SENATE FLOOR AMENDMENT

FLOOR AMENDMENT NO. 10 **Date** APR 11 2006

TO: H.B. No. 2419, S.D. 2

SECTION 1. H.B. No. 2419, S.D. 2, is amended by designating sections 1 through 12 as part I.

SECTION 2. H.B. No. 2419, S.D. 2, is amended by adding thirty-one new sections, designating these new sections as Part II, numbering these new sections as sections 13 through 43, and to read as follows:

"PART II

SECTION 13. The purpose of this part is to adopt changes to Hawaii's tax law that will allow Hawaii to participate in the streamlined sales and use tax agreement. By enacting the Hawaii Simplified Sales and Use Tax Administration Act, Act 173, Session Laws of Hawaii 2003, the State of Hawaii became a participating member of the National Streamlined Sales Tax Project.

In furtherance of the State's efforts to comply with the terms and conditions of the conforming legislation reflected in the Streamlined Sales Tax Project's model agreement and act, the Hawaii state legislature enacted Act 3, Special Session Laws of Hawaii 2005. Act 3, in part, establishes a technical advisory group to assist the state department of taxation in identifying and resolving issues necessary for Streamlined Sales Tax Project compliance. In addition, a joint house-senate legislative oversight committee has been formed to provide additional tax policy support and guidance. This part is a culmination of these efforts.

In order to participate in the streamlined sales and use tax agreement, Hawaii must amend its tax law in conformity with the streamlined sales and use tax agreement. To conform, Hawaii must adopt a single rate of general excise tax, Hawaii's substitute for a sales tax. In accordance with advice received from the Streamlined Sales Tax Governing Board and COST, a national organization representing businesses, this was accomplished by:

(1) Moving the one-half of one per cent tax rate for wholesale transactions to a new chapter;
(2) Adding a new chapter on the taxation of imports of property, services, and contracting;
(3) Moving the 0.15 per cent tax on insurance producers to a new chapter; and

(4) Eliminating the tax on businesses owned by disabled persons.

This part also provides for destination-based sourcing and amnesty.

SECTION 14. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

TAX ON WHOLESALERS, SERVICE BUSINESSES, AND CONTRACTORS

§A-1 Definitions; "business", "gross income". The definitions contained in sections 237-1, 237-2, and 237-3 shall apply to this chapter.

§A-2 "Wholesaler" and "jobber" defined. (a) "Wholesaler" or "jobber" applies only to a person making sales at wholesale. Only the following are sales at wholesale:

(1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;

(2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in a finished or saleable product in a form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;

(3) Sales to a licensed producer or cooperative association of materials or commodities that are to be incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;

(4) Sales to a licensed contractor of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in a finished work or project in a form as to be perceptible to the senses;

(5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed,

hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section A-3 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of these licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate specified in section A-6(a)(5). This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

(6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed or seedstock for producing agricultural and aquacultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural and aquacultural products or fish are to be disposed of as described in section A-3 or to be incorporated in a manufactured product as described in paragraph (2);

(7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural and aquacultural products; of seedlings and cuttings for producing nursery plants or aquacultural products; or of chick containers; which cartons and other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section A-3, or to be incorporated in a manufactured product as described in paragraph (2);

(8) Sales of tangible personal property where:

(A) Tangible personal property is sold upon the order or request of a licensed seller for the purpose

of rendering a service in the course of the person's service business or calling, or upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;

(B) The tangible personal property becomes or is used as an identifiable element of the service rendered; and

(C) The cost of the tangible personal property does not constitute overhead to the licensed seller;

(9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;

(10) Sales of services to a licensed seller engaging in a business or calling whenever:

(A) Either:

(i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;

(ii) In the context of a service-to-tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing tangible personal property to be sold;

(iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor; or

(iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;

(B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations;

(C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations;

(D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, contractor, or person furnishing transient accommodations for imposition of the tax under this chapter or chapter 237;

(E) The gross income of the licensed seller is not subject to a deduction under this chapter, chapter 237, or chapter 237D; and

(F) The resale of the service, tangible personal property, contracting, or transient accommodations is subject to the tax imposed under this chapter or chapter 237;

(11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller;

(12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller;

(13) Sales of amusements subject to taxation under section A-6(a)(3) to a licensed seller engaging in a business or calling whenever:

(A) Either:

(i) In the context of an amusement-to-service transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;

(ii) In the context of an amusement-to-tangible personal property transaction, an amusement is rendered upon the order or request of a

licensed seller for the purpose of selling tangible personal property; or

(iii) In the context of an amusement-to-amusement transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another amusement in the course of the person's amusement business;

(B) The benefit of the amusement passes to the customer of the licensed seller as an identifiable element of the other service, tangible personal property to be sold, or amusement;

(C) The cost of the amusement does not constitute overhead to the licensed seller;

(D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, person furnishing transient accommodations, or person rendering an amusement for imposition of the tax under chapter 237;

(E) The gross income of the licensed seller is not subject to a deduction under this chapter or chapter 237; and

(F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter or chapter 237. As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge; and

(14) Sales by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials.

(b) If the use tax law under chapter B is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce, or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding subsection otherwise defining "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a person, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service that buys and maintains

at the person's place of business a stock or lines of merchandise that the person distributes; and that the person, through salespersons, advertising, or sales promotion devices, sells to licensed retailers, to institutional, or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter.

§A-3 "Producer" defined. (a) "Producer" means any person engaged in the business of raising and producing agricultural products in their natural state, or in producing natural resource products, or engaged in the business of fishing or aquaculture, for sale, or for shipment or transportation out of the State, of the agricultural or aquaculture products in their natural or processed state, or butchered and dressed, or the natural resource products, or fish.

(b) As used in this section, "agricultural products" include floricultural, horticultural, viticultural, forestry, nut, coffee, dairy, livestock, poultry, bee, animal, and any other farm, agronomic, or plantation products.

§A-4 Definitions; "contractor", "service business or calling". The definitions contained in sections 237-6 and 237-7 shall be applicable for this chapter.

§A-5 Administrative provisions. Sections 237-8, 237-9, 237-9.5, 237-11, and 237-12 shall be applicable for this chapter.

§A-6 Imposition of tax. (a) There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

(1) Tax on manufacturers:

(A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared for sale, as shown by the gross proceeds

derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent;

(B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State;

(C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:

(i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products;

(ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State,

of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department of taxation shall prescribe uniform and equitable rules for ascertaining the values;

(iii) At the election of the taxpayer and with the approval of the department of taxation, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce; and

(iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State;

(2) Tax on producers: Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C). No manufacturer or producer, engaged in the business of manufacturing or producing in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer;

(3) Tax upon theaters, amusements, radio broadcasting stations, etc. Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at

which amusements are offered to the public, at wholesale, the tax shall be one-half of one per cent of the gross proceeds of the business;

(4) Tax on service business upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, as a wholesaler described in section A-2, the tax shall be equal to one-half of one per cent of the gross proceeds of the business;

(5) Tax on sales by wholesalers:

(A) Upon every person who is engaged in the business of a wholesaler or jobber as described in section A-2 of selling any tangible personal property whatsoever (not including, however, bonds or other evidences of indebtedness, or stocks), there is hereby levied, and shall be assessed and collected, a tax equivalent to one-half of one per cent of the gross proceeds of sales of the business as a wholesaler or jobber as defined in section A-2;

(B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property as a wholesaler, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of Congress of the United States that may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.

(b) When a manufacturer or producer, engaged in business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale taxed under this chapter, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay

the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State under this chapter; provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.

§A-7 Resale certificates. (a) The department of taxation, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(1) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the additional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and

(2) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.

(b) The department of taxation may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(1) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(2) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.

(c) The department of taxation may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(1) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(2) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.

§A-8 Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this section shall not be taxable under any other paragraph, subsection, or section of this chapter.

§A-9 Segregation of gross income, etc., on records and in returns. The imposition of taxes and the application of tax rates do not depend upon the business in which the taxpayer is primarily engaged. One business may be subject to two or more tax rates under this chapter and chapter 237. If a business is within the purview of two or more of the paragraphs of section 237-13 or other provisions of this chapter or chapter 237, all of them apply, each provision being applicable to the appropriate item of gross income, gross proceeds of sales, or value of products. However, any person engaging or continuing in a business having gross income, gross proceeds of sales, and value of products, or any of these as the case may be, taxable at different rates, shall be subject to taxation upon the aggregate amount of the gross income, gross proceeds of sales, and value of products of the business at the highest rate applicable to any part of the aggregate, unless the person shall segregate the parts taxable at different rates upon the person's records and in the person's returns, and shall sustain the burden of proving that the segregation was correctly made.

§A-10 Assessment on generated electricity. Any other provision of law to the contrary notwithstanding, the levy and assessment of tax on the gross proceeds from the sale of electric power to a public utility company for resale to the public, shall be made only as a tax on business of a producer, at the rate assessed producers, under section A-6(a)(2).

§A-11 Technicians. When technicians supply dentists or physicians with dentures, orthodontic devices, braces, and similar items which have been prepared by the technician in

accordance with specifications furnished by the dentist or physician, and these items are to be used by the dentist or physician in the dentist's or physician's professional practice for a particular patient who is to pay the dentist or physician for the same as a part of the dentist's or physician's professional services, the technician shall be taxed as though the technician were a manufacturer selling a product to a licensed retailer, rather than pursuant to chapter 237 at the rate of four per cent that is generally applied to professions and services.

§A-12 Activity ordered by others. (a) Where, through the activity of a person taxable under section 237-13(5), a product has been milled, processed, or otherwise manufactured upon the order of another taxpayer who is a manufacturer taxable upon the value of the entire manufactured products, which consists in part of the value of the services taxable under section 237-13(5), so much gross income as is derived from the rendering of the services shall be subjected to tax on the person rendering the services at the rate of one-half of one per cent, and the value of the entire product shall be included in the measure of the tax imposed on the other taxpayer as elsewhere provided.

(b) Where, through the activity of a person taxable under section 237-13(5), there have been rendered to a cane planter services consisting in the harvesting or hauling of the cane, or consisting in road maintenance, under a contract between the person rendering the services and the cane planter, covering the services and also the milling of the sugar, the services of harvesting and hauling the cane and road maintenance shall be treated the same as the service of milling the cane, as provided by subsection (a), and the value of the entire product, manufactured or sold for the cane planter under the contract, shall be included in the measure of the tax imposed on the persons elsewhere provided.

§A-13 Apportionment. In the case of a tax upon the production of property in the State, the apportionment shall be determined as in the case of the tax on manufacturers provided in section A-6(a)(1).

§A-14 Conformity to constitution. Section 237-22 shall apply to this chapter.

§A-15 Exemptions. The exemptions provided in section 237-23, 237-26, 237-27.5, 237-29, 237-29.5, and 237-29.53 shall apply to this chapter.

§A-16 Amounts not taxable. This chapter shall not apply to the following amounts:

(1) The amounts of taxes on cigarettes and tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale;

(2) The amounts of federal taxes under chapter 37 of the Internal Revenue Code of 1986, as amended, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;

(3) Gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State; a corporation all of whose outstanding shares are owned by an individual or individuals who are blind, deaf, or totally disabled; a general, limited or limited liability partnership, all of whose partners are blind, deaf, or totally disabled; or a limited liability company, all of whose members are blind, deaf, or totally disabled;

(4) Amounts received by a producer of sugarcane from the manufacturer to whom the producer sells the sugarcane, where:

(A) The producer is an independent cane farmer, so classed by the Secretary of Agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented;

(B) The value or gross proceeds of sale of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section A-6(a)(1);

(C) The producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer; and

(D) The producer's gross proceeds of sales are reduced by reason of the tax on the value or sale of the manufactured products.

§A-17 Exemption for sale of tangible personal property for resale at wholesale. (a) There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the gross proceeds or gross income arising from the sale of tangible personal property imported to Hawaii from a foreign or domestic source to a licensed taxpayer for subsequent resale for the purpose of wholesale as defined under section A-2(a)(8).

(b) The department of taxation, by rule, may provide that a seller may take from the purchaser of imported tangible personal property, a certificate in a form that the department shall prescribe, certifying that the purchaser of the imported tangible personal property shall resell the imported tangible personal property at wholesale as defined under section A-

2(a)(8). Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, if the sale in fact is not a sale for the purpose of resale at wholesale, the amount of the additional tax which by reason thereof is imposed upon the seller. The absence of a certificate, unless the sales of the business are exclusively a sale for the purpose of resale at wholesale, in itself, shall give rise to the presumption that the sale is not a sale for the purpose of resale at wholesale.

§A-18 Administrative provisions. Sections 237-20, 237-21, 237-27, 237-30, 237-31, 237-32, 237-33, 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-42, 237-43, 237-46, 237-47, 237-49, and 237-A through 237-F shall apply to this chapter."

SECTION 15. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

TAX ON IMPORT OF GOODS, SERVICES AND CONTRACTING FOR RESALE

§B-1 Definitions. Definitions contained in section 238-1 shall apply to this chapter.

§B-2 Imposition of tax on tangible personal property; exemptions. There is hereby levied an excise tax on the use in this State of tangible personal property which is imported by a taxpayer in this State whether owned, purchased from an unlicensed seller, or however acquired for use in this State. The tax imposed by this chapter shall accrue when the property is acquired 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 thereof are as follows:

(1) If the importer or purchaser is licensed under chapter A and is:

(A) A wholesaler or jobber importing or purchasing for purposes of sale or resale; or

(B) A manufacturer importing or purchasing material or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in a form as to be perceptible to the senses, and the finished or saleable product is to be sold in a manner as to result in a further tax on the activity of the manufacturer as the manufacturer or as a wholesaler, and not as a retailer;

there shall be no tax; provided that if the wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 237), paragraph (2) shall apply to the wholesaler, jobber, or manufacturer, but the director of taxation shall

refund to the wholesaler, jobber, or manufacturer, in the manner provided under section 231-23(c) the amount of tax as the wholesaler, jobber, or manufacturer shall establish, to the satisfaction of the director, to have been paid by the wholesaler, jobber, or manufacturer to the director with respect to property that has been used by the wholesaler, jobber, or manufacturer for the purposes stated in this paragraph;

(2) If the importer or purchaser is licensed under chapter 237 and is:

(A) A retailer or other person importing or purchasing for purposes of sale or resale, not exempted by paragraph (1);

(B) A manufacturer importing or purchasing material or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in a form as to be perceptible to the senses, and the finished or saleable product is to be sold at retail in this State, in a manner as to result in a further tax on the activity of the manufacturer in selling the products at retail;

(C) A contractor importing or purchasing material or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in the finished work or project in a form as to be perceptible to the senses;

(D) A person engaged in a service business or calling as defined in section 237-7, or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, in which the import or purchase of tangible personal property would have qualified as a sale at wholesale as defined in section A-2(a)(8) had the seller of the property been subject to the tax in chapter 237; or

(E) A publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials,

the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase or sale is consummated outside of Hawaii, then one-half of one per cent of the value of the property.

§B-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 A 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 A on services at the rate of one-half of one per cent; 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 under chapter A on the manufacturer as a wholesaler, and not a retailer;

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;

(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(2) as a contractor;

the tax shall be one-half of one per cent of the value of the imported or purchased services or contracting.

§B-4 Application of tax, etc. Section 238-3 shall apply to this chapter.

§B-5 Certain property used by producers. If a licensed producer, or a cooperative association acting under the authority of chapter 421, in order to sell to the producer, or a licensed person, imports into the State or acquires in the State commodities, materials, items, services, or living things enumerated in section A-2(a)(3) and (a)(5) to (a)(7), then section A-2 shall apply. If section A-2 applies and the producer is engaged in the sale of the producer's products at retail or in any manner other than at wholesale, then the tax upon use of property in the State imposed by section 238-2 shall apply the same as in the case of a purchaser who is a licensed retailer. In other cases no tax shall be imposed under this chapter.

§B-6 Administration. Sections 238-5, 238-6, 238-7, 238-8, 238-9, 238-9.5, 238-10, 238-11, 238-13, 238-14 and 238-16 shall apply to this chapter."

SECTION 16. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

INSURANCE PRODUCER'S TAX

§C-1 Definitions. The definitions contained in sections 237-1, 237-2, and 237-3 shall apply to this chapter.

§C-2 Tax on insurance producers. Upon every person engaged as a licensed producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to 0.15 per cent of the commissions due to that activity.

§C-3 Apportionment. Where insurance producers, who are not employees and are licensed pursuant to chapter 431, produce commissions that are divided between the insurance producers, the tax levied under section C-2 as to insurance producers shall apply to each producer with respect to the producer's portion of the commissions, and no more.

§C-4 Administrative provisions. Sections 237-8, 237-9, 237-9.5, 237-11, 237-12, 237-30, 237-31, 237-33, 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-42, 237-43, 237-46, and 237-A through 237-G shall apply to this chapter."

SECTION 17. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§46- County compliance with the streamlined sales and use tax agreement.** The counties shall not adopt any ordinance or interpret any ordinance in such a manner that violates the provisions of the streamlined sales and use tax agreement established by the Streamlined Sales Tax Governing Board, Incorporated, and adopted pursuant to chapter 255D."

SECTION 18. Chapter 237, Hawaii Revised Statutes, is amended by adding seven new sections to be appropriately designated and to read as follows:

"**§237-A General sourcing rules.**

(1) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(A) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(B) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller;

(C) When subparagraphs (A) and (B) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are

maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(D) When subparagraphs (A), (B), and (C) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; or

(E) When none of the previous rules of subparagraphs (A), (B), (C), and (D) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold);

(2) The lease or rental of tangible personal property, other than property identified in paragraph (3) or (4), shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with paragraph (1). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; or

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with paragraph (1);

This paragraph does not affect the imposition or computation of general excise or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease;

(3) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in paragraph (4), shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations; or

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with paragraph (1);

This paragraph does not affect the imposition or computation of general excise or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease;

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with paragraph (1), notwithstanding the exclusion of lease or rental in paragraph (1). "Transportation equipment" means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(B) Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

(i) Registered through the international registration plan; and

(ii) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(C) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(D) Containers designed for use on and component parts attached or secured on the items set forth in subparagraphs (A) to (C).

§237-B General sourcing definitions. For the purposes of section 237-A(1), the terms "receive" and "receipt" mean:

(1) Taking possession of tangible personal property;

(2) Making first use of services; or

(3) Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

§237-C Telecommunications sourcing rule. (a) Except for the defined telecommunications services in subsection (c), the sale of telecommunications service sold on a call-by-call basis shall be sourced to:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunications services in subsection (c), a sale of telecommunications service sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(c) The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications service other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act;

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

(A) The seller's telecommunications system; or

(B) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(3) Until December 31, 2007, a sale of prepaid calling service is sourced in accordance with section 237-A; provided that in the case of a sale of mobile

telecommunications service that is prepaid telecommunications service, the rule provided in section 237-A(1)(E) shall include as an option the location associated with the mobile telephone number;

(4) Effective January 1, 2008, a sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with section 237-A; provided that in the case of a sale of prepaid wireless calling service, the rule provided in section 237-A(1)(E) shall include as an option the location associated with the mobile telephone number; or

(5) A sale of a private communication service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located;

(B) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located; or

(C) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty per cent in each level of jurisdiction in which the customer channel termination points are located.

Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

§237-D Telecommunications sourcing definitions. Until December 31, 2007, for the purposes of section 237-C, the following definitions shall apply:

"Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

"Customer":

(1) Means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section 237-C;

(2) Does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the communications.

"End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

"Home service provider" has the same meaning as that term is defined in section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

"Mobile telecommunications service" has the same meaning as that term is defined in section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

"Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" shall be within the licensed service area of the home service provider.

"Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service.

"Prepaid calling service" means the right to access exclusively telecommunications service, which must be paid for

in advance and that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

"Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

"Service address" means:

(1) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(2) If the location in paragraph (1) is not known, service address means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller; or

(3) If the location in paragraphs (1) and (2) are not known, service address means the location of the customer's place of primary use.

§237-E Telecommunications sourcing definitions. Effective January 1, 2008, for the purpose of section 237-C, the following definitions shall apply:

"Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

"Customer":

(1) Means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only

applies for the purpose of sourcing sales of telecommunications services under section 237-C;

(2) Does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the communications.

"End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

"Home service provider" has the same meaning as that term is defined in section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

"Mobile telecommunications service" has the same meaning as that term is defined in section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

"Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" shall be within the licensed service area of the home service provider.

"Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

"Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

"Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be

paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

"Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

"Service address" means:

(1) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(2) If the location in paragraph (1) is not known, service address means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller; or

(3) If the location in paragraphs (1) and (2) are not known, service address means the location of the customer's place of primary use.

§237-F Deduction for bad debts. (a) A seller shall be allowed a deduction from taxable sales for bad debts. A seller may deduct the amount of bad debts from the seller's gross sales, rentals, or services used for the computation of the tax. The amount of gross sales, rentals, or services deducted shall be charged off as uncollectible on the books and records of the seller at the time the debt becomes worthless and deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and shall be eligible to be deducted for federal income tax purposes.

For the purposes of this section, a claimant who is not required to file a federal income tax return may deduct a bad debt on a return filed for the period in which the bad debt becomes worthless and is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

If a consumer or other person pays all or part of a bad debt with respect to which a seller claimed a deduction under this section, the seller is liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes in the seller's

next payment to the department. Any payments made on a bad debt shall be applied proportionally first to the taxable price of the property and the tax on the property and second to any interest, service, or other charge.

(b) Any claim for a bad debt deduction under this section shall be supported by evidence required by the department. The department shall review any change in the rate of taxation applicable to any taxable sales, rentals, or services by a seller claiming a deduction pursuant to this section and shall ensure that the deduction on any bad debt does not result in the seller claiming the deduction recovering any more or less than the taxes imposed on the sale, rental, or service that constitutes the bad debt.

(c) If a certified service provider assumed filing responsibility under the streamlined sales and use tax administration act, the certified service provider may claim, on behalf of the seller, any bad debt allowable to the seller and shall credit or refund that amount of bad debt allowed or refunded to the seller.

(d) If the books and records of a seller who, under the streamlined sales and use tax administration act claims a bad debt allowance, support an allocation of the bad debts among member states of that agreement, the seller may allocate the bad debt.

(e) As used in this section, "bad debt" means any portion of a debt resulting from a seller's collection of the use tax under the streamlined sales and use tax administration act on the purchase of tangible personal property or services that is not otherwise deductible or excludable and that is eligible to be claimed, or could be eligible to be claimed if the seller kept accounts on an accrual basis, as a deduction pursuant to section 166 of the Internal Revenue Code, 26 U.S.C. section 166. A bad debt does not include any of the following:

(1) Interest, finance charge, or use tax on the purchase price;

(2) Uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid;

(3) Expenses incurred in attempting to collect any account receivable or any portion of the debt recovered;

(4) Any accounts receivable that have been sold to and remain in the possession of a third party for collection; or

(5) Repossessed property.

§237-G Direct mail sourcing. (a) Notwithstanding the general sourcing provisions of section 237-A, a purchaser of direct mail who is not a holder of a direct pay permit shall provide to the seller, in conjunction with the purchase, either

a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

Upon receipt of the direct mail form, the seller shall be relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser shall be obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller shall be relieved of any further obligation to collect tax on any transaction for which the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information as required under subsection (a), the seller shall collect the tax. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

Receipts from sales of direct mail for distribution to out-of-state recipients and receipts from sales of direct-mail processing services in connection with distribution of direct mail to out-of-state recipients shall be exempt from taxation under this chapter. The exemption provided by this section shall apply to receipts from charges for the printing or production of direct mail, whether prepared in or shipped into Hawaii, after preparation, and stored for subsequent shipment to out-of-state customers. The direct mail processing services exemption provided under this section shall apply to receipts from charges for all direct mail processing services for distribution to out-of-state recipients, including but not limited to preparing and maintaining mailing lists, addressing, separating, folding, inserting, sorting, and packaging direct mail materials, and transporting the direct mail to the point of shipment by the mail service or other carrier."

SECTION 19. Section 237-1, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

""Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services, including but not

limited to transportation, shipping, postage, handling, crating, and packing. If a shipment includes both exempt and taxable property, the seller shall allocate the delivery charge by using:

(1) A percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or

(2) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

"Direct mail":

(1) Means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser, or at the direction of the purchaser, in cases in which the cost of the items are not billed directly to the recipients;

(2) Includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material;

(3) Does not include multiple items of printed material.

"Lease or rental":

(1) After , means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration;

(2) May include future options to purchase or extend;

(3) Does not include:

(A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(B) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of $100 or one per cent of the total required payments;

(C) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator shall do more than maintain, inspect, or set-up the tangible personal property; or

(D) Agreements covering motor vehicles and trailers where the amount of consideration may be

increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. section 7701(h)(1).

For the purposes of this chapter, the definition of "lease or rental" shall be used regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the federal Internal Revenue Code, or other provisions of federal, state, or local law.

"Sales price" applies to the measure subject to tax and means the total amount of consideration, including cash, credit, property, and services for which personal property or services are sold, leased, rented, or valued in money, whether money is received or otherwise, without any deduction for the following:

(1) The seller's cost of the property sold;

(2) The cost of the materials used, labor or service cost, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(4) Delivery and installation charges; or

(5) Installation charges.

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. Tangible personal property includes gas, steam, and prewritten computer software."

SECTION 20. Chapter 255D, Hawaii Revised Statutes, is amended by adding nine new sections to be appropriately designated and to read as follows:

"**§255D-A Relief from certain liability.** All sellers and certified service providers as defined in section 255D-2 using databases pursuant to section 255D-D(f) and (g) shall be relieved from liability to the state and local jurisdictions for having charged and collected the incorrect amount of general excise or use tax resulting from the seller or certified service provider relying on erroneous data provided by the state on tax rates, boundaries, or taxing jurisdiction assignments.

§255D-B Rounding rule. For the purpose of calculating the amount of the general excise or use tax:

(1) The tax computation shall be carried to the third decimal place; and

(2) The tax shall be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

Sellers may elect to compute the tax due on a transaction on an item or an invoice basis, and shall allow the rounding rule to be applied to the aggregated state and local taxes.

§255D-C Amnesty for registration under this chapter. (a) The department shall provide amnesty for uncollected or unpaid general excise tax under chapter 237 or use tax under chapter 238, including any county surcharge, to a seller who registers to pay or to collect and remit applicable general excise or use tax on sales made to purchasers in the State in accordance with the terms of the streamlined sales and use tax agreement, provided that the seller was not so registered in the State in the twelve-month period preceding the effective date of the State's participation in the streamlined sales and use tax agreement.

(b) The amnesty shall preclude assessment for uncollected or unpaid general excise tax under chapter 237 or use tax under chapter 238 together with penalty or interest for sales made during the period the seller was not registered in the State, provided registration occurs within twelve months of the effective date of the State's participation in the streamlined sales and use tax agreement.

(c) The amnesty shall not be available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and the audit is not yet finally resolved including any related administrative and judicial processes.

(d) The amnesty shall not be available for general excise or use taxes already paid or remitted to the State or to taxes collected by the seller.

(e) The amnesty shall be fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable general excise or use taxes for a period of at least thirty-six months. The statute of limitations is tolled with respect to asserting a tax liability during this thirty-six month period.

(f) The amnesty shall only apply to general excise or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

§255D-D Local rate and boundary changes. (a) Any rate changes by a county shall be effective only on the first day of a calendar quarter after a minimum of sixty days notice to sellers.

(b) Any county tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon county tax rates published in the catalog shall be effective only on the first day of a calendar quarter after a minimum of one hundred twenty days notice to sellers.

(c) For general excise and use tax purposes only, local jurisdiction boundary changes apply only on the first day of a

calendar quarter after a minimum of sixty days notice to sellers.

(d) The department of taxation shall provide and maintain a database that describes boundary changes for all taxing jurisdictions. The database shall include a description of the change and the effective date of the change for general excise tax under chapter 237 and use tax under chapter 238 purposes.

(e) The department of taxation shall provide and maintain a database of all general excise tax rates under chapter 237 and use tax rates under chapter 238 for all of the jurisdictions levying taxes within the State. For the identification of states, counties, and cities, codes corresponding to the rates shall be provided according to Federal Information Processing Standards as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates shall be in the format determined by the Streamlined Sales Tax Governing Board, Incorporated.

(f) The department of taxation shall provide and maintain a database that assigns each five digit and nine digit zip code within the State to the proper tax rates and jurisdictions. The department of taxation shall apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine digit zip code designation by utilizing software approved by the Streamlined Sales Tax Governing Board, Incorporated, that makes this designation from the street address and the five digit zip code of the purchaser.

(g) The State shall participate with other states in the development of an address-based system for assigning taxing jurisdictions. The system shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sec. 119(a)). If any state develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in subsection (e) of this section.

§255D-E Certified service provider; agent of the seller. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted for the collection and remittance of general excise and use taxes. As

the seller's agent, the certified service provider is liable for general excise and use tax due to the State on all sales transactions it processes for the seller unless the seller made a material misrepresentation or committed fraud.

(b) A seller that uses a certified automated system is responsible and is liable to the State for reporting and remitting tax.

§255D-F Confidentiality of records. (a) Except as provided in subsection (c), a certified service provider shall not retain or disclose the personally identifiable information of consumers. A certified service provider's system shall be designed and tested to ensure the privacy of consumers by protecting their anonymity.

(b) A certified service provider shall provide clear and conspicuous notice of its information practices to consumers, including but not limited to what information it collects, how it collects the information, how it uses the information, how long it retains the information, and whether it discloses the information to member states.

(c) A certified service provider's retention or disclosure to member states of personally identifiable information is limited to that required to ensure the validity of exemptions claimed because of a consumer's status or intended use of the goods or services purchased.

(d) A certified service provider shall provide the necessary technical, physical, and administrative safeguards to protect personally identifiable information from unauthorized access and disclosure.

(e) The privacy policy required under this section shall be subject to enforcement by the attorney general.

(f) If personally identifiable information is retained by the State for the purpose of subsection (c), in the absence of exigent circumstances, a person shall be afforded reasonable access to their own data, with a right to correct inaccurately recorded data.

(g) The agreement does not enlarge or limit the State's authority to do any of the following:

(1) Conduct audits or other reviews as provided under the agreement or the State's law;

(2) Provide records pursuant to the State's freedom of information act, disclosure laws with governmental agencies, or other regulations;

(3) Prevent, consistent with the State's law, disclosures of confidential taxpayer information;

(4) Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; or

(5) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

(h) The department shall publish on the department's website the State's policy relating to the collection, use, and retention of personally identifiable information obtained from a certified service provider under subsection (c).

(i) The department shall destroy personally identifiable information obtained from a certified service provider when the information is no longer required for purposes under subsection (c).

(j) If a person other than a member state or person authorized by a member state's law or the agreement seeks to discover personally identifiable information about an individual from the State, the department shall make a reasonable and timely effort to notify that individual of the request.

(k) As used in this section, "personally identifiable information" means information that identifies a specific person.

§255D-G Liability for uncollected tax. (a) A seller registered under the agreement is not liable for any uncollected or nonremitted tax on transactions with purchasers in the State before the date of registration if the seller was not licensed or registered under chapter 237 in the twelve-month period preceding the effective date of the State's participation in the agreement. The seller is also not responsible for any penalty or interest that may be due on those transactions. This subsection applies only if the seller is registered in this State within twelve months of the effective date of this State's participation in the agreement.

(b) Subsection (a) does not apply to:

(1) Any tax liability of the registered seller for transactions that are subject to general excise or use tax in the state in which the registered seller is the purchaser;

(2) Any general excise or use taxes already paid or remitted to the State or to taxes collected by the seller; and

(3) Any transactions for which the seller received notice of the commencement of an audit and the audit is not finally resolved, including related administrative or judicial processes.

(c) Subsection (a) applies to the seller absent the seller's fraud or intentional misrepresentation of a material fact only if the seller continues to be registered under the agreement and continues collection and remittance of applicable general excise and use taxes in the State for at least thirty-six months. The statute of limitations applicable to assessing a tax liability is tolled during this thirty-six-month period.

§255D-H Rate changes. (a) The department shall publish on its website a notification to sellers registered under the agreement of a change in rate or tax base within five business days of receiving notice of the changes to the tax rate or base or of an amendment to general excise and use tax rules. Whenever possible, a rate or tax base change should occur on the first day of a calendar quarter.

(b) The failure of a seller to receive notice under subsection (a) does not relieve the seller of its obligation to collect the general excise or use tax.

(c) The department shall complete a taxability matrix as provided for under section 328 of the agreement, maintain it in a database in a downloadable format approved by the Streamlined Sales Tax Governing Board, Incorporated, and provide notice of changes in the matrix.

§255D-I Customer refund procedures. A cause of action against a seller for overcollected general excise or use taxes does not accrue until sixty days after a purchaser has provided written notice to a seller. The purchaser shall provide in the notice sufficient information to determine the validity of the request. In matters relating to the request, a seller is presumed to have a reasonable business practice if in the collection of general excise or use tax, the seller has a certified service provider or a system, including a proprietary system, certified by the department, and has remitted to this State all taxes collected, less any deductions, credits, or collection allowances."

SECTION 21. Section 237-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) "Gross income" means the gross receipts, cash or accrued, of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and all receipts, actual or accrued as hereinafter provided, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor cost, taxes, royalties, interest, or discount paid or any other expenses whatsoever. Every taxpayer shall be presumed to be dealing on a cash basis unless the taxpayer proves to the satisfaction of the department of taxation that the taxpayer is dealing on an accrual basis and the taxpayer's books are so kept, or unless the taxpayer employs or is required to employ the accrual basis for the purposes of the tax imposed by chapter 235 for any taxable year in which event the taxpayer shall report the taxpayer's gross income for

the purposes of this chapter on the accrual basis for the same period.

"Gross proceeds of sale" means the [~~value actually proceeding from the sale of tangible personal property without any deduction on account of the cost of property sold or expenses of any kind.~~] sales price."

SECTION 22. Section 237-8.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The county surcharge on state tax, upon the adoption of county ordinances and in accordance with the requirements of section 46-16.8, shall be levied, assessed, and collected as provided in this section on all gross proceeds and gross income taxable under this chapter. No county shall set the surcharge on state tax at a rate greater than one-half of one per cent of all gross proceeds and gross income 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 of taxation shall have all the rights and powers provided under this chapter. No county shall conduct an independent tax audit of sellers registered under the streamlined sales tax agreement. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person is engaged in business and, in the case of a person engaged in business in more than one county, the director shall determine, through apportionment or other means, that portion of the surcharge on state tax attributable to business conducted in each county."

SECTION 23. Section 237-9, Hawaii Revised Statutes, is amended to read as follows:

"**§237-9 Licenses; penalty.** (a) Except as provided in this section, any person who has a gross income or gross proceeds of sales or value of products upon which a privilege tax is imposed by this chapter, as a condition precedent to engaging or continuing in [~~such~~] the business, shall in writing apply for and obtain from the department of taxation, upon a one-time payment of the sum of $20, a license to engage in and to conduct such business, upon condition that the person shall pay the taxes accruing to the State under this chapter, and the person shall thereby be duly licensed to engage in and conduct the business. Any person licensed or holding a license under this chapter before January 1, 1990, shall pay a one-time license renewal fee of $20 on or before January 31, 1990, as a condition precedent to engaging or continuing in business. The license shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The license may be inspected and examined, and shall at all times be conspicuously displayed at the place for which it is issued.

A seller registered under the streamlined sales and use tax agreement who is not otherwise obligated to obtain a license in the State is not required to obtain a license because of that registration.

(b) Licenses and applications therefor shall be in such form as the department shall prescribe, except that where the licensee is engaged in two or more forms of business of different classification, the license shall so state on its face. The license provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled license identification number after December 31, 1989, shall be regarded as a new license application and subject to the payment of the one-time license fee of $20. The director may revoke or cancel any license issued under this chapter for cause as provided by rules adopted pursuant to chapter 91.

(c) If the license fee is paid, the department shall not refuse to issue a license or revoke or cancel a license for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237-46 be invoked to restrain the exercise of such a privilege, or the carrying on of [~~such~~] interstate or foreign commerce.

(d) The director may permit a person engaged in network marketing, multi-level marketing, or other similar business to obtain the license required under this section for purposes of becoming a tax collection agent on behalf of its direct sellers. The tax collection agent shall report, collect, and pay over the taxes due under this chapter and chapter 238 on behalf of its direct sellers who are covered by the tax collection agreement. The tax collection agent's direct sellers shall be deemed to be licensed under this chapter; provided that the licensure shall apply solely to the business activity conducted directly through the marketing arrangement. Under this section, a tax collection agent shall:

(1) Notify all of its direct sellers making sales in the State that it has been designated to collect, report, and pay over the tax imposed by this chapter and chapter 238 on their behalf on the business activity conducted through the marketing arrangement;

(2) If required by the director as a condition of obtaining the license, furnish with the annual return, a list (including identification numbers) of all direct sellers for the taxable year who have been provided (by the tax collection agent) information

returns required under section 6041A of the Internal Revenue Code of 1986, as amended, and any other information that is relevant to ensure proper payment of taxes due under this section; and

(3) Be personally liable for the taxes due and collected under the tax collection agreement if taxes are collected, but not reported or paid, together with penalties and interest as provided by law.

(e) The director may authorize a person to assume the obligation of self-accruing and remitting tax due on purchases or leases directly to the department under a direct payment authorization, if the following conditions are met:

(1) The authorization is to be used for the purchase or lease of tangible personal property or services;

(2) The authorization is necessary because it is either impractical at the time of acquisition to determine the manner in which the tangible personal property or services will be used or it will facilitate improved compliance with the tax laws of the State; and

(3) The person requesting authorization for direct payment maintains accurate and complete records of all purchases or leases and uses of tangible personal property or services purchased pursuant to the direct payment authorization in a form acceptable to the department.

The department may identify items that are not eligible for a direct payment authorization.

[~~(e)~~] (f) For the purposes of this section:

"Consumer product" shall include tangible consumer products and intangible consumer services.

"Direct seller" means any person who is engaged in the trade or business of selling (or soliciting the sale of) consumer products:

(1) To any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis, that the director prescribes by rule adopted pursuant to chapter 91, for resale other than in a permanent retail establishment;

(2) Other than in a permanent retail establishment; provided that:

(A) Substantially all the remuneration (whether or not paid in cash) for the sale of consumer products is directly related to sales or other output rather than to the number of hours worked; and

(B) The sales of consumer products by the person are performed pursuant to a written contract that provides that the person will not be treated as

an employee with respect to those sales for federal or state tax purposes.

"Direct seller" includes individuals who realize remuneration dependent on the productivity of other individuals in the marketing arrangement.

"Network marketing" or "multi-level marketing" means a marketing arrangement in which consumer products are distributed and sold to or through direct sellers."

SECTION 24. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

"**§237-13 Imposition of tax.** There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

[~~(1) Tax on manufacturers.~~

~~(A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.~~

~~(B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.~~

~~(C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter~~

~~provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:~~

~~(i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products;~~

~~(ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values;~~

~~(iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce; and~~

~~(iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.~~

~~(2)~~] (1) Tax on business of selling tangible personal property[~~; producing.~~]:

(A) Upon every person engaging or continuing in the business of selling any tangible personal property [~~whatsoever~~] (not including, however, bonds or other evidence of indebtedness, or stocks), unless subject to chapter A, there is [~~likewise~~] hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; [~~provided that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the sale shall be subject to section 237-13.3. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).~~]

(B) Gross proceeds of sales of tangible property, unless subject to chapter A, in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States [~~which~~] that may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed[~~.~~];

[~~(C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example,~~

~~consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.~~

~~(D)~~] (C) When a manufacturer, or a producer[~~,~~] as defined under section A-3, engaged in [~~such~~] the business of manufacturing or producing in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale[~~,~~] and taxed under chapter A, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State[~~,~~] under chapter A; provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products[~~.~~]; and

[~~(E)~~] (D) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph [~~(3)(C),~~] (2)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph [~~or paragraph (1)~~] to the contrary[~~.~~];

[~~(F) The department, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:~~

~~(i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the additional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and~~

~~(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.~~

~~(3)~~] (2) Tax upon contractors[~~.~~]:

(A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business[~~.~~];

(B) In computing the tax levied under this paragraph, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A) or section 237-16, on:

(i) Another taxpayer who is a contractor, as defined in section 237-6;

(ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or

(iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State;

provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person[~~.~~];

(C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:

(i) The gross income exempted shall constitute reimbursement of costs incurred for

materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and

(ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government[~~.~~]<u>;</u>

(D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements the person intended, and for the period of at least one year after completion of the building, structure, or other improvements the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of [~~such~~] <u>the</u> building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount [~~which~~] <u>that</u> would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a

business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all [~~such~~] gross income shall be taxable under paragraph [~~(9);~~] (6); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5[~~.~~];

[~~(4)~~] (3) Tax upon theaters, amusements, radio broadcasting stations, etc.:

[~~(A)~~] Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, unless taxed under section A-6, the tax shall be equal to four per cent of the gross income of the business[~~, and in the case of a sale of an amusement at wholesale under section 237-4(a)(13), the tax shall be subject to section 237-13.3.~~

~~(B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:~~

~~(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and~~

~~(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.~~];

[~~(5)~~] (4) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the

services so rendered by the person[~~.~~], unless taxable under chapter A or C;

[~~(6)~~] (5) Tax on service business[~~.~~]:

(A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, chapter A, or chapter C, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business[~~, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business. Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.~~

~~(B) The department may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:~~

~~(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and~~

~~(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.~~

~~(C) Where any person engaging or continuing within the State in any service business or calling renders those services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering those services and the ultimate recipient of the benefits of those services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent. Where the taxpayer is subject to both this subparagraph and to the lowest tax rate under~~

~~subparagraph (A), the taxpayer shall be taxed under this subparagraph. This subparagraph shall be repealed on January 1, 2006.~~];

[~~(D)~~] (B) Where any person is engaged in the business of selling interstate or foreign common carrier [~~telecommunication~~] telecommunications services within and without the State, other than as a home service provider, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier [~~telecommunication~~] telecommunications services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State[~~.~~];

[~~(E)~~] (C) Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing interstate or foreign mobile telecommunications services to a customer with a place of primary use in this State when [~~such~~] the services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for mobile telecommunications services [~~which~~] that are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the income from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-24, shall be apportioned under any apportionment factor or formula adopted under [~~section 237-13(6)(D).~~]

subparagraph (B). Gross income shall not include:

(i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;

(ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;

(iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and

(iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22[~~.~~]; and

[~~(7) Tax on producers. Upon every person engaged as a licensed producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to 0.15 per cent of the commissions due to that activity.~~

~~(8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.~~

~~(9)~~] (6) Tax on other business. Upon every person engaging or continuing within the State in any

business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted[~~.~~] or subject to tax under chapter A or chapter C."

SECTION 25. Section 237-18, Hawaii Revised Statutes, amended to read as follows:

"**§237-18 Further provisions as to application of tax.** (a) Where a coin operated device produces gross income which is divided between the owner or operator of the device, on the one hand, and the owner or operator of the premises where the device is located, on the other hand, the tax imposed by this chapter shall apply to each [~~such~~] person with respect to the person's portion of the proceeds, and no more.

(b) Where gate receipts or other admissions are divided between the person furnishing or producing a play, concert, lecture, athletic event, or similar spectacle (including any motion picture showing) on the one hand, and a promoter (including any proprietor or other operator of a motion picture house) offering the spectacle to the public, on the other hand, the tax imposed by this chapter, if the promoter is subject to the tax imposed by this chapter, shall apply only to the promoter measured by the whole of the proceeds, and the promoter shall be authorized to deduct and withhold from the portion of the proceeds payable to the person furnishing or producing the spectacle the amount of the tax payable by the person upon such portion. No tax shall apply to a promoter with respect to [~~such~~] the portion of the proceeds as is payable to a person furnishing or producing the spectacle, who is exempted by section 237-23 from taxation upon [~~such~~] the activity.

[~~(c) Where, through the activity of a person taxable under section 237-13(6), a product has been milled, processed, or otherwise manufactured upon the order of another taxpayer who is a manufacturer taxable upon the value of the entire manufactured products, which consists in part of the value of the services taxable under section 237-13(6), so much gross income as is derived from the rendering of the services shall be subjected to tax on the person rendering the services at the rate of one-half of one per cent, and the value of the entire product shall be~~

~~included in the measure of the tax imposed on the other taxpayer as elsewhere provided.~~

~~(d) Where, through the activity of a person taxable under section 237-13(6), there have been rendered to a cane planter services consisting in the harvesting or hauling of the cane, or consisting in road maintenance, under a contract between the person rendering the services and the cane planter, covering the services and also the milling of the sugar, the services of harvesting and hauling the cane and road maintenance shall be treated the same as the service of milling the cane, as provided by subsection (c), and the value of the entire product, manufactured or sold for the cane planter under the contract, shall be included in the measure of the tax imposed on the person as elsewhere provided.~~

[~~(e)~~] (c) Where [~~insurance agents, including general agents, subagents, or solicitors, who are not employees and are licensed pursuant to chapter 431, or~~] real estate brokers or salespersons, who are not employees and are licensed pursuant to chapter 467, produce commissions [~~which~~] that are divided between [~~such general agents, subagents, or solicitors, or between such~~] real estate brokers or salespersons, [~~as the case may be,~~] the tax levied under section [~~237-13(6)~~] 237-13(5) as to real estate brokers or salespersons[~~, or under section 237-13(7) as to insurance general agents, subagents, or solicitors~~] shall apply to each [~~such~~] person with respect to the person's portion of the commissions, and no more.

[~~(f)~~] (d) Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services and the travel agency or tour packager, the tax imposed by this chapter shall apply to each [~~such~~] person with respect to [~~such~~] the person's respective portion of the proceeds, and no more.

As used in this subsection "tourism related services" means catamaran cruises, canoe rides, dinner cruises, lei greetings, transportation included in a tour package, sightseeing tours not subject to chapter 239, admissions to luaus, dinner shows, extravaganzas, cultural and educational facilities, and other services rendered directly to the customer or tourist, but only if the providers of the services other than air transportation are subject to a four per cent tax under this chapter or chapter 239.

[~~(g)~~] (e) Where transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissioned negotiated contract rates and the gross income is divided between the operator of transient accommodations on the one hand and the travel agency or tour packager on the other hand, the tax imposed by this chapter shall apply to each [~~such~~]

person with respect to [~~such~~] the person's respective portion of the proceeds, and no more.

As used in this subsection, the words "transient accommodations" and "operator" shall be defined in the same manner as they are defined in section 237D-1.

[~~(h)~~] (f) Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor carrier's respective portion of the proceeds.

As used in this subsection:

"Carrier" means a person who engages in transportation, and does not include a person such as a freight forwarder or tour packager who provides transportation by contracting with others, except to the extent that [~~such~~] the person [~~oneself~~] engages in transportation.

"Contract carrier" means a person other than a public utility as defined under section 239-2 or taxicab, which under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water, or air.

"Motor carrier" means a common carrier or contract carrier transporting persons or property for compensation on the public highways, other than a public utility as defined under section 239-2 or taxicab.

"Public highways" has the meaning defined by section 264-1 including both state and county highways, but operation upon rails shall not be deemed transportation on the public highways."

SECTION 26. Section 237-21, Hawaii Revised Statutes, is amended to read as follows:

"**§237-21 Apportionment.** If any person[~~, other than persons liable to the tax on manufacturers as provided by section 237-13(1),~~] is engaged in business both within and without the State or in selling goods for delivery outside the State, and if under the Constitution or laws of the United States or section 237-29.5 the entire gross income of [~~such~~] the person cannot be included in the measure of this tax, there shall be apportioned to the State and included in the measure of the tax that portion of the gross income [~~which~~] that is derived from activities within the State, to the extent that the apportionment is required by the Constitution or laws of the United States or section 237-29.5. [~~In the case of a tax upon the production of property in the State the apportionment shall be determined as in the case of the tax on manufacturers.~~] In other cases, if and to the extent that the apportionment cannot be accurately made by separate accounting methods, there shall be apportioned to the State and included in the measure of this

tax that proportion of the total gross income, so requiring apportionment, which the cost of doing business within the State, applicable to the gross income, bears to the cost of doing business both within and without the State, applicable to the gross income."

SECTION 27. Section 237-24, Hawaii Revised Statutes, is amended to read as follows:

"**§237-24 Amounts not taxable.** This chapter shall not apply to the following amounts:

(1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;

(2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;

(3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;

(4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;

(5) Amounts received by any person as compensatory damages for any tort injury to the person, or to the person's character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);

(6) Amounts received as salaries or wages for services rendered by an employee to an employer;

(7) Amounts received as alimony and other similar payments and settlements;

(8) Amounts collected by distributors as fuel taxes on "liquid fuel" imposed by chapter 243, and the amounts collected by [~~such~~] distributors as a fuel tax imposed by any Act of the Congress of the United States;

(9) Taxes on liquor imposed by chapter 244D on dealers holding permits under that chapter;

[~~(10) The amounts of taxes on cigarettes and tobacco products imposed by chapter 245 on wholesalers or~~

~~dealers holding licenses under that chapter and selling the products at wholesale;~~

[~~(11)~~] (10) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;

[~~(12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;~~

[~~(13)~~] (11) [~~An amount up to, but not in excess of, $2,000 a year of gross income~~] Amounts received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State; a corporation all of whose outstanding shares are owned by an individual or individuals who are blind, deaf, or totally disabled; a general, limited, or limited liability partnership, all of whose partners are blind, deaf, or totally disabled; or a limited liability company, all of whose members are blind, deaf, or totally disabled;

[~~(14) Amounts received by a producer of sugarcane from the manufacturer to whom the producer sells the sugarcane, where:~~

~~(A) The producer is an independent cane farmer, so classed by the Secretary of Agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented;~~

~~(B) The value or gross proceeds of sale of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section 237-13(1) or (2);~~

~~(C) The producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer; and~~

~~(D) The producer's gross proceeds of sales are reduced by reason of the tax on the value or sale of the manufactured products;~~

[~~(15)~~] (12) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes; and

[~~(16)~~] (13) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by [~~such~~] the corporation for lease rental, real property taxes, and other expenses of operating

and maintaining the cooperative land and improvements; provided that [~~such a~~] the cooperative corporation is a corporation:

(A) Having one and only one class of stock outstanding;

(B) Each of the stockholders of which is entitled solely by reason of the stockholder's ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation; and

(C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation."

SECTION 28. 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 from sales of:

(A) Intoxicating liquor as the term "liquor" is defined in chapter 244D;

(B) Cigarettes and tobacco products as defined in chapter 245; and

(C) Agricultural, meat, or fish products;

to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state on the shipper's vessels or airplanes;

(3) Amounts received by the manager or board of directors of:

(A) An association of apartment owners of a condominium property regime established in accordance with chapter 514B; 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;

(4) Amounts received or accrued from:

(A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, 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;

(5) 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 section 1002(3) of title 29 of the United States Code, as amended;

(6) 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;

(7) 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:

(A) "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; and

(B) "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 which is sold by the practitioner or which 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;~~] a replacement, corrective, or supportive device including repair and replacement parts for the device, worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body.

A prosthetic device does not include corrective eyeglasses, contact lenses, hearing aids, and dental prothesis;

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

(9) 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;

(10) 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;

(11) 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

(12) 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. 40102."

SECTION 29. Section 237-34, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any [~~such~~] return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

(1) Trustees;

(2) Partners;

(3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return;

(4) The person authorized to act for a corporation in dissolution;

(5) The shareholder of an S corporation;

(6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate's or decedent's return;

(7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;

(8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);

(9) Persons duly authorized by the State in connection with their official duties;

(10) Any duly accredited tax official of the United States or of any state or territory;

(11) The Multistate Tax Commission or its authorized representative;

(12) Members of a limited liability company; [~~and~~]

(13) A person contractually obligated to pay the taxes assessed against another when the latter person is under audit by the department[~~.~~]; and

(14) The Streamlined Sales Tax Governing Board, Incorporated, or its authorized representative.

Any violation of this subsection shall be a misdemeanor."

SECTION 30. Section 238-2, Hawaii Revised Statutes, is amended to read as follows:

"**§238-2 Imposition of tax on tangible personal property; exemptions.** There is hereby levied an excise tax on the use in this State of tangible personal property [~~which~~] that is imported by a taxpayer in this State whether owned, purchased from an unlicensed seller, or however acquired for use in this State[~~.~~], unless subject to tax or exempt from tax under chapter B. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The [~~rates~~] rate of the tax hereby imposed [~~and the exemptions thereof are as follows:~~

~~(1) If the importer or purchaser is licensed under chapter 237 and is:~~

~~(A) A wholesaler or jobber importing or purchasing for purposes of sale or resale; or~~

~~(B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer~~

~~as the manufacturer or as a wholesaler, and not as a retailer,~~

~~there shall be no tax; provided that if the wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 237), paragraph (2) shall apply to the wholesaler, jobber, or manufacturer, but the director of taxation shall refund to the wholesaler, jobber, or manufacturer, in the manner provided under section 231-23(c) such amount of tax as the wholesaler, jobber, or manufacturer shall, to the satisfaction of the director, establish to have been paid by the wholesaler, jobber, or manufacturer to the director with respect to property which has been used by the wholesaler, jobber, or manufacturer for the purposes stated in this paragraph;~~

~~(2) If the importer or purchaser is licensed under chapter 237 and is:~~

~~(A) A retailer or other person importing or purchasing for purposes of sale or resale, not exempted by paragraph (1);~~

~~(B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold at retail in this State, in such manner as to result in a further tax on the activity of the manufacturer in selling such products at retail;~~

~~(C) A contractor importing or purchasing material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses;~~

~~(D) A person engaged in a service business or calling as defined in section 237-7, or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, in which the import or purchase of tangible personal property would have qualified as a sale at wholesale as defined in section 237-4(a)(8) had the seller of the property been subject to the tax in chapter 237; or~~

~~(E) A publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials,~~

~~the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase or sale is consummated outside of Hawaii, then one-half of one per cent of the value of such property; and~~

~~(3) In all other cases,~~] is four per cent of the value of the property.

For purposes of this section, tangible personal property is property that is imported by the taxpayer for use in this State, notwithstanding the fact that title to the property, or the risk of loss to the property, passes to the purchaser of the property at a location outside this State."

SECTION 31. 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[~~.~~], unless subject to tax or exempt from tax under chapter B. 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~~] rate 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;~~

~~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~~] is four per cent on the value of the imported or purchased services or contracting."

SECTION 32. 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 of one 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. No county shall conduct an independent audit of sellers registered under the streamlined sales tax agreement. 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 33. Section 237-4, Hawaii Revised Statutes, is repealed.

["~~**§237-4 "Wholesaler", "jobber", defined.**~~ ~~(a) "Wholesaler" or "jobber" applies only to a person making sales at wholesale. Only the following are sales at wholesale:~~

~~(1)~~ ~~Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;~~

~~(2)~~ ~~Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;~~

~~(3)~~ ~~Sales to a licensed producer or cooperative association of materials or commodities that are to be~~

~~incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;~~

~~(4) Sales to a licensed contractor, of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in such finished work or project in such form as to be perceptible to the senses;~~

~~(5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;~~

~~(6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed or seedstock for producing agricultural and aquacultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural and aquacultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);~~

~~(7)~~ ~~Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural and aquacultural products; of seedlings and cuttings for producing nursery plants or aquacultural products; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);~~

~~(8)~~ ~~Sales of tangible personal property:~~

~~(A)~~ ~~To a licensed seller engaged in a service business or calling; provided that:~~

~~(i)~~ ~~The property is not consumed or incidental to the performance of the services;~~

~~(ii)~~ ~~There is a resale of the article at the retail rate of four per cent; and~~

~~(iii)~~ ~~The resale of the article is separately charged or billed by the person rendering the services;~~

~~(B)~~ ~~Where:~~

~~(i)~~ ~~Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling, or upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;~~

~~(ii)~~ ~~The tangible personal property becomes or is used as an identifiable element of the service rendered; and~~

~~(iii)~~ ~~The cost of the tangible personal property does not constitute overhead to the licensed seller;~~

~~the sale shall be subject to section 237-13.3; or~~

~~(C)~~ ~~Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A).~~

~~Subparagraphs (A) and (C) shall be repealed on January 1, 2006;~~

~~(9)~~ ~~Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the~~

~~leasing company for lease to its customers, and are thereafter leased as a service to others;~~

~~(10)~~ ~~Sales of services to a licensed seller engaging in a business or calling whenever:~~

~~(A)~~ ~~Either:~~

~~(i)~~ ~~In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;~~

~~(ii)~~ ~~In the context of a service-to-tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing tangible personal property to be sold;~~

~~(iii)~~ ~~In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor; or~~

~~(iv)~~ ~~In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;~~

~~(B)~~ ~~The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations;~~

~~(C)~~ ~~The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations;~~

~~(D)~~ ~~The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, contractor, or person furnishing transient accommodations for imposition of the tax under this chapter;~~

~~(E)~~ ~~The gross income of the licensed seller is not subject to a deduction under this chapter or chapter 237D; and~~

~~(F) The resale of the service, tangible personal property, contracting, or transient accommodations is subject to the tax imposed under this chapter at the highest tax rate.~~

~~Sales subject to this paragraph shall be subject to section 237-13.3;~~

~~(11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller;~~

~~(12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller;~~

~~(13) Sales of amusements subject to taxation under section 237-13(4) to a licensed seller engaging in a business or calling whenever:~~

~~(A) Either:~~

~~(i) In the context of an amusement-to-service transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;~~

~~(ii) In the context of an amusement-to-tangible personal property transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of selling tangible personal property; or~~

~~(iii) In the context of an amusement-to-amusement transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another amusement in the course of the person's amusement business;~~

~~(B) The benefit of the amusement passes to the customer of the licensed seller as an identifiable element of the other service,~~

~~tangible personal property to be sold, or amusement;~~

~~(C) The cost of the amusement does not constitute overhead to the licensed seller;~~

~~(D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, person furnishing transient accommodations, or person rendering an amusement for imposition of the tax under chapter 237;~~

~~(E) The gross income of the licensed seller is not subject to a deduction under this chapter; and~~

~~(F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter at the highest rate.~~

~~As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge. Sales subject to this paragraph shall be subject to section 237-13.3; and~~

~~(14) Sales by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials.~~

~~(b) If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding paragraph otherwise defining "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a person, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service that buys and maintains at the person's place of business a stock or lines of merchandise that the person distributes; and that the person, through salespersons, advertising, or sales promotion devices, sells to licensed retailers, to institutional or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter.~~"]

SECTION 34. Section 237-5, Hawaii Revised Statutes, is repealed.

["~~**§237-5 "Producer" defined.** "Producer" means any person engaged in the business of raising and producing agricultural products in their natural state, or in producing natural resource products, or engaged in the business of fishing or aquaculture, for sale, or for shipment or transportation out of the State, of the agricultural or aquaculture products in their natural or processed state, or butchered and dressed, or the natural resource products, or fish.~~

~~As used in this section "agricultural products" include floricultural, horticultural, viticultural, forestry, nut, coffee, dairy, livestock, poultry, bee, animal, and any other farm, agronomic, or plantation products.~~"]

SECTION 35. Section 237-13.3, Hawaii Revised Statutes, is repealed.

["~~**§237-13.3 Application of sections 237-4(a)(8), 237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A).** (a) Sections 237-4(a)(8), 237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to the contrary notwithstanding, instead of the tax levied under section 237-13(2)(A) on wholesale sales subject to section 237-4(a)(8)(B), under section 237-13(4)(A) on a wholesaler subject to section 237-4(a)(13), and under section 237-13(6)(A) on a wholesaler subject to section 237-4(a)(10) at one-half of one per cent, during the period January 1, 2000, to December 31, 2005, the tax shall be as follows:~~

~~(1) In calendar year 2000, 3.5 per cent;~~
~~(2) In calendar year 2001, 3.0 per cent;~~
~~(3) In calendar year 2002, 2.5 per cent;~~
~~(4) In calendar year 2003, 2.0 per cent;~~
~~(5) In calendar year 2004, 1.5 per cent;~~
~~(6) In calendar year 2005, 1.0 per cent; and~~
~~(7) In calendar year 2006 and thereafter, the tax shall be 0.5 per cent.~~

~~(b) The department shall have the authority to implement the tax rate changes in subsection (a) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes.~~"]

SECTION 36. Section 237-13.5, Hawaii Revised Statutes, is repealed.

["~~**§237-13.5 Assessment on generated electricity.** Any other provision of the law to the contrary notwithstanding, the levy and assessment of the general excise tax on the gross proceeds from the sale of electric power to a public utility company for resale to the public, shall be made only as a tax on the business of a producer, at the rate assessed producers, under section 237-13(2)(A).~~"]

SECTION 37. Section 237-15, Hawaii Revised Statutes, is repealed.

["~~**§237-15 Technicians.** When technicians supply dentists or physicians with dentures, orthodontic devices, braces, and similar items which have been prepared by the technician in accordance with specifications furnished by the dentist or physician, and such items are to be used by the dentist or physician in the dentist's or physician's professional practice for a particular patient who is to pay the dentist or physician for the same as a part of the dentist's or physician's professional services, the technician shall be taxed as though the technician were a manufacturer selling a product to a licensed retailer, rather than at the rate of four per cent which is generally applied to professions and services.~~"]

SECTION 38. Section 237-29.55, Hawaii Revised Statutes, is repealed.

["~~**[§237-29.55] Exemption for sale of tangible personal property for resale at wholesale.** (a) There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the gross proceeds or gross income arising from the sale of tangible personal property imported to Hawaii from a foreign or domestic source to a licensed taxpayer for subsequent resale for the purpose of wholesale as defined under section 237-4.~~

~~(b) The department, by rule, may provide that a seller may take from the purchaser of imported tangible personal property, a certificate, in a form that the department shall prescribe, certifying that the purchaser of the imported tangible personal property shall resell the imported tangible personal property at wholesale as defined under section 237-4. Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, if the sale in fact is not a sale for the purpose of resale at wholesale, the amount of the additional tax which by reason thereof is imposed upon the seller. The absence of a certificate, unless the sales of the business are exclusively a sale for the purpose of resale at wholesale, in itself, shall give rise to the presumption that the sale is not a sale for the purpose of resale at wholesale.~~"]

SECTION 39. Section 238-4, Hawaii Revised Statutes, is repealed.

["~~**§238-4 Certain property used by producers.** If a licensed producer, or a cooperative association acting under the authority of chapter 421 or 422, in order to sell to such producer, or a licensed person, imports into the State or acquires in the State commodities, materials, items, services, or living things enumerated in section [237-4(a)(3) and (5) to (7)], then section 237-4 shall apply. If section 237-4 applies and the producer is engaged in the sale of the producer's~~

~~products at retail or in any manner other than at wholesale, then the tax upon use of property in the State imposed by section 238-2(2) shall apply the same as in the case of a purchaser who is a licensed retailer. In other such cases no tax shall be imposed under this chapter~~

SECTION 40. There is appropriated out of the general revenues of the State of Hawaii the sum of $, or so much thereof as may be necessary for fiscal year 2006-2007, to carry out the purposes of this part, including the hiring of necessary staff.

The sum appropriated shall be expended by the department of taxation.

SECTION 41. There is appropriated out of the general revenues of the State of Hawaii the sum of $, or so much thereof as may be necessary for fiscal year 2006-2007, for technical assistance and briefings to enable the legislature to carry out its responsibilities under this part.

Technical assistance may include analysis of the fiscal and legal impacts of proposed conformance with the existing general excise tax law and other laws and any other issues that might result from the implementation of a streamlined and sales and use tax. Funds may also be expended for preparation of proposed legislation above and beyond that which could be undertaken by state employees due to the specialized nature of this project. Funds may be further expended in briefings of legislators and any other parties deemed appropriate by the designees of the president of the senate and the speaker of the house of representatives and in any other support activities for this project.

The sum appropriated shall be expended by the office of the auditor for the purposes of this part. The office of the auditor shall secure the services necessary to support the project in as expeditious a manner as possible and without regard to chapter 103D, Hawaii Revised Statutes.

SECTION 42. Notwithstanding the provisions of any law making it unlawful for any person, officer, or employee of the State to make known information imparted by any tax return or permit any tax return to be seen or examined by any person, it shall be lawful to permit a private contractor contracted under section 41 of this Act to inspect any tax return of any taxpayer, or to furnish to the private contractor an abstract of the return or supply the private contractor with information concerning any item contained in the return or disclosed by the report of any investigation of the return or of the subject matter of the return only for the purposes of conforming the State's general excise and use taxes to be operative with the Streamlined Sales Tax Project's Model Agreement and Act.

SECTION 43. In codifying the new chapters and sections added to the Hawaii Revised Statutes by this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new chapters and sections in this Act."

SECTION 3. H.B. No. 2419, S.D. 2, is amended by renumbering sections 13 and 14 as sections 44 and 45, respectively, and designating the newly renumbered sections 44 and 45 sections as Part III.

SECTION 4. H.B. No. 2419, S.D. 2, is amended by amending the newly renumbered section 45 to read as follows:

"SECTION 45. This Act shall take effect on July 1, 2050, and shall be repealed on June 30, 2011; provided that sections 36-27, 36-30, 237-8.6(c), 237-31, and 238-2.6, Hawaii Revised Statutes, shall be reenacted in the form in which they existed on the day before the effective date of this Act[~~.~~]; provided that the amendment made by section 32 of this Act to section 238-2.6(a), Hawaii Revised Statutes, shall not be repealed on June 30, 2011."

Offered by: Carol Fukunaga (X) **Carried**

( ) **Failed to Carry**

( ) **Withdrawn**