be subject to section 237-13.3.
- (B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
- (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
- (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.
- (5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.
- (6) Tax on service business.
- (A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business. [Sales subject to this subparagraph] Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.
- (B) The department[, by rule,] may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
- (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon

- demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
- (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.
- (C) Where any person engaging or continuing within the State in any service business or calling renders those services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering those services and the ultimate recipient of the benefits of those services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent. Where the taxpayer is subject to both this subparagraph and to the lowest tax rate under subparagraph (A), the taxpayer shall be taxed under this subparagraph. This subparagraph shall be repealed on January 1, 2006.
  - (D) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State.
- (7) Tax on insurance solicitors and agents. Upon every person engaged as a licensed solicitor, general agent, or subagent pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to .15 per cent of the commissions due to that activity.
  - (8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.

- (9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted.”

SECTION 4. Section 237-13.3, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“~~[[§237-13.3]]~~ **Application of sections 237-4(a)(8), 237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A).** (a) Sections 237-4(a)(8), 237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to the contrary notwithstanding, instead of the tax levied under [sections 237-4 and] section 237-13(2)(A) on wholesale sales subject to section 237-4(a)(8)(B), under section 237-13(4)(A) on a wholesaler subject to section 237-4(a)(13), and under section 237-13(6)(A) on a wholesaler subject to section 237-4(a)(10) at one-half of one per cent, during the period January 1, 2000, to December 31, 2005, the tax shall be as follows:

- (1) In calendar year 2000, 3.5 per cent;
- (2) In calendar year 2001, 3.0 per cent;
- (3) In calendar year 2002, 2.5 per cent;
- (4) In calendar year 2003, 2.0 per cent;
- (5) In calendar year 2004, 1.5 per cent;
- (6) In calendar year 2005, 1.0 per cent; and
- (7) In calendar year 2006 and thereafter, the tax shall be 0.5 per cent.”

SECTION 5. Section 237-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

- “(e) This section shall not apply to:
- (1) Sales of tangible personal property treated as a wholesale sale under section 237-4(a)(8)(B) to a licensed seller engaged in a service business or calling or a licensed person furnishing transient accommodations; or
  - (2) Sales of services treated as a wholesale sale under section 237-4(a)(10) to a licensed seller engaged in a service business or calling, a licensed contractor as defined in section 237-6, or a licensed person furnishing transient accommodations.”

SECTION 6. Section 237-29.53, Hawaii Revised Statutes, is amended to read as follows:

“**§237-29.53 Exemption for contracting or services exported out of State.** (a) There shall be exempted from, and excluded from the measure of, taxes imposed by this chapter, all of the value or gross income derived from contracting (as defined under section 237-6) or services performed by a person engaged in a service business or calling in the State for [a customer located] use outside the State where:

- (1) The contracting or services are for resale, consumption, or use outside the State; and

- (2) The value or gross income derived from the contracting or services performed would otherwise be subject to the tax imposed under this chapter on contracting or services at the highest rate.

For the purposes of this subsection, the seller or person rendering the contracting or services exported and resold, consumed, or used outside the State shall take from the customer, a certificate or an equivalent, in a form the department prescribes, certifying that the contracting or service purchased is to be otherwise resold, consumed, or used outside the State. Any customer who furnishes this certificate or an equivalent shall be obligated to pay the seller or person rendering the contracting or services, upon demand, if the contracting or service purchased is not resold or otherwise consumed or used outside the State, the amount of the additional tax which by reason thereof is imposed upon the seller or person rendering the contracting or service.

(b) There shall be exempted from, and excluded from the measure of, taxes imposed by this chapter, all of the value or gross income derived from contracting (as defined in section 237-6) or services performed by a person engaged in a service business or calling in the State for a purchaser who resells all of the contracting or services for resale, consumption, or use outside the State pursuant to subsection (a). For the purposes of this subsection, the seller or person rendering the contracting or services for a purchaser who resells the contracting or services for resale, consumption, or use outside the State shall take from the purchaser, a certificate or an equivalent, in a form that the department prescribes, certifying that the contracting or services purchased is to be [resold to a customer of the purchaser who has complied with] for resale, consumption, or use outside the State pursuant to subsection (a). Any purchaser who furnishes this certificate or an equivalent shall be obligated to pay the seller or person rendering the contracting or services, upon demand, if the contracting or services purchased is not resold in its entirety to a customer of the purchaser who has complied with subsection (a), the amount of the additional tax which by reason thereof is imposed upon the seller or the person rendering the contracting or service.

(c) For purposes of this section, “service business or calling” includes all activities engaged in for other persons for a consideration that involve the rendering of a service as distinguished from the sale of tangible personal property or the production and sale of tangible personal property. “Service business or calling” includes professional services, but does not include service rendered by an employee to the employee’s employer.]”

SECTION 7. Section 238-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of “price”, “purchase” and “sale”, “purchaser”, “representation”, “seller”, and “use” to read:

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

“Purchase” and “sale” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means, wheresoever consummated, of tangible personal property [or], services, or contracting for a consideration.

“Purchaser” means any person purchasing property [or], services, or contracting and “importer” means any person importing property [or], services[;], or contracting; provided that the terms “purchaser” and “importer” shall not include the State, its political subdivisions, or wholly owned agencies or instrumentalities of the State or a political subdivision; or the United States, its wholly owned agencies or instrumentalities, or any person immune from the tax imposed by this chapter

under the Constitution and laws of the United States but the terms shall include national banks.

“Representation” refers to any or all of the following:

- (1) A seller being present in the State;
- (2) A seller having in the State a salesperson, commission agent, manufacturer’s representative, broker, or other person who is authorized or employed by the seller to assist the seller in selling property [or], services, or contracting for use or consumption in the State, by procuring orders for the sales, making collections or deliveries, or otherwise; and
- (3) A seller having in the State a person upon whom process directed to the seller from the courts of the State may be served, including the director of commerce and consumer affairs and the deputy director in the cases provided in section 415-14.

“Seller” means any person engaged in the business of selling tangible personal property [or], services, or contracting, wheresoever engaged, but does not include the United States or its wholly owned agencies or instrumentalities other than national banks, the State or a political subdivision thereof, or wholly owned agencies or instrumentalities of the State or a political subdivision.

“Use” (and any nounal, verbal, adjectival, adverbial, and other equivalent form of the term) herein used interchangeably means any use, whether the use is of such nature as to cause the property [or], services, or contracting to be appreciably consumed or not, or the keeping of the property or services for such use or for sale, and shall include the exercise of any right or power over tangible or intangible personal property incident to the ownership of that property, but the term “use” shall not include:

- (1) Temporary use of property, not of a perishable or quickly consumable nature, where the property is imported into the State for temporary use (not sale) therein by the person importing the same and is not intended to be, and is not, kept permanently in the State [(as for]. For example, without limiting the generality of the foregoing language:
  - (A) In the case of a contractor importing permanent equipment for the performance of a construction contract, with intent to remove, and who does remove, the equipment out of the State upon completing the contract;
  - (B) In the case of moving picture films imported for use in theaters in the State with intent or under contract to transport the same out of the State after completion of such use; and
  - (C) In the case of a transient visitor importing an automobile or other belongings into the State to be used by the transient visitor while therein but which are to be used and are removed upon the transient visitor’s departure from the State[]];
- (2) Use by the taxpayer of property acquired by the taxpayer solely by way of gift;
- (3) Use which is limited to the receipt of articles and the return thereof, to the person from whom acquired, immediately or within a reasonable time either after temporary trial or without trial;
- (4) Use of goods imported into the State by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for the vessels;
- (5) The use or keeping for use of household goods, personal effects, and private automobiles imported into the State for nonbusiness use by a person who:
  - (A) Acquired them in another state, territory, district, or country;

- (B) At the time of the acquisition was a bona fide resident of another state, territory, district, or country;
  - (C) Acquired the property for use outside the State; and
  - (D) Made actual and substantial use thereof outside this State;
- provided that as to an article acquired less than three months prior to the time of its importation into the State it shall be presumed, until and unless clearly proved to the contrary, that it was acquired for use in the State and that its use outside the State was not actual and substantial;
- (6) The leasing or renting of any aircraft or the keeping of any aircraft solely for leasing or renting to lessees or renters using the aircraft for commercial transportation of passengers and goods;
  - (7) The use of oceangoing vehicles for passenger or passenger and goods transportation from one point to another within the State as a public utility as defined in chapter 269;
  - (8) The use of material, parts, or tools imported or purchased by a person licensed under chapter 237 which are used for aircraft service and maintenance, or the construction of an aircraft service and maintenance facility as those terms are defined in section 237-24.9; [and]
  - (9) The use of services or contracting imported for resale [to a foreign customer located outside the State to the extent the services are resold, consumed, or used by that foreign customer] where the contracting or services are for resale, consumption, or use outside the State pursuant to section 237-29.53(a)[.]; and
  - (10) The use of contracting imported or purchased by a contractor as defined in section 237-6 who is:
    - (A) Licensed under chapter 237;
    - (B) Engaged in business as a contractor; and
    - (C) Subject to the tax imposed under section 238-2.3.

With regard to purchases made and distributed under the authority of chapter 421, a cooperative association shall be deemed the user thereof.”

2. By repealing the definition of “foreign customer”.

[““Foreign customer” means a nonresident person who:

- (1) Is not subject to chapter 237;
- (2) Has not been physically present in the State for more than thirty days in the six months prior to entering into a written exported contracting or services agreement with a person licensed under chapter 237 engaged in contracting (as defined in section 237-6) or a service business or calling; and
- (3) Is the sole recipient of the exported contracting or services provided through a person in Hawaii engaged in contracting or a service business or calling and licensed under chapter 237.”]

SECTION 8. Section 238-2, Hawaii Revised Statutes, is amended to read as follows:

“**§238-2 Imposition of tax; exemptions.** There is hereby levied an excise tax on the use in this State of tangible personal property which is imported, or purchased from an unlicensed seller, for use in this State. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions thereof are as follows:

- (1) If the importer or purchaser is licensed under chapter 237 and is:
  - (A) A wholesaler or jobber importing or purchasing for purposes of resale; or

- (B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer as the manufacturer or as a wholesaler, and not as a retailer,

there shall be no tax; provided that if the wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 237), paragraph (2) shall apply to the wholesaler, jobber, or manufacturer, but the director of taxation shall refund to the wholesaler, jobber, or manufacturer, in the manner provided under section 231-23(c) such amount of tax as the wholesaler, jobber, or manufacturer shall, to the satisfaction of the director, establish to have been paid by the wholesaler, jobber, or manufacturer to the director with respect to property which has been used by the wholesaler, jobber, or manufacturer for the purposes stated in this paragraph;

- (2) If the importer or purchaser is licensed under chapter 237 and is:
  - (A) A retailer or other person importing or purchasing for purposes of resale, not exempted by paragraph (1);
  - (B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold at retail in this State, in such manner as to result in a further tax on the activity of the manufacturer in selling such products at retail;
  - (C) A contractor importing or purchasing material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses; or
  - (D) A person engaged in a service business or calling as defined in section 237-7, or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, in which the import or purchase of tangible personal property would have qualified as a sale at wholesale as defined in section 237-4(a)(8) had the seller of the property been subject to the tax in chapter 237, the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase [or a person furnishing transient accommodations subject to the tax imposed by section 237D-2,] or sale is consummated outside of Hawaii, then one-half of one per cent of the value of such property;

and

- (3) In all other cases, four per cent of the value of the property.’’

SECTION 9. Section 238-2.3, Hawaii Revised Statutes, is amended to read as follows:

**“§238-2.3<sup>1</sup> Imposition of tax on imported services; exemptions.** There is hereby levied an excise tax on the value of services or contracting as defined in section 237-6 that are performed by an unlicensed seller at a point outside the State and imported or purchased for use in this State. The tax imposed by this chapter shall accrue when the service or contracting as defined in section 237-6 is received by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions from the tax are as follows:

- (1) If the importer or purchaser is licensed under chapter 237 and is:
  - (A) Engaged in a service business or calling in which the imported or purchased services or contracting become identifiable elements, excluding overhead, of the services rendered[,] by the importer or purchaser, and the gross income of the importer or purchaser is subject to the tax imposed under chapter 237 on services at the rate of one-half of one per cent[;] or the rate of tax imposed under section 237-13.3; or
  - (B) A manufacturer importing or purchasing services or contracting that become identifiable elements, excluding overhead, of a finished or saleable product (including the container or package in which the product is contained) and the finished or saleable product is to be sold in a manner that results in a further tax on the activity of the manufacturer as a wholesaler, and not a retailer; there shall be no tax imposed on the value of the imported or purchased services[;] or contracting; provided that if the manufacturer is also engaged in business as a retailer as classified under chapter 237, paragraph (2) shall apply to the manufacturer, but the director of taxation shall refund to the manufacturer, in the manner provided under section 231-23(c), that amount of tax that the manufacturer, to the satisfaction of the director, shall establish to have been paid by the manufacturer to the director with respect to services that have been used by the manufacturer for the purposes stated in this paragraph.
- (2) If the importer or purchaser is a person licensed under chapter 237 and is:
  - (A) Engaged in a service business or calling in which the imported or purchased services or contracting become identifiable elements, excluding overhead, of the services rendered[,] by the importer or purchaser, and the gross income from those services when sold by the importer or purchaser is subject to the tax imposed under chapter 237 at the highest rate; [or]
  - (B) A manufacturer importing or purchasing services or contracting that become identifiable elements, excluding overhead, of the finished or saleable manufactured product (including the container or package in which the product is contained) and the finished or saleable product is to be sold in a manner that results in a further tax under chapter 237 on the activity of the manufacturer as a retailer; or
  - (C) A contractor importing or purchasing services or contracting that become identifiable elements, excluding overhead, of the finished work or project required, under the contract, and where the gross proceeds derived by the contractor are subject to the tax under section 237-13(3) or 237-16 as a contractor[;];<sub>2</sub>  
the tax shall be one-half of one per cent of the value of the imported or purchased services[.] or contracting; and



- (3) In all other cases, the importer or purchaser is subject to the tax at the rate of four per cent on the value of the imported or purchased services[.] or contracting.”

SECTION 10. Section 238-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), (c), and (d) to read:

“(a) The tax imposed by this chapter shall not apply to any property [or], services, or contracting or to any use of the property [or], services, or contracting [which] that cannot legally be so taxed under the Constitution or laws of the United States, but only so long as, and only to the extent to which the State is without power to impose the tax.

To the extent that any exemption, exclusion, or apportionment is necessary to comply with the preceding sentence, the director of taxation shall:

- (1) Exempt or exclude from the tax under this chapter, property, services, or contracting or the use of property, services, or contracting exempted under chapter 237; or
- (2) Apportion the gross value of services or contracting sold to customers within the State by persons engaged in business both within and without the State to determine the value of that portion of the services or contracting that is subject to taxation under chapter 237 for the purposes of section 237-21.

Any provision of law to the contrary notwithstanding, exemptions or exclusions from tax under this chapter allowed on or before April 1, 1978, under the provisions of the Constitution of the United States or an act of the Congress of the United States to persons or common carriers engaged in interstate or foreign commerce, or both, whether ocean-going or air, shall continue undiminished and be available thereafter.

(b) The tax imposed by this chapter shall not apply to any use of property [or], services, or contracting the transfer of which property [or], services, or contracting to, or the acquisition of which by, the person so using the same, has actually been or actually is taxed under chapter 237.

(c) The tax imposed by this chapter shall be paid only once upon or in respect of the same property [or], services[.], or contracting; provided that nothing in this chapter contained shall be construed to exempt any property [or], services, or contracting, or the use thereof from taxation under any other law of the State.

(d) The tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State, except as otherwise specifically provided herein; provided that if it be finally held by any court of competent jurisdiction, that the tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property [or], services, or contracting, or the use thereof, then this chapter shall be deemed not to apply to the property [or], services, or contracting, [and] or the use thereof under such specific circumstances, but such other laws shall be given full effect with respect to the property [or], services, or contracting, [and] or use.”

2. By amending subsections (i) and (j) to read:

“(i) Each taxpayer liable for the tax imposed by this chapter on tangible personal property [or], services, or contracting shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the taxpayer with respect to the same transaction and property [or], services, or contracting to another state and any subdivision thereof, but such credit shall not exceed the amount of the use tax imposed under this chapter on account of the transaction and property [or], services[.], or contracting. The director of taxation may require the taxpayer to produce the necessary receipts or vouchers indicating the payment of the

sales or use tax to another state or subdivision as a condition for the allowance of the credit.

(j) The tax imposed by this chapter shall not apply to any use of property [or], services, or contracting exempted by section 237-26 or section 237-29.”

SECTION 11. Section 238-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) On or before the last day of each calendar month, any person who has become liable for the payment of a tax under this chapter during the preceding calendar month in respect of any property [or], services, or contracting, or the use thereof, shall file a return with the assessor of the taxation district in which the property was held or the services or contracting were received when the tax first became payable, or with the director of taxation at Honolulu, setting forth a description of the property [or], services, or contracting and the character and quantity thereof in sufficient detail to identify the same or otherwise in such reasonable detail as the director by rule shall require, and the purchase price or value thereof as the case may be. The return shall be accompanied by a remittance in full of the tax, computed at the rate specified in section 238-2 or 238-2.3 upon the price or value so returned. Any tax remaining unpaid after the last day following the end of the calendar month during which the tax first became payable shall become delinquent; provided that a receipt from a seller required or authorized to collect the tax, given to a taxpayer in accordance with section 238-6, shall be sufficient to relieve the taxpayer from further liability for the tax to which the receipt may refer, or for the return thereof.”

SECTION 12. Section 238-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of the taxes due under sections 238-2(3), 238-2.5, and 238-2.3, every seller having in the State, regularly or intermittently, any property, tangible or intangible, any place of business, or any representation as hereinabove defined, (and irrespective of the seller’s having or not having qualified to do business in the State) shall, if the seller makes sales of property [or], services, or contracting for use in the State (whether or not the sales are made in the State), collect from the purchaser the taxes imposed by sections 238-2(3), 238-2.5, and 238-2.3, on the use of the property [or], services, or contracting so sold by the seller. The collection shall be made within twenty days after the accrual of the tax or within such other period as shall be fixed by the director of taxation upon the application of the seller, and the seller shall give to the purchaser a receipt therefor in the manner and form prescribed by the director; provided that this subsection shall not apply to vehicles registered under section 286-50.”

SECTION 13. Section 238-9, Hawaii Revised Statutes, is amended to read as follows:

“**§238-9 Records.** Every person who is engaged in any business in the State and who is required under this chapter to make returns, shall keep in the English language in the State and preserve for a period of three years, books of account or other records in sufficient detail to enable the director of taxation, as far as reasonably practicable, to determine whether or not any taxes imposed by this chapter are payable in respect of the property [or], services, or contracting concerned, and if so payable, the amount thereof.”

SECTION 14. Section 239-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding subsection (a), the rate of tax upon the portion of the gross income of [a]:

- (1) A public utility [which] that consists of the receipts from the sale of its products or services to another public utility [which] that resells such products or services shall be one-half of one per cent[.]; or
- (2) A public utility engaged in the business of selling telecommunication services to a person defined in section 237-13(6)(D) who resells such products or services, shall be as follows:
  - (A) In calendar year 2000, 5.5 per cent;
  - (B) In calendar year 2001, 5.0 per cent;
  - (C) In calendar year 2002, 4.5 per cent;
  - (D) In calendar year 2003, 4.0 per cent;
  - (E) In calendar year 2004, 3.5 per cent;
  - (F) In calendar year 2005, 3.0 per cent;
  - (G) In calendar year 2006, 2.5 per cent; and
  - (H) In calendar year 2007, and thereafter, 0.5 per cent;

provided that the resale of the products, services, or telecommunication services is subject to taxation under this section[,] or subject to taxation at the highest rate under section 237-13(6); and provided further that the public utility’s exemption from real property taxes imposed by chapter 246 shall be reduced by the proportion that its public utility gross income described herein bears to its total public utility gross income. Whenever the public utility has other public utility gross income, the gross income from the sale of its products or services to another public utility or a person subject to section 237-13(6)(D) shall be included in applying subsection (a) in determining the rate of tax upon the other public utility gross income. The department shall have the authority to implement the tax rate changes in paragraph (2) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes.”

SECTION 15. Section 239-6, Hawaii Revised Statutes, is amended to read as follows:

“**§239-6 Airlines, certain carriers.** (a) There shall be levied and assessed upon each airline a tax of four per cent of its gross income each year from the airline business; provided that if an airline adopts a rate schedule for students in grade twelve or below traveling in school groups providing such students at reasonable hours a rate less than one-half of the regular adult fare, the tax shall be three per cent of its gross income each year from the airline business.

(b) There shall be levied and assessed upon each motor carrier, each common carrier by water, and upon each contract carrier other than a motor carrier, a tax of four per cent of its gross income each year from the motor carrier or contract carrier business.

(c) The tax imposed by this section is a means of taxing the personal property of the airline or other carrier, tangible and intangible, including going concern value, and is in lieu of the tax imposed by chapter 237 but is not in lieu of any other tax.

(d) Notwithstanding subsections (a), (b), and (c), the rate of tax upon the portion of the gross income of a motor carrier which consists of the receipts from the sale of its products or services to a contractor shall be as follows:

- (1) In calendar year 2000, 3.5 per cent;
- (2) In calendar year 2001, 3.0 per cent;
- (3) In calendar year 2002, 2.5 per cent;
- (4) In calendar year 2003, 2.0 per cent;
- (5) In calendar year 2004, 1.5 per cent;

(6) In calendar year 2005, 1.0 per cent; and

(7) In calendar year 2006, and thereafter, 0.5 per cent;

provided that there is a resale of the products or services and the resale by the contractor is subject to taxation at the highest rate under section 237-13 or 237-16; the gross income of the motor carrier is not divided as provided in the definition of "gross income" in section 239-2 for the tax imposed under this chapter or chapter 237; and the gross income of the motor carrier from the sale of its products or services to the contractor is not subject to a deduction under chapter 237 by the contractor; and in the case of services provided by the motor carrier, the benefit of the service passes to the customer of the contractor as an identifiable element of the contracting or service provided by the contractor and does not constitute overhead as defined in section 237-1.

The department shall have the authority to implement the tax rate changes in paragraphs (1) through (7) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes.

For purposes of this subsection, "contractor" has the same meaning as defined in section 237-6."

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 17. This Act, upon its approval, shall apply to gross income or gross proceeds received after December 31, 1999; provided that:

- (1) Sections 7 through 13 shall apply to taxes accruing after December 31, 1999; and
- (2) Sections 14 and 15 shall take effect on January 1, 2001, so that the amendments made by sections 14 and 15 shall apply to the entire gross income received by a public service company for the calendar year preceding January 1, 2001, and for the calendar years thereafter. In the case of a public service company operating on a fiscal year basis, the amendments made by sections 14 and 15 shall apply to the entire gross income received for the fiscal year in which January 1, 2001, occurs and for fiscal years thereafter.

(Approved June 8, 2000.)

**Note**

1. So in original.