

ACT 32

S.B. NO. 1318

A Bill for an Act Relating to Use Tax.

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

SECTION 1. The purpose of this Act is to clarify the current application of the use tax by eliminating overbroad and redundant language in a provision relating to interstate commerce activities.

In Act 74, Session Laws of Hawaii 1979, the legislature amended the tax law to prevent the application of Hawaii general excise or use tax to certain interstate commerce activities of common carriers, which the legislative history identifies as primarily those involved in stevedoring and other similar activities. Act 74 was enacted in response to a United States Supreme Court opinion that expanded the State's ability to tax interstate commerce. In order to prevent the State from taxing stevedoring and other similar activities, Act 74 was the solution.

Since the enactment of Act 74, the tax laws have been amended to expressly exempt the particular stevedoring and other interstate commerce activities originally intended to be exempted by the legislature by Act 74. Because other provisions now expressly exempt these activities, language in the use tax law referencing Act 74 is redundant and unnecessary.

SECTION 2. Section 238-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The tax imposed by this chapter 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 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.]”~~

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 Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 2011.)