

ACT 46

S.B. NO. 1190

A Bill for an Act Relating to the Imposition of Use Tax on Imported Contracting.

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

SECTION 1. Section 238-1, Hawaii Revised Statutes, is amended by amending the definition of "use" to read as follows:

““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, services, or contracting to be appreciably consumed or not, or the keeping of the property or services for such use or for sale, the exercise of any right or power over tangible or intangible personal property incident to the ownership of that property, and shall include control over tangible or intangible property by a seller who is licensed or who should be licensed under chapter 237, who directs the importation of the property into the State for sale and delivery to a purchaser in the State, liability and

free on board (FOB) to the contrary notwithstanding, regardless of where title passes, 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. 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 or the acquisition or importation of any such aircraft or aircraft engines by any lessee or renter engaged in interstate air transportation. For purposes of this paragraph, "leasing" includes all forms of lease, regardless of whether the lease is an operating lease or financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. 40102;
- (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;
- (9) The use of services or contracting imported for resale where the contracting or services are for resale, consumption, or use outside the State pursuant to section 237-29.53(a);
- ~~[(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;] and~~
- [(11)] (10) The use of property, services, or contracting imported by foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes.

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

SECTION 2. Section 238-2.3, Hawaii Revised Statutes, is amended to read as follows:

“§238-2.3 Imposition of tax on imported services or contracting; 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 manufacturer as a wholesaler, and not a retailer; or
- (C) A contractor importing or purchasing contracting that become identifiable elements, excluding overhead, of the finished work or project required under the contract; provided that:
- (i) The gross proceeds derived by the contractor are subject to the tax under section 237-13(3) as a contractor; and
- (ii) The contractor could have deducted amounts paid to the subcontractor under section 237-13(3)(B) if the subcontractor was subject to general excise tax under chapter 237;

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;
 - (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) as a contractor, 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 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2013.

(Approved April 23, 2013.)