

ACT 271

S.B NO. 2716

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 property becomes or is used as an identifiable element of the service rendered; and
 - (iii) The cost of the property does not constitute overhead to the licensed seller;
- the sale shall be subject to section 237-13.3. Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A). Subparagraph (A) 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 transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, 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.
- 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 by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials.”

SECTION 2. 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[.]¹; or
- (E) A publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials.

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 Statutory material to be repealed is bracketed.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

SECTION 4. This Act shall take effect upon its approval; provided that this Act shall apply to gross income or gross proceeds received, or gross value accruing, after June 30, 2000.

(Approved June 20, 2000.)

Note

- 1. Prior to amendment “,” appeared here.