

**ACT 105**

S.B. NO. 754

A Bill for an Act Relating to Taxation.

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

SECTION 1. The purpose of this Act is to temporarily suspend the general excise and use tax exemptions for certain amounts received by certain persons and, instead, require those persons to pay the applicable tax on those amounts at a specified rate. The suspension and imposition of the tax commences on July 1, 2011, and ends on June 30, 2013.

This Act does not suspend the existing general excise tax exemption for nonprofit organizations with the exception of the value or gross income received by nonprofit organizations from certain conventions, conferences, trade shows, or display spaces.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§237- Temporary suspension of exemption of certain amounts; levy of tax.** (a) Notwithstanding any other law to the contrary, the exemption of the following amounts from taxation under this chapter shall be suspended from July 1, 2011, through June 30, 2013:

- (1) Amounts deducted from the gross income received by contractors as described under section 237-13(3)(B);
- (2) Reimbursements received by federal cost-plus contractors for the costs of purchased materials, plant, and equipment as described under section 237-13(3)(C);
- (3) Gross receipts of home service providers acting as service carriers providing mobile telecommunications services to other home service providers as described under section 237-13(6)(D);
- (4) Amounts deducted from the gross income of real property lessees because of receipt from sublessees as described under section 237-16.5;
- (5) The value or gross income received by nonprofit organizations from certain conventions, conferences, trade show exhibits, or display spaces as described under section 237-16.8;
- (6) Amounts received by sugarcane producers as described under section 237-24(14);
- (7) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped interisland as described under section 237-24.3(1);
- (8) Amounts received from the sale of intoxicating liquor, cigarettes and tobacco products, and agricultural, meat, or fish products to persons or common carriers engaged in interstate or foreign commerce as described under section 237-24.3(2);
- (9) Amounts received or accrued from the loading or unloading of cargo as described under section 237-24.3(4)(A);
- (10) Amounts received or accrued from tugboat and towage services as described under section 237-24.3(4)(B);
- (11) Amounts received or accrued from the transportation of pilots or government officials and other maritime-related services as described under section 237-24.3(4)(C);
- (12) Amounts received by labor organizations for real property leases as described under section 237-24.3(10);
- (13) Amounts received as rent for aircraft or aircraft engines used for interstate air transportation as described under section 237-24.3(12);
- (14) Amounts received by exchanges and exchange members as described under section 237-24.5;
- (15) Amounts received as high technology research and development grants under section 206M-15 as described under section 237-24.7(10);
- (16) Amounts received from the servicing and maintenance of aircraft or construction of aircraft service and maintenance facilities as described under section 237-24.9;
- (17) Gross proceeds from the sale of the following:
  - (A) Intoxicating liquor to the United States (including any agency or instrumentality of the United States that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or 244D, but not including national

banks) or any organization to which the sale is permitted by the proviso of "Class 3" of section 281-31 that is located on any Army, Navy, or Air Force reservation as described under section 237-25(a)(1);

- (B) Tobacco products and cigarettes to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of tax under chapter 238 or 245, but not including national banks) as described under section 237-25(a)(2); and
  - (C) "Other tangible personal property" to the United States (including any agency, instrumentality, or federal credit union thereof, but not including national banks) and any state-chartered credit union as described under section 237-25(a)(3);
- (18) Amounts received by petroleum product refiners from other refiners for further refining of petroleum products as described under section 237-27;
  - (19) Gross proceeds received from the construction, reconstruction, erection, operation, use, maintenance, or furnishing of air pollution control facilities, as described under section 237-27.5, that do not have valid certificates of exemption on July 1, 2011;
  - (20) Gross proceeds received from shipbuilding and ship repairs as described under section 237-28.1;
  - (21) Amounts received by telecommunications common carriers from call center operators for interstate or foreign telecommunications services as described under section 237-29.8;
  - (22) Gross proceeds received by qualified businesses in enterprise zones, as described under section 209E-11, that do not have valid certificates of qualification from the department of business, economic development, and tourism on July 1, 2011; and
  - (23) Gross proceeds received by contractors licensed under chapter 444 for construction within enterprise zones performed for qualified businesses within the enterprise zones or businesses approved by the department of business, economic development, and tourism to enroll into the enterprise zone program, as described under section 209E-11.

(b) Except as otherwise provided under subsection (f), (g), or (h), there is levied, assessed, and collected annually against a taxpayer receiving or deriving previously exempt gross income or gross proceeds of sale from July 1, 2011, to June 30, 2013, a tax at the rate of four per cent on that previously exempt gross income or gross proceeds of sale.

(c) As used in this section, "previously exempt gross income or gross proceeds of sale" means the amount of the gross income or gross proceeds of sale, the exemption for which is suspended under subsection (a). The term also includes the value received by a nonprofit organization from conventions, conferences, trade show exhibits, and display spaces, the exemption for which is suspended under subsection (a)(5).

(d) The taxpayer, against whom the tax is levied and assessed under this section, shall be responsible for payment of the tax to the director of taxation.

(e) Notwithstanding section 237-8.6, no county surcharge shall be levied, assessed, or collected on any previously exempt gross income or gross proceeds of sale that is subject to taxation under subsection (b).

(f) This section shall not apply to gross income or gross proceeds from binding written contracts entered into prior to July 1, 2011, that do not permit the passing on of increased rates of taxes.

(g) This section shall not apply to gross income or gross proceeds from stevedoring services and related services, as defined in section 382-1, furnished to a company by its wholly owned subsidiary.

(h) The tax imposed under subsection (b) shall not apply to any gross income or gross proceeds of sale 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 the gross income or gross proceeds of sale from the tax under subsection (b); or
- (2) Apportion the gross income or gross proceeds of sale derived within the State by persons engaged in business both within and without the State to determine the gross income or gross proceeds of sale that is subject to taxation under this chapter for the purposes of section 237-21.

(i) This chapter shall apply to the payment, collection, enforcement, and appeal of the tax levied under this section.

The director of taxation may establish additional requirements, procedures, and forms pursuant to rules adopted under chapter 91, to effectuate this section.

**§237- Information reporting.** Beginning July 1, 2011, the director of taxation shall require information reporting on all exclusions or exemptions of all amounts, persons, or transactions from this chapter, except for the following:

- (1) Amounts received that are exempt under section 237-24(1) through (7); and
- (2) Any other amounts, persons, or transactions as determined by the director to be in the best interest of tax administration and made by official pronouncement.”

SECTION 3. Chapter 238, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§238- Temporary suspension of exemption of certain amounts; levy of tax.** (a) Notwithstanding any other law to the contrary, the exemption of the following from taxation under this chapter shall be suspended from July 1, 2011, through June 30, 2013:

- (1) The leasing or renting of aircraft or keeping of aircraft solely for leasing or renting for commercial transportation of passengers and goods or the acquisition or importation of aircraft or aircraft engines by a lessee or renter engaged in interstate air transportation, as described under paragraph (6) of the definition of “use” in section 238-1;
- (2) 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 described under paragraph (7) of the definition of “use” in section 238-1;
- (3) The use of material, parts, or tools imported or purchased by a person licensed under chapter 237 that are used for aircraft service and maintenance or the construction of an aircraft service and maintenance facility, as described under paragraph (8) of the definition of “use” in section 238-1;

- (4) The use or sale of intoxicating liquor and cigarette and tobacco products imported into the State and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out of State by the person, crew, or passengers on the shipper's vessels or airplanes, as described under section 238-3(g);
- (5) The use of any vessel constructed under section 189-25 prior to July 1, 1969, as described under section 238-3(h); and
- (6) The use of any air pollution control facility subject to section 237-27.5 as described under section 238-3(k).

(b) Except as otherwise provided under subsection (f) or (g), there is levied, assessed, and collected annually against a taxpayer who imports or purchases previously exempt property, services, or contracting for use in this State that becomes subject to the State's taxing jurisdiction from July 1, 2011, to June 30, 2013, a tax at the rate of four per cent on the value of that previously exempt property, services, or contracting.

(c) As used in this section, "previously exempt property, services, or contracting" means property, services, or contracting, the exemption for which is suspended under subsection (a).

(d) A taxpayer, against whom the tax is levied and assessed under this section, shall be responsible for payment of the tax to the director of taxation.

(e) Notwithstanding section 238-2.6, no county surcharge shall be levied, assessed, or collected on the value of any previously exempt property, services, or contracting that is subject to taxation under subsection (b).

(f) This section shall not apply to any property, services, or contracting imported or purchased under binding written contracts entered into prior to July 1, 2011, that do not permit the passing on of increased rates of taxes.

(g) The tax imposed under subsection (b) shall not apply to any property, services, or contracting or to any use of the property, services, or contracting 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 the property, services, or contracting or the use of the property, services, or contracting, from the tax under subsection (b); 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.
- (h) This chapter shall apply to the payment, collection, enforcement, and appeal of the tax levied under this section.

The director of taxation may establish additional requirements, procedures, and forms pursuant to rules adopted under chapter 91, to effectuate this section.

**§238- Information reporting.** Beginning July 1, 2011, the director of taxation shall require information reporting on all exclusions or exemptions of all amounts, persons, or transactions from this chapter, except for any amounts, persons, or transactions as determined by the director to be in the best interest of tax administration and made by official pronouncement."

**SECTION 4.** The department of taxation shall have the authority to postpone the payment of the tax imposed under this Act until the deadline to file the general excise or use tax annual return and reconciliation form, as applicable, without regard to any extension.

**SECTION 5.** New statutory material is underscored.<sup>1</sup>

**SECTION 6.** This Act shall take effect on July 1, 2011, and shall be repealed on June 30, 2013.

(Approved June 9, 2011.)

**Note**

1. Edited pursuant to HRS §23G-16.5.