# ACT 80 S.B. NO. 2475

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that the State's shipping industry is critical to the people of Hawaii. It is the means by which most goods come to the islands to support our lives thousands of miles away from any continents.

The legislature also finds that, because nearly all goods are imported into the State and then transported between our islands, the costs of goods are much higher than nearly anywhere else in the United States. As such, Hawaii is extremely sensitive to the costs of goods, including the fees and taxes that are associated with shipping.

The legislature further finds that Hawaii's general excise tax is intended to be a comprehensive tax that covers nearly all levels of transactions, not just at the point of sale. However, it has been the policy of the legislature that certain transactions should not be taxed. As a result, certain exemptions are recognized under the general excise tax law.

The legislature finds that current state law already recognizes that amounts received or accrued from certain broad categories of shipping activities, such as loading and unloading of cargo, transporting of pilots, rigging gear, checking freight and similar services, and usage of moorings and running dock lines, are exempt from the general excise tax.

The legislature also finds that the department of taxation has issued guidance regarding factors to be considered when determining whether or not amounts received as fees or taxes imposed on a third party and collected by the taxpayer should be taxed. For example, in 2008 the department issued Announcement 2008-05, which stated that rental motor vehicle customer facility charges are not subject to the general excise tax because:

(1) The charges are assessed upon the customer;
(2) The business serves in the capacity of a conduit or agent of the department as a collector; and

(3) The moneys do not represent gross revenue or gross proceeds.

As such, the fees were deemed exempt under the three-factor test. Similarly, the same announcement stated that the newly established fee to be collected by transportation companies for the inspection, quarantine, and eradication of invasive species contained in any freight would not be subject to the general excise tax because the transportation company merely collected the fee on behalf of the department of agriculture.

The legislature further finds that, despite longstanding policy decisions and guidance provided by the department of taxation, further clarification is necessary to unequivocally provide that amounts received or accrued from certain fees and charges related to shipping should continue to be exempt under the general excise tax law.

It has long been recognized by the legislature that exemptions relating to the transportation of cargo by ship are warranted because the imposition of tax on the amounts received or accrued for interstate shipping would have a substantial negative impact on the State's economy. Increased shipping costs would ultimately be borne by consumers, leading to the further escalation of the State's cost of living. The legislature finds that this is unacceptable.

The purpose of this Act is to clarify that amounts received or accrued for stevedoring services, wharfage, and demurrage services are exempt under the general excise tax law.

SECTION 2. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

**"§237-24.3 Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

(1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "produce dealer" shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;

(2) Amounts received by the manager, submanager, or board of directors of:

(A) An association of a condominium property regime established in accordance with chapter 514B or any predecessor thereto; or

(B) A nonprofit homeowners or community association incorporated in accordance with chapter 414D or any predecessor thereto and existing pursuant to covenants running with the land,

in reimbursement of sums paid for common expenses;

(3) Amounts received or accrued from:

(A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, <u>including stevedoring services as defined in section 382-1,</u> whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;

(B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; [~~and~~]

(C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and

similar services; standby charges; and use of moorings and running mooring lines; and

(D) Wharfage and demurrage imposed under chapter 266 that is paid to the department of transportation;

(4) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in title 29 United States Code section 1002(3), as amended;

(5) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;

(6) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:

"Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; provided that "prescription drugs" shall not include cannabis or manufactured cannabis products authorized pursuant to chapters 329 and 329D; and

"Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and that is sold by the practitioner or that is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

(7) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;

(8) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;

(9) Amounts received by a labor organization for real property leased to:
(A) A labor organization; or
(B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.
As used in this paragraph, "labor organization" means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended;

(10) Amounts received from 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; and

(11) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. section 40102."

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

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

(Approved June 17, 2022.)