

GOV. MSG. NO. 731

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

May 21, 2008

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 21, 2008, the following bill was signed into law:

HB1755 HD1 SD1

A BILL FOR AN ACT RELATING TO THE GENERAL  
EXCISE TAX.  
(ACT 89)

Sincerely,

LINDA LINGLE

---

---

# A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 237-4, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) "Wholesaler" or "jobber" applies only to a person  
4 making sales at wholesale. Only the following are sales at  
5 wholesale:

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

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



- 1           (3) Sales to a licensed producer or cooperative  
2           association of materials or commodities that are to be  
3           incorporated by the producer or by the cooperative  
4           association into a finished or saleable product that  
5           is to be sold and not otherwise used by the producer  
6           or cooperative association, including specifically  
7           materials or commodities expended as essential to the  
8           planting, growth, nurturing, and production of  
9           commodities that are sold by the producer or by the  
10          cooperative association;
- 11          (4) Sales to a licensed contractor, of materials or  
12          commodities that are to be incorporated by the  
13          contractor into the finished work or project required  
14          by the contract and that will remain in such finished  
15          work or project in such form as to be perceptible to  
16          the senses;
- 17          (5) Sales to a licensed producer, or to a cooperative  
18          association described in section 237-23(a)(7) for sale  
19          to a licensed producer, or to a licensed person  
20          operating a feed lot, of poultry or animal feed,  
21          hatching eggs, semen, replacement stock, breeding  
22          services for the purpose of raising or producing



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

20 (6) Sales to a licensed producer, or to a cooperative  
21 association described in section 237-23(a)(7) for sale  
22 to the producer, of seed or seedstock for producing



1 agricultural and aquacultural products, or bait for  
2 catching fish (including the catching of bait for  
3 catching fish), which agricultural and aquacultural  
4 products or fish are to be disposed of as described in  
5 section 237-5 or to be incorporated in a manufactured  
6 product as described in paragraph (2);

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

21 (8) Sales of tangible personal property:



- 1           (A) To a licensed seller engaged in a service
- 2                   business or calling; provided that:
- 3                   (i) The property is not consumed or incidental
- 4                           to the performance of the services;
- 5                   (ii) There is a resale of the article at the
- 6                           retail rate of four per cent; and
- 7                   (iii) The resale of the article is separately
- 8                           charged or billed by the person rendering
- 9                           the services;
- 10          (B) Where:
- 11                   (i) Tangible personal property is sold upon the
- 12                           order or request of a licensed seller for
- 13                           the purpose of rendering a service in the
- 14                           course of the person's service business or
- 15                           calling, or upon the order or request of a
- 16                           person subject to tax under section 237D-2
- 17                           for the purpose of furnishing transient
- 18                           accommodations;
- 19                   (ii) The tangible personal property becomes or is
- 20                           used as an identifiable element of the
- 21                           service rendered; and



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

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

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

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

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

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

16 (A) Either:

17 (i) In the context of a service-to-service  
18 transaction, a service is rendered upon the  
19 order or request of a licensed seller for  
20 the purpose of rendering another service in  
21 the course of the seller's service business  
22 or calling[+], including a dealer's



1                   furnishing of goods or services to the  
2                   purchaser of tangible personal property to  
3                   fulfill a warranty obligation of the  
4                   manufacturer of the property;

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

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

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



- 1 (B) The benefit of the service passes to the customer  
2 of the licensed seller, licensed contractor, or  
3 person furnishing transient accommodations as an  
4 identifiable element of the other service or  
5 property to be sold, the contracting, or the  
6 furnishing of transient accommodations;
- 7 (C) The cost of the service does not constitute  
8 overhead to the licensed seller, licensed  
9 contractor, or person furnishing transient  
10 accommodations;
- 11 (D) The gross income of the licensed seller is not  
12 divided between the licensed seller and another  
13 licensed seller, contractor, or person furnishing  
14 transient accommodations for imposition of the  
15 tax under this chapter;
- 16 (E) The gross income of the licensed seller is not  
17 subject to a deduction under this chapter or  
18 chapter 237D; and
- 19 (F) The resale of the service, tangible personal  
20 property, contracting, or transient  
21 accommodations is subject to the tax imposed  
22 under this chapter at the highest tax rate.



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

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

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



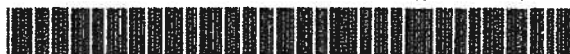
1           (13) Sales of amusements subject to taxation under section  
2                   237-13(4) to a licensed seller engaging in a business  
3                   or calling whenever:

4           (A) Either:

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

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

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



- 1 (B) The benefit of the amusement passes to the  
2 customer of the licensed seller as an  
3 identifiable element of the other service,  
4 tangible personal property to be sold, or  
5 amusement;
- 6 (C) The cost of the amusement does not constitute  
7 overhead to the licensed seller;
- 8 (D) The gross income of the licensed seller is not  
9 divided between the licensed seller and another  
10 licensed seller, person furnishing transient  
11 accommodations, or person rendering an amusement  
12 for imposition of the tax under chapter 237;
- 13 (E) The gross income of the licensed seller is not  
14 subject to a deduction under this chapter; and
- 15 (F) The resale of the service, tangible personal  
16 property, or amusement is subject to the tax  
17 imposed under this chapter at the highest rate.

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

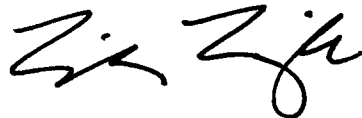


1       (14) Sales by a printer to a publisher of magazines or  
2           similar printed materials containing advertisements,  
3           when the publisher is under contract with the  
4           advertisers to distribute a minimum number of  
5           magazines or similar printed materials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

9       SECTION 2. Statutory material to be repealed is bracketed  
10   and stricken. New statutory material is underscored.

11       SECTION 3. This Act shall take effect on July 1, 2008.

APPROVED this 21 day of MAY, 2008



GOVERNOR OF THE STATE OF HAWAII

