

## ACT 183

H.B. NO. 2416

A Bill for an Act Relating to Tax on Intangible Property.

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

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§237- Exemption for intangible property used outside the State.** (a) All of the value or gross proceeds arising from the use of intangible property outside the State shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter.

(b) For the purposes of this section, the seller or licensor shall take from the purchaser a certificate, in a form prescribed by the department, certifying that the intangible property is to be used outside the State. Any purchaser who furnishes the certificate shall be obligated to pay to the seller or licensor, upon demand, the amount of the additional tax that is imposed upon the seller or licensor, if the intangible property is used in this State.”

SECTION 2. Chapter 238, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§238- Imposition of tax on intangible property.** There is hereby levied an excise tax on the value of intangible property acquired from an unlicensed seller and imported or used in the State. The tax imposed by this chapter shall accrue when the intangible property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rate of the tax hereby imposed shall be four per cent of the value of the intangible property.”

SECTION 3. Section 238-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “import” to read:

““Import” (or any nounal, verbal, adverbial, adjective, or other equivalent of the term) includes:

- (1) The importation into the State of [~~tangible~~] property, services, or contracting owned, purchased from an unlicensed seller, or however acquired, from any other part of the United States or its possessions or from any foreign country, whether in interstate or foreign commerce, or both; and
- (2) The sale and delivery of [~~tangible-personal~~] property owned, purchased from an unlicensed seller, or however acquired, by a seller who is or should be licensed under the general excise tax law from an out-of-state location to an in-state purchaser, regardless of the free on board point or the place where title to the property transfers to the purchaser.”

2. By amending the definition of “price” to read:

““Price” means the total amount for which [~~tangible-personal~~] property, 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.”

3. By amending the definition of “property” to read:

““Property” means tangible personal property, intangible property, and prepaid telephone calling services but does not include ~~newspapers~~:

- (1) Newspapers or other periodical publications purchased on the subscription plan, issued at stated intervals as frequently as four times a year, and of the class admitted to the United States mails as second class matter under the laws and regulations governing the postal service on January 1, 1965[-];
- (2) Securities as defined in title 15 United States Code section 78c or similar laws of jurisdictions outside the United States;
- (3) Commodities for future delivery and other agreements, options, and rights as defined in title 7 United States Code section 2 that are permitted to be traded on a board of trade designated by the Commodities Futures Trading Commission under the Commodity Exchange Act;
- (4) Evidence of indebtedness;
- (5) Interest in land; or
- (6) Dividends as defined by chapter 235.”

4. By amending the definition of “purchase” and “sale” to read:

““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, services, or contracting for a consideration.”

5. By amending the definition of “seller” to read:

““Seller” means any person engaged in the business of selling ~~[tangible personal]~~ property, 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.”

6. By amending the definition of “service business or calling” to read:

““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]~~ property. “Service business or calling” includes professional services, but does not include services rendered by an employee to the employee’s employer.”

SECTION 4. Section 238-2.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The county surcharge on state tax, upon the adoption of a county ordinance and in accordance with the requirements of section 46-16.8, shall be levied, assessed, and collected as provided in this section on the value of property and services taxable under this chapter. No county shall set the surcharge on state tax at a rate greater than one-half per cent of the value of property taxable under this chapter. All provisions of this chapter shall apply to the county surcharge on state tax. With respect to the surcharge, the director shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person imports or purchases ~~[tangible personal]~~ property and, in the case of a person importing or purchasing ~~[tangible]~~ property in more than one county, the director shall determine, through apportionment or other means, that portion of the surcharge on state tax attributable to the importation or purchase in each county.”

SECTION 5. Section 238-3, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) Each taxpayer liable for the tax imposed by this chapter on ~~[tan- gible-personal]~~ property, 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, services, or contracting to another state and any subdivision thereof, but ~~[such]~~ the credit shall not exceed the amount of the use tax imposed under this chapter on account of the transaction and property, 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.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2018.

(Approved July 10, 2018.)

**Note**

1. Edited pursuant to HRS §23G-16.5.