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## A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The purpose of this Act is to adopt changes to  
2 Hawaii's tax law that will allow Hawaii to participate in the  
3 streamlined sales and use tax agreement. By enacting the Hawaii  
4 Simplified Sales and Use Tax Administration Act, Act 173,  
5 Session Laws of Hawaii 2003, the State of Hawaii became a  
6 participating member of the National Streamlined Sales Tax  
7 Project.

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



1 policy support and guidance. This Act is a culmination of these  
2 efforts.

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

- 11 (1) Moving the one-half of one per cent tax rate for  
12 wholesale transactions to a new chapter;
- 13 (2) Adding a new chapter on the taxation of imports of  
14 property, services, and contracting;
- 15 (3) Moving the 0.15 per cent tax on insurance producers to  
16 a new chapter; and
- 17 (4) Eliminating the tax on businesses owned by disabled  
18 persons.

19 This Act also provides for destination-based sourcing and  
20 amnesty.



1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 TAX ON WHOLESALERS, SERVICE BUSINESSES, AND CONTRACTORS

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

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

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

14 (2) Sales to a licensed manufacturer of materials or  
15 commodities that are to be incorporated by the  
16 manufacturer into a finished or saleable product  
17 (including the container or package in which the  
18 product is contained) during the course of its  
19 preservation, manufacture, or processing, including  
20 preparation for market, and that will remain in a  
21 finished or saleable product in a form as to be  
22 perceptible to the senses, which finished or saleable



1 product is to be sold and not otherwise used by the  
2 manufacturer;

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

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

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



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



- 1           (6) Sales to a licensed producer, or to a cooperative  
2           association described in section 237-23(a)(7) for sale  
3           to the producer, of seed or seedstock for producing  
4           agricultural and aquacultural products, or bait for  
5           catching fish (including the catching of bait for  
6           catching fish), which agricultural and aquacultural  
7           products or fish are to be disposed of as described in  
8           section A-3 or to be incorporated in a manufactured  
9           product as described in paragraph (2);
- 10          (7) Sales to a licensed producer, or to a cooperative  
11          association described in section 237-23(a)(7) for sale  
12          to a licensed producer; of polypropylene shade cloth;  
13          of polyfilm; of polyethylene film; of cartons and  
14          other containers, wrappers, and sacks, and binders to  
15          be used for packaging eggs, vegetables, fruits, and  
16          other agricultural and aquacultural products; of  
17          seedlings and cuttings for producing nursery plants or  
18          aquacultural products; or of chick containers; which  
19          cartons and other containers, wrappers, and sacks,  
20          binders, seedlings, cuttings, and containers are to be  
21          used as described in section A-3, or to be



1 incorporated in a manufactured product as described in  
2 paragraph (2);

3 (8) Sales of tangible personal property where:

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

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

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

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

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

22 (A) Either:



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

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

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

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



1                   for the purpose of furnishing transient  
2                   accommodations;

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

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

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

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

21          (F)   The resale of the service, tangible personal  
22                  property, contracting, or transient



1 accommodations is subject to the tax imposed  
2 under this chapter or chapter 237;

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           A-6(a)(3) 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 or
- 15          chapter 237; and
- 16          (F) The resale of the service, tangible personal
- 17          property, or amusement is subject to the tax
- 18          imposed under this chapter or chapter 237. As
- 19          used in this paragraph, "amusement" means
- 20          entertainment provided as part of a show for
- 21          which there is an admission charge; 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           (b) If the use tax law under chapter B is finally held by  
10          a court of competent jurisdiction to be unconstitutional or  
11          invalid insofar as it purports to tax the use or consumption of  
12          tangible personal property imported into the State in interstate  
13          or foreign commerce, or both, wholesalers and jobbers shall be  
14          taxed thereafter under this chapter in accordance with the  
15          following definition (which shall supersede the preceding  
16          subsection otherwise defining "wholesaler" or "jobber"):  
17          "Wholesaler" or "jobber" means a person, or a definitely  
18          organized division thereof, definitely organized to render and  
19          rendering a general distribution service that buys and maintains  
20          at the person's place of business a stock or lines of  
21          merchandise that the person distributes; and that the person,  
22          through salespersons, advertising, or sales promotion devices,



1 sells to licensed retailers, to institutional, or licensed  
2 commercial or industrial users, in wholesale quantities and at  
3 wholesale rates. A corporation deemed not to be carrying on a  
4 trade or business in this State under section 235-6 shall  
5 nevertheless be deemed to be a wholesaler and shall be subject  
6 to the tax imposed by this chapter.

7       **SA-3 "Producer" defined.** (a) "Producer" means any person  
8 engaged in the business of raising and producing agricultural  
9 products in their natural state, or in producing natural  
10 resource products, or engaged in the business of fishing or  
11 aquaculture, for sale, or for shipment or transportation out of  
12 the State, of the agricultural or aquaculture products in their  
13 natural or processed state, or butchered and dressed, or the  
14 natural resource products, or fish.

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

19       **SA-4 Definitions; "contractor", "service business or**  
20 **calling".** The definitions contained in sections 237-6 and 237-7  
21 shall be applicable for this chapter.



1           **SA-5 Administrative provisions.** Sections 237-8, 237-9,  
2 237-9.5, 237-11, and 237-12 shall be applicable for this  
3 chapter.

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

10           (1) Tax on manufacturers:

11           (A) Upon every person engaging or continuing within  
12           the State in the business of manufacturing,  
13           including compounding, canning, preserving,  
14           packing, printing, publishing, milling,  
15           processing, refining, or preparing for sale,  
16           profit, or commercial use, either directly or  
17           through the activity of others, in whole or in  
18           part, any article or articles, substance or  
19           substances, commodity or commodities, the amount  
20           of the tax to be equal to the value of the  
21           articles, substances, or commodities,  
22           manufactured, compounded, canned, preserved,



1 packed, printed, milled, processed, refined, or  
2 prepared for sale, as shown by the gross proceeds  
3 derived from the sale thereof by the manufacturer  
4 or person compounding, preparing, or printing  
5 them, multiplied by one-half of one per cent;

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

10 (C) If any person liable for the tax on manufacturers  
11 ships or transports the person's product, or any  
12 part thereof, out of the State, whether in a  
13 finished or unfinished condition, or sells the  
14 same for delivery to points outside the State  
15 (for example, consigned to a mainland purchaser  
16 via common carrier f.o.b. Honolulu), the value of  
17 the products in the condition or form in which  
18 they exist immediately before entering interstate  
19 or foreign commerce, determined as hereinafter  
20 provided, shall be the basis for the assessment  
21 of the tax imposed by this paragraph. This tax  
22 shall be due and payable as of the date of entry



1 of the products into interstate or foreign  
2 commerce, whether the products are then sold or  
3 not. The department shall determine the basis  
4 for assessment, as provided by this paragraph, as  
5 follows:

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

16 (ii) If the products have not been sold at the  
17 time of their entry into interstate or  
18 foreign commerce, and in cases governed by  
19 clause (i) in which the products are sold  
20 under circumstances such that the gross  
21 proceeds of sale are not indicative of the  
22 true value of the products, the value of the



1 products constituting the basis for  
2 assessment shall correspond as nearly as  
3 possible to the gross proceeds of sales for  
4 delivery outside the State, adjusted as  
5 provided in clause (i), or if sufficient  
6 data are not available, sales in the State,  
7 of similar products of like quality and  
8 character and in similar quantities, made by  
9 the taxpayer (unless not indicative of the  
10 true value) or by others. Sales outside the  
11 State, adjusted as provided in clause (i),  
12 may be considered when they constitute the  
13 best available data. The department of  
14 taxation shall prescribe uniform and  
15 equitable rules for ascertaining the values;  
16 (iii) At the election of the taxpayer and with the  
17 approval of the department of taxation, the  
18 taxpayer may make the taxpayer's returns  
19 under clause (i) even though the products  
20 have not been sold at the time of their  
21 entry into interstate or foreign commerce;  
22 and



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

7       (2) Tax on producers: Upon every person engaging or  
8       continuing within this State in the business of a  
9       producer, the tax shall be equal to one-half of one  
10      per cent of the gross proceeds of sales of the  
11      business, or the value of the products, for sale, if  
12      sold for delivery outside the State or shipped or  
13      transported out of the State, and the value of the  
14      products shall be determined in the same manner as the  
15      value of manufactured products covered in the cases  
16      under paragraph (1) (C). No manufacturer or producer,  
17      engaged in the business of manufacturing or producing  
18      in the State and selling the manufacturer's or  
19      producer's products for delivery outside of the State  
20      (for example, consigned to a mainland purchaser via  
21      common carrier f.o.b. Honolulu), shall be required to  
22      pay the tax imposed in this chapter for the privilege



1 of so selling the products, and the value or gross  
2 proceeds of sales of the products shall be included  
3 only in determining the measure of the tax imposed  
4 upon the manufacturer or producer;

5 (3) Tax upon theaters, amusements, radio broadcasting  
6 stations, etc. Upon every person engaging or  
7 continuing within the State in the business of  
8 operating a theater, opera house, moving picture show,  
9 vaudeville, amusement park, dance hall, skating rink,  
10 radio broadcasting station, or any other place at  
11 which amusements are offered to the public, at  
12 wholesale, the tax shall be one-half of one per cent  
13 of the gross proceeds of the business;

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

20 (5) Tax on sales by wholesalers:  
21 (A) Upon every person who is engaged in the business  
22 of a wholesaler or jobber as under section A-2 of



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

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



1 (b) When a manufacturer or producer, engaged in business  
2 in the State, also is engaged in selling the manufacturer's or  
3 producer's products in the State at wholesale taxed under this  
4 chapter, retail, or in any other manner, the tax for the  
5 privilege of engaging in the business of selling the products in  
6 the State shall apply to the manufacturer or producer as well as  
7 the tax for the privilege of manufacturing or producing in the  
8 State, and the manufacturer or producer shall make the returns  
9 of the gross proceeds of the wholesale, retail, or other sales  
10 required for the privilege of selling in the State, as well as  
11 making the returns of the value or gross proceeds of sales of  
12 the products required for the privilege of manufacturing or  
13 producing in the State. The manufacturer or producer shall pay  
14 the tax imposed in this chapter for the privilege of selling its  
15 products in the State, and the value or gross proceeds of sales  
16 of the products, thus subjected to tax, may be deducted insofar  
17 as duplicated as to the same products by the measure of the tax  
18 upon the manufacturer or producer for the privilege of  
19 manufacturing or producing in the State under this chapter;  
20 provided that no producer of agricultural products who sells the  
21 products to a purchaser who will process the products outside  
22 the State shall be required to pay the tax imposed in this



1 chapter for the privilege of producing or selling those  
2 products.

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

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

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

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

21           (1) Any licensed seller who furnishes a certificate shall  
22           be obligated to pay to the person rendering the



1           amusement, upon demand, the amount of additional tax  
 2           that is imposed upon the seller whenever the sale is  
 3           not at wholesale; and

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

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

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

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

21          **SA-8 Tax on receipts of sugar benefit payments.** Upon the  
 22          amounts received from the United States government by any



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

15 **§A-9 Segregation of gross income, etc., on records and in**  
16 **returns.** The imposition of taxes and the application of tax  
17 rates do not depend upon the business in which the taxpayer is  
18 primarily engaged. One business may be subject to two or more  
19 tax rates under this chapter and chapter 237. If a business is  
20 within the purview of two or more of the paragraphs of section  
21 237-13 or other provisions of this chapter or chapter 237, all  
22 of them apply, each provision being applicable to the



1 appropriate item of gross income, gross proceeds of sales, or  
2 value of products. However, any person engaging or continuing  
3 in a business having gross income, gross proceeds of sales, and  
4 value of products, or any of these as the case may be, taxable  
5 at different rates, shall be subject to taxation upon the  
6 aggregate amount of the gross income, gross proceeds of sales,  
7 and value of products of the business at the highest rate  
8 applicable to any part of the aggregate, unless the person shall  
9 segregate the parts taxable at different rates upon the person's  
10 records and in the person's returns, and shall sustain the  
11 burden of proving that the segregation was correctly made.

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

18 **SA-11 Technicians.** When technicians supply dentists or  
19 physicians with dentures, orthodontic devices, braces, and  
20 similar items which have been prepared by the technician in  
21 accordance with specifications furnished by the dentist or  
22 physician, and these items are to be used by the dentist or



1 physician in the dentist's or physician's professional practice  
2 for a particular patient who is to pay the dentist or physician  
3 for the same as a part of the dentist's or physician's  
4 professional services, the technician shall be taxed as though  
5 the technician were a manufacturer selling a product to a  
6 licensed retailer, rather than pursuant to chapter 237 at the  
7 rate of four per cent that is generally applied to professions  
8 and services.

9       **§A-12 Activity ordered by others.** (a) Where, through the  
10 activity of a person taxable under section 237-13(5), a product  
11 has been milled, processed, or otherwise manufactured upon the  
12 order of another taxpayer who is a manufacturer taxable upon the  
13 value of the entire manufactured products, which consists in  
14 part of the value of the services taxable under section  
15 237-13(5), so much gross income as is derived from the rendering  
16 of the services shall be subjected to tax on the person  
17 rendering the services at the rate of one-half of one per cent,  
18 and the value of the entire product shall be included in the  
19 measure of the tax imposed on the other taxpayer as elsewhere  
20 provided.

21       (b) Where, through the activity of a person taxable under  
22 section 237-13(5), there have been rendered to a cane planter



1 services consisting in the harvesting or hauling of the cane, or  
2 consisting in road maintenance, under a contract between the  
3 person rendering the services and the cane planter, covering the  
4 services and also the milling of the sugar, the services of  
5 harvesting and hauling the cane and road maintenance shall be  
6 treated the same as the service of milling the cane, as provided  
7 by subsection (a), and the value of the entire product,  
8 manufactured or sold for the cane planter under the contract,  
9 shall be included in the measure of the tax imposed on the  
10 persons elsewhere provided.

11 **§A-13 Sales of telecommunications services through prepaid**  
12 **telephone calling service.** (a) For the purposes of this  
13 section, "prepaid telephone calling service" means the right to  
14 exclusively purchase telecommunication services, paid for in  
15 advance, that enables the origination of calls using an access  
16 number or authorization code, whether manually or electronically  
17 dialed.

18 (b) If the sale or recharge of a prepaid telephone calling  
19 service does not take place at the vendor's place of business,  
20 it shall be conclusively determined to take place at the  
21 customer's shipping address; or if there is no item shipped,  
22 then it shall be the customer's billing address.



1 (c) When a person licensed under this chapter sells  
2 prepaid telephone calling services to a licensed retail  
3 merchant, jobber, or other licensed seller for purposes of  
4 resale, the person shall be taxed as a wholesaler selling  
5 tangible personal property.

6 (d) For purposes of prepaid telephone calling services  
7 only, all such services shall be taxed under this section and  
8 shall be in lieu of taxation under chapter 239.

9 **SA-14 Apportionment.** In the case of a tax upon the  
10 production of property in the State, the apportionment shall be  
11 determined as in the case of the tax on manufacturers provided  
12 in section A-6(a)(1).

13 **SA-15 Conformity to constitution.** Section 237-22 shall  
14 apply to this chapter.

15 **SA-16 Exemptions.** The exemptions provided in section  
16 237-23, 237-26, 237-27.5, 237-29, 237-29.5, and 237-29.53 shall  
17 apply to this chapter.

18 **SA-17 Amounts not taxable.** This chapter shall not apply  
19 to the following amounts:

20 (1) The amounts of taxes on cigarettes and tobacco  
21 products imposed by chapter 245 on wholesalers or



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

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

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

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

21 (A) The producer is an independent cane farmer, so  
22 classed by the Secretary of Agriculture under the



1                    Sugar Act of 1948 (61 Stat. 922, Chapter 519) as  
2                    the Act may be amended or supplemented;

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

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

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

16                    **§A-18 Exemption for sale of tangible personal property for**

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



1 (b) The department of taxation, by rule, may provide that  
2 a seller may take from the purchaser of imported tangible  
3 personal property, a certificate in a form that the department  
4 shall prescribe, certifying that the purchaser of the imported  
5 tangible personal property shall resell the imported tangible  
6 personal property at wholesale as defined under section A-2.  
7 Any purchaser who furnishes a certificate shall be obligated to  
8 pay to the seller, upon demand, if the sale in fact is not a  
9 sale for the purpose of resale at wholesale, the amount of the  
10 additional tax which by reason thereof is imposed upon the  
11 seller. The absence of a certificate, unless the sales of the  
12 business are exclusively a sale for the purpose of resale at  
13 wholesale, in itself, shall give rise to the presumption that  
14 the sale is not a sale for the purpose of resale at wholesale.

15 **SA-19 Administrative provisions.** Sections 237-20, 237-21,  
16 237-27, 237-30, 237-31, 237-32, 237-33, 237-33.5, 237-34,  
17 237-35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-42,  
18 237-43, 237-46, 237-47, 237-49, and 237-A to 237-F shall apply  
19 to this chapter."

20 SECTION 3. The Hawaii Revised Statutes is amended by  
21 adding a new chapter to be appropriately designated and to read  
22 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



1 form as to be perceptible to the senses, and the  
2 finished or saleable product is to be sold in a  
3 manner as to result in a further tax on the  
4 activity of the manufacturer as the manufacturer  
5 or as a wholesaler, and not as a retailer;  
6 there shall be no tax; provided that if the  
7 wholesaler, jobber, or manufacturer is also engaged in  
8 business as a retailer (so classed under chapter 237),  
9 paragraph (2) shall apply to the wholesaler, jobber,  
10 or manufacturer, but the director of taxation shall  
11 refund to the wholesaler, jobber, or manufacturer, in  
12 the manner provided under section 231-23(c) the amount  
13 of tax as the wholesaler, jobber, or manufacturer  
14 shall establish, to the satisfaction of the director,  
15 to have been paid by the wholesaler, jobber, or  
16 manufacturer to the director with respect to property  
17 that has been used by the wholesaler, jobber, or  
18 manufacturer for the purposes stated in this  
19 paragraph;

20 (2) If the importer or purchaser is licensed under chapter  
21 237 and is:



- 1           (A) A retailer or other person importing or  
2           purchasing for purposes of sale or resale, not  
3           exempted by paragraph (1);
- 4           (B) A manufacturer importing or purchasing material  
5           or commodities that are to be incorporated by the  
6           manufacturer into a finished or saleable product  
7           (including the container or package in which the  
8           product is contained) wherein it will remain in a  
9           form as to be perceptible to the senses, and the  
10          finished or saleable product is to be sold at  
11          retail in this State, in a manner as to result in  
12          a further tax on the activity of the manufacturer  
13          in selling the products at retail;
- 14          (C) A contractor importing or purchasing material or  
15          commodities that are to be incorporated by the  
16          contractor into the finished work or project  
17          required by the contract and that will remain in  
18          the finished work or project in a form as to be  
19          perceptible to the senses;
- 20          (D) A person engaged in a service business or calling  
21          as defined in section 237-7, or a person  
22          furnishing transient accommodations subject to



1 the tax imposed by section 237D-2, in which the  
2 import or purchase of tangible personal property  
3 would have qualified as a sale at wholesale as  
4 defined in section A-2(a)(8) had the seller of  
5 the property been subject to the tax in chapter  
6 237; or

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

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



1           **§B-3 Imposition of tax on imported services or**  
2 **contracting; exemptions.** There is hereby levied an excise tax  
3 on the value of services or contracting as defined in section  
4 237-6 that are performed by an unlicensed seller at a point  
5 outside the State and imported or purchased for use in this  
6 State. The tax imposed by this chapter shall accrue when the  
7 service or contracting as defined in section 237-6 is received  
8 by the importer or purchaser and becomes subject to the taxing  
9 jurisdiction of the State. The rates of the tax hereby imposed  
10 and the exemptions from the tax are as follows:

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

13           (A) Engaged in a service business or calling in which  
14           the imported or purchased services or contracting  
15           become identifiable elements, excluding overhead,  
16           of the services rendered by the importer or  
17           purchaser, and the gross income of the importer  
18           or purchaser is subject to the tax imposed under  
19           chapter A on services at the rate of one-half of  
20           one per cent; or

21           (B) A manufacturer importing or purchasing services  
22           or contracting that become identifiable elements,



1           excluding overhead, of a finished or saleable  
2           product (including the container or package in  
3           which the product is contained) and the finished  
4           or saleable product is to be sold in a manner  
5           that results in a further tax under chapter A on  
6           the manufacturer as a wholesaler, and not a  
7           retailer;

8           there shall be no tax imposed on the value of the  
9           imported or purchased services or contracting;  
10          provided that if the manufacturer is also engaged in  
11          business as a retailer as classified under chapter  
12          237, paragraph (2) shall apply to the manufacturer,  
13          but the director of taxation shall refund to the  
14          manufacturer, in the manner provided under section  
15          231-23(c), that amount of tax that the manufacturer,  
16          to the satisfaction of the director, shall establish  
17          to have been paid by the manufacturer to the director  
18          with respect to services that have been used by the  
19          manufacturer for the purposes stated in this  
20          paragraph;

21          (2) If the importer or purchaser is a person licensed  
22          under chapter 237 and is:



1 (A) Engaged in a service business or calling in which  
2 the imported or purchased services or contracting  
3 become identifiable elements, excluding overhead,  
4 of the services rendered by the importer or  
5 purchaser, and the gross income from those  
6 services when sold by the importer or purchaser  
7 is subject to the tax imposed under chapter 237;

8 (B) A manufacturer importing or purchasing services  
9 or contracting that become identifiable elements,  
10 excluding overhead, of the finished or saleable  
11 manufactured product (including the container or  
12 package in which the product is contained) and  
13 the finished or saleable product is to be sold in  
14 a manner that results in a further tax under  
15 chapter 237 on the activity of the manufacturer  
16 as a retailer; or

17 (C) A contractor importing or purchasing services or  
18 contracting that become identifiable elements,  
19 excluding overhead, of the finished work or  
20 project required under the contract, and where  
21 the gross proceeds derived by the contractor are

1                   subject to the tax under section 237-13(2) as a  
2                   contractor;

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

5           **SB-4 Application of tax, etc.** Section 238-3 shall apply  
6 to this chapter.

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

20           **SB-6 Administration.** Sections 238-5, 238-6, 238-7, 238-8,  
21 238-9, 238-9.5, 238-10, 238-11, 238-13, 238-14 and 238-16 shall  
22 apply to this chapter."



1 SECTION 4. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 INSURANCE PRODUCER'S TAX

6 §C-1 Definitions. The definitions contained in sections  
7 237-1, 237-2, and 237-3 shall apply to this chapter.

8 §C-2 Tax on insurance producers. Upon every person  
9 engaged as a licensed producer pursuant to chapter 431, there is  
10 hereby levied and shall be assessed and collected a tax equal to  
11 0.15 per cent of the commissions due to that activity.

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

18 §C-4 Administrative provisions. Sections 237-8, 237-9,  
19 237-9.5, 237-11, 237-12, 237-30, 237-31, 237-32, 237-33,  
20 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39,  
21 237-40, 237-41, 237-42, 237-43, 237-46, 237-47, 237-49 and 237-A  
22 to 237-G shall apply to this chapter."



1 SECTION 5. Chapter 46, Hawaii Revised Statutes, is amended  
2 by adding a new section to be appropriately designated and to  
3 read as follows:

4 **"§46- County compliance with the streamlined sales and**  
5 **use tax agreement.** The counties shall not adopt any ordinance  
6 or interpret any ordinance in such a manner that violates the  
7 streamlined sales and use tax agreement established by the  
8 Streamlined Sales Tax Governing Board, Incorporated, and adopted  
9 pursuant to chapter 255D."

10 SECTION 6. Chapter 237, Hawaii Revised Statutes, is  
11 amended by adding six new sections to be appropriately  
12 designated and to read as follows:

13 **"§237-A General sourcing rules.**

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

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

19 (B) When the product is not received by the purchaser  
20 at a business location of the seller, the sale is  
21 sourced to the location where receipt by the  
22 purchaser (or the purchaser's donee, designated



1                   as such by the purchaser) occurs, including the  
2                   location indicated by instructions for delivery  
3                   to the purchaser (or donee), known to the seller;

4           (C)   When subparagraphs (A) and (B) do not apply, the  
5                   sale is sourced to the location indicated by an  
6                   address for the purchaser that is available from  
7                   the business records of the seller that are  
8                   maintained in the ordinary course of the seller's  
9                   business when use of this address does not  
10                  constitute bad faith;

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

19           (E)   When none of the previous rules of subparagraph  
20                   (A), (B), (C), or (D) apply, including the  
21                   circumstance in which the seller is without  
22                   sufficient information to apply the previous



1                   rules, then the location shall be determined by  
2                   the address from which tangible personal property  
3                   was shipped, from which the digital good or the  
4                   computer software delivered electronically was  
5                   first available for transmission by the seller,  
6                   or from which the service was provided  
7                   (disregarding for these purposes any location  
8                   that merely provided the digital transfer of the  
9                   product sold);

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

13           (A) For a lease or rental that requires recurring  
14           periodic payments, the first periodic payment is  
15           sourced the same as a retail sale in accordance  
16           with paragraph (1). Periodic payments made  
17           subsequent to the first payment are sourced to  
18           the primary property location for each period  
19           covered by the payment. The primary property  
20           location shall be as indicated by an address for  
21           the property provided by the lessee that is  
22           available to the lessor from its records



1 maintained in the ordinary course of business,  
 2 when use of this address does not constitute bad  
 3 faith. The property location shall not be  
 4 altered by intermittent use at different  
 5 locations, such as use of business property that  
 6 accompanies employees on business trips and  
 7 service calls; or

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

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

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

20 (A) For a lease or rental that requires recurring  
 21 periodic payments, each periodic payment is  
 22 sourced to the primary property location. The



1           primary property location shall be as indicated  
2           by an address for the property provided by the  
3           lessee that is available to the lessor from its  
4           records maintained in the ordinary course of  
5           business, when use of this address does not  
6           constitute bad faith. This location shall not be  
7           altered by intermittent use at different  
8           locations; or

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

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

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



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

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

8           (i) Registered through the international  
9           registration plan; and

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

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



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

4            **§237-B General sourcing definitions.** For the purposes of  
5 section 237-A(1), the terms "receive" and "receipt" mean:

- 6            (1) Taking possession of tangible personal property;
- 7            (2) Making first use of services; or
- 8            (3) Taking possession or making first use of digital  
9            goods, whichever comes first.

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

12           **§237-C Telecommunications sourcing rule.** (a) Except for  
13 the defined telecommunications services in subsection (c), the  
14 sale of telecommunications service sold on a call-by-call basis  
15 shall be sourced to:

- 16           (1) Each level of taxing jurisdiction where the call  
17           originates and terminates in that jurisdiction; or
- 18           (2) Each level of taxing jurisdiction where the call  
19           either originates or terminates and in which the  
20           service address is also located.

21           (b) Except for the defined telecommunications services in  
22 subsection (c), a sale of telecommunications service sold on a



1 basis other than a call-by-call basis, is sourced to the  
2 customer's place of primary use.

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

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

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

14 (A) The seller's telecommunications system; or

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

18 (3) A sale of prepaid calling service or a sale of a  
19 prepaid wireless calling service is sourced in  
20 accordance with section 237-A; provided that in the  
21 case of a sale of prepaid wireless calling service,  
22 the rule provided in section 237-A(1)(E) shall include



1           as an option the location associated with the mobile  
2           telephone number; or

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

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

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

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

21          Service for segments of a channel located in more than  
22          one jurisdiction or levels of jurisdiction and which



1 segments are not separately billed is sourced in each  
2 jurisdiction based on the percentage determined by  
3 dividing the number of customer channel termination  
4 points in the jurisdiction by the total number of  
5 customer channel termination points.

6 **§237-D Telecommunications sourcing definitions.** For the  
7 purpose of section 237-C, the following definitions shall apply:

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

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

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

18 "Customer":

19 (1) Means the person or entity that contracts with the  
20 seller of telecommunications services. If the end  
21 user of telecommunications services is not the  
22 contracting party, the end user of the



1           telecommunications service is the customer of the  
2           telecommunications service, but this sentence only  
3           applies for the purpose of sourcing sales of  
4           telecommunications services under section 237-C;

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

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

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

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

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



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

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

18       "Prepaid calling service" means the right to access  
19 exclusively telecommunications services, which must be paid for  
20 in advance and that enables the origination of calls using an  
21 access number or authorization code, whether manually or  
22 electronically dialed, and that is sold in predetermined units



1 or dollars of which the number declines with use in a known  
2 amount.

3 "Prepaid wireless calling service" means a  
4 telecommunications service that provides the right to utilize  
5 mobile wireless service as well as other non-telecommunications  
6 services, including the download of digital products delivered  
7 electronically, content and ancillary services, which must be  
8 paid for in advance that is sold in predetermined units or  
9 dollars of which the number declines with use in a known amount.

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

18 "Service address" means:

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



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

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

11       **§237-E Deduction for bad debts.** (a) A seller shall be  
12       allowed a deduction from taxable sales for bad debts. A seller  
13       may deduct the amount of bad debts from the seller's gross  
14       sales, rentals, or services used for the computation of the tax.  
15       The amount of gross sales, rentals, or services deducted shall  
16       be charged off as uncollectible on the books and records of the  
17       seller at the time the debt becomes worthless and deducted on  
18       the return for the period during which the bad debt is written  
19       off as uncollectible in the claimant's books and records and  
20       shall be eligible to be deducted for federal income tax  
21       purposes.



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

8       If a consumer or other person pays all or part of a bad  
9 debt with respect to which a seller claimed a deduction under  
10 this section, the seller is liable for the amount of taxes  
11 deducted in connection with that portion of the debt for which  
12 payment is received and shall remit these taxes in the seller's  
13 next payment to the department. Any payments made on a bad debt  
14 shall be applied proportionally first to the taxable price of  
15 the property and the tax on the property and second to any  
16 interest, service, or other charge.

17       (b) Any claim for a bad debt deduction under this section  
18 shall be supported by evidence required by the department. The  
19 department shall review any change in the rate of taxation  
20 applicable to any taxable sales, rentals, or services by a  
21 seller claiming a deduction pursuant to this section and shall  
22 ensure that the deduction on any bad debt does not result in the



1 seller claiming the deduction recovering any more or less than  
2 the taxes imposed on the sale, rental, or service that  
3 constitutes the bad debt.

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

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

15 (e) As used in this section, "bad debt" means any portion  
16 of a debt resulting from a seller's collection of the use tax  
17 under the streamlined sales and use tax administration act on  
18 the purchase of tangible personal property or services that is  
19 not otherwise deductible or excludable and that is eligible to  
20 be claimed, or could be eligible to be claimed if the seller  
21 kept accounts on an accrual basis, as a deduction pursuant to



1 section 166 (with respect to bad debts) of the Internal Revenue  
2 Code of 1986. A bad debt does not include any of the following:

- 3 (1) Interest, finance charge, or use tax on the purchase  
4 price;
- 5 (2) Uncollectible amounts on property that remains in the  
6 possession of the seller until the full purchase price  
7 is paid;
- 8 (3) Expenses incurred in attempting to collect any account  
9 receivable or any portion of the debt recovered;
- 10 (4) Any accounts receivable that have been sold to and  
11 remain in the possession of a third party for  
12 collection; or
- 13 (5) Repossessed property.

14 **§237-F Direct mail sourcing.** (a) Notwithstanding the  
15 general sourcing provisions of section 237-A, a purchaser of  
16 direct mail who is not a holder of a direct pay permit shall  
17 provide to the seller, in conjunction with the purchase, either  
18 a direct mail form or information to show the jurisdictions to  
19 which the direct mail is delivered to recipients.

20 Upon receipt of the direct mail form, the seller shall be  
21 relieved of all obligations to collect, pay, or remit the  
22 applicable tax and the purchaser shall be obligated to pay or



1 remit the applicable tax on a direct pay basis. A direct mail  
2 form shall remain in effect for all future sales of direct mail  
3 by the seller to the purchaser until it is revoked in writing.

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

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

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



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

17       SECTION 7. Section 237-1, Hawaii Revised Statutes, is  
18 amended by adding six new definitions to be appropriately  
19 inserted and to read as follows:

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



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

- 5       (1) A percentage based on the total sales price of the  
6           taxable property compared to the total sales price of  
7           all property in the shipment; or  
8       (2) A percentage based on the total weight of the taxable  
9           property compared to the total weight of all property  
10          in the shipment.

11       "Direct mail":

- 12       (1) Means printed material delivered or distributed by  
13           United States mail or other delivery service to a mass  
14           audience or to addresses on a mailing list provided by  
15           the purchaser, or at the direction of the purchaser,  
16           in cases in which the cost of the items are not billed  
17           directly to the recipients;  
18       (2) Includes tangible personal property supplied directly  
19           or indirectly by the purchaser to the direct mail  
20           seller for inclusion in the package containing the  
21           printed material;  
22       (3) Does not include multiple items of printed material.



1       "Lease or rental":

2       (1) Means any transfer of possession or control of  
3       tangible personal property for a fixed or  
4       indeterminate term for consideration;

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

6       (3) Does not include:

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

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

17          (C) Providing tangible personal property along with  
18          an operator for a fixed or indeterminate period  
19          of time. A condition of this exclusion is that  
20          the operator is necessary for the equipment to  
21          perform as designed. For the purpose of this  
22          subparagraph, an operator shall do more than



1                   maintain, inspect, or set-up the tangible  
2                   personal property; or  
3           (D) Agreements covering motor vehicles and trailers  
4                   where the amount of consideration may be  
5                   increased or decreased by reference to the amount  
6                   realized upon sale or disposition of the property  
7                   as defined in section 7701(h)(1) (with respect to  
8                   motor vehicle operating leases) of the Internal  
9                   Revenue Code of 1986.

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

15           "Purchase price" applies to the measure subject to use tax  
16 and has the same meaning as sales price.

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

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



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

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

8        (4) Delivery and installation charges; or

9        (5) Installation charges.

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

14       SECTION 8. Chapter 255D, Hawaii Revised Statutes, is  
15       amended by adding nine new sections to be appropriately  
16       designated and to read as follows:

17       **"§255D-A Relief from certain liability.** All sellers and  
18       certified service providers as defined in section 255D-2 using  
19       databases pursuant to section 255D-D(f) and (g) shall be  
20       relieved from liability to the state and local jurisdictions for  
21       having charged and collected the incorrect amount of general  
22       excise or use tax resulting from the seller or certified service



1 provider relying on erroneous data provided by the State on tax  
2 rates, boundaries, or taxing jurisdiction assignments.

3 **§255D-B Rounding rule.** For the purpose of calculating the  
4 amount of the general excise or use tax:

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

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

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

13 **§255D-C Amnesty for registration under this chapter.** (a)  
14 The department shall provide amnesty for uncollected or unpaid  
15 general excise tax under chapter 237 or use tax under chapter  
16 238, including any county surcharge, to a seller who registers  
17 to pay or to collect and remit applicable general excise or use  
18 tax on sales made to purchasers in the State in accordance with  
19 the terms of the streamlined sales and use tax agreement;  
20 provided that the seller was not so registered in the State in  
21 the twelve-month period preceding the effective date of the



1 State's participation in the streamlined sales and use tax  
2 agreement.

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

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

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

18 (e) The amnesty shall be fully effective, absent the  
19 seller's fraud or intentional misrepresentation of a material  
20 fact, as long as the seller continues registration and continues  
21 payment or collection and remittance of applicable general  
22 excise or use taxes for a period of at least thirty-six months.



1 The statute of limitations is tolled with respect to asserting a  
2 tax liability during this thirty-six month period.

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

6 **§255D-D Local rate and boundary changes.** (a) Any rate  
7 changes by a county shall be effective only on the first day of  
8 a calendar quarter after a minimum of sixty days notice to  
9 sellers.

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

15 (c) For general excise and use tax purposes only, local  
16 jurisdiction boundary changes apply only on the first day of a  
17 calendar quarter after a minimum of sixty days notice to  
18 sellers.

19 (d) The department of taxation shall provide and maintain  
20 a database that describes boundary changes for all taxing  
21 jurisdictions. The database shall include a description of the



1 change and the effective date of the change for general excise  
2 tax under chapter 237 and use tax under chapter 238 purposes.

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

14 (f) The department of taxation shall provide and maintain  
15 a database that assigns each five digit and nine digit zip code  
16 within the State to the proper tax rates and jurisdictions. The  
17 department of taxation shall apply the lowest combined tax rate  
18 imposed in the zip code area if the area includes more than one  
19 tax rate in any level of taxing jurisdictions. If a nine digit  
20 zip code designation is not available for a street address or if  
21 a seller or certified service provider is unable to determine  
22 the nine digit zip code designation of a purchaser after



1 exercising due diligence to determine the designation, the  
2 seller or certified service provider may apply the rate for the  
3 five digit zip code area. For the purposes of this section,  
4 there is a rebuttable presumption that a seller or certified  
5 service provider has exercised due diligence if the seller has  
6 attempted to determine the nine digit zip code designation by  
7 utilizing software approved by the Streamlined Sales Tax  
8 Governing Board, Incorporated, that makes this designation from  
9 the street address and the five digit zip code of the purchaser.

10 (g) The State shall participate with other states in the  
11 development of an address-based system for assigning taxing  
12 jurisdictions. The system shall meet the requirements developed  
13 pursuant to the federal Mobile Telecommunications Sourcing Act  
14 (4 U.S.C. Sec. 119(a)). If any state develops an address-based  
15 assignment system pursuant to the Mobile Telecommunications  
16 Sourcing Act, a seller may use that system in place of the  
17 system provided for in subsection (e).

18 **§255D-E Certified service provider; agent of the seller.**

19 (a) A certified service provider is the agent of a seller, with  
20 whom the certified service provider has contracted for the  
21 collection and remittance of general excise and use taxes. As  
22 the seller's agent, the certified service provider is liable for



1 general excise and use tax due to the State on all sales  
2 transactions it processes for the seller unless the seller made  
3 a material misrepresentation or committed fraud.

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

7 **§255D-F Confidentiality of records.** (a) Except as  
8 provided in subsection (c), a certified service provider shall  
9 not retain or disclose the personally identifiable information  
10 of consumers. A certified service provider's system shall be  
11 designed and tested to ensure the privacy of consumers by  
12 protecting their anonymity.

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

19 (c) A certified service provider's retention or disclosure  
20 to member states of personally identifiable information is  
21 limited to that required to ensure the validity of exemptions



1 claimed because of a consumer's status or intended use of the  
2 goods or services purchased.

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

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

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

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

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

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

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



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

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

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

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

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

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



1        §255D-G Liability for uncollected tax. (a) A seller  
2        registered under the agreement is not liable for any uncollected  
3        or nonremitted tax on transactions with purchasers in the State  
4        before the date of registration if the seller was not licensed  
5        or registered under chapter 237 in the twelve-month period  
6        preceding the effective date of the State's participation in the  
7        agreement. The seller is also not responsible for any penalty  
8        or interest that may be due on those transactions. This  
9        subsection applies only if the seller is registered in this  
10       State within twelve months of the effective date of this State's  
11       participation in the agreement.

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

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

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

20       (3) Any transactions for which the seller received notice  
21       of the commencement of an audit and the audit is not



1 finally resolved, including related administrative or  
2 judicial processes.

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

11 **§255D-H Rate changes.** (a) The department shall publish  
12 on its website a notification to sellers registered under the  
13 agreement of a change in rate or tax base within five business  
14 days of receiving notice of the changes to the tax rate or base  
15 or of an amendment to general excise and use tax rules.  
16 Whenever possible, a rate or tax base change should occur on the  
17 first day of a calendar quarter.

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

21 (c) The department shall complete a taxability matrix as  
22 provided for under section 328 of the agreement, maintain it in



1 a database in a downloadable format approved by the Streamlined  
2 Sales Tax Governing Board, Incorporated, and provide notice of  
3 changes in the matrix.

4 **§255D-I Customer refund procedures.** A cause of action  
5 against a seller for overcollected general excise or use taxes  
6 does not accrue until sixty days after a purchaser has provided  
7 written notice to a seller. The purchaser shall provide in the  
8 notice sufficient information to determine the validity of the  
9 request. In matters relating to the request, a seller is  
10 presumed to have a reasonable business practice if in the  
11 collection of general excise or use tax, the seller has a  
12 certified service provider or a system, including a proprietary  
13 system, certified by the department, and has remitted to this  
14 State all taxes collected, less any deductions, credits, or  
15 collection allowances."

16 SECTION 9. Chapter 239, Hawaii Revised Statutes, is  
17 amended by adding a new section to part II to be appropriately  
18 designated and to read as follows:

19 **"§239- Treatment of conflicts.** In case of conflict  
20 between this part and chapter 237, chapter 237 shall control."

21 SECTION 10. Section 237-3, Hawaii Revised Statutes, is  
22 amended by amending subsection (a) to read as follows:



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



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

5 SECTION 11. Section 237-8.6, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) The county surcharge on state tax, upon the adoption  
8 of county ordinances and in accordance with the requirements of  
9 section 46-16.8, shall be levied, assessed, and collected as  
10 provided in this section on all gross proceeds and gross income  
11 taxable under this chapter. No county shall set the surcharge  
12 on state tax at a rate greater than one-half of one per cent of  
13 all gross proceeds and gross income taxable under this chapter.  
14 All provisions of this chapter shall apply to the county  
15 surcharge on state tax. With respect to the surcharge, the  
16 director of taxation shall have all the rights and powers  
17 provided under this chapter. No county shall conduct an  
18 independent tax audit of sellers registered under the  
19 streamlined sales tax agreement. In addition, the director of  
20 taxation shall have the exclusive rights and power to determine  
21 the county or counties in which a person is engaged in business  
22 and, in the case of a person engaged in business in more than



1 one county, the director shall determine, through apportionment  
2 or other means, that portion of the surcharge on state tax  
3 attributable to business conducted in each county."

4 SECTION 12. Section 237-9, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§237-9 Licenses; penalty. (a) Except as provided in  
7 this section, any person who has a gross income or gross  
8 proceeds of sales or value of products upon which a privilege  
9 tax is imposed by this chapter, as a condition precedent to  
10 engaging or continuing in [~~such~~] the business, shall in writing  
11 apply for and obtain from the department of taxation, upon a  
12 one-time payment of the sum of \$20, a license to engage in and  
13 to conduct such business, upon condition that the person shall  
14 pay the taxes accruing to the State under this chapter, and the  
15 person shall thereby be duly licensed to engage in and conduct  
16 the business. Any person licensed or holding a license under  
17 this chapter before January 1, 1990, shall pay a one-time  
18 license renewal fee of \$20 on or before January 31, 1990, as a  
19 condition precedent to engaging or continuing in business. The  
20 license shall not be transferable and shall be valid only for  
21 the person in whose name it is issued and for the transaction of  
22 business at the place designated therein. The license may be



1 inspected and examined, and shall at all times be conspicuously  
2 displayed at the place for which it is issued.

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

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

19 (c) If the license fee is paid, the department shall not  
20 refuse to issue a license or revoke or cancel a license for the  
21 exercise of a privilege protected by the First Amendment of the  
22 Constitution of the United States, or for the carrying on of



1 interstate or foreign commerce, or for any privilege the  
2 exercise of which, under the Constitution and laws of the United  
3 States, cannot be restrained on account of nonpayment of taxes,  
4 nor shall section 237-46 be invoked to restrain the exercise of  
5 such a privilege, or the carrying on of [~~such~~] interstate or  
6 foreign commerce.

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

19 (1) Notify all of its direct sellers making sales in the  
20 State that it has been designated to collect, report,  
21 and pay over the tax imposed by this chapter and



1 chapter 238 on their behalf on the business activity  
2 conducted through the marketing arrangement;

3 (2) If required by the director as a condition of  
4 obtaining the license, furnish with the annual return,  
5 a list (including identification numbers) of all  
6 direct sellers for the taxable year who have been  
7 provided (by the tax collection agent) information  
8 returns required under section 6041A of the Internal  
9 Revenue Code of 1986, as amended, and any other  
10 information that is relevant to ensure proper payment  
11 of taxes due under this section; and

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

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

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



- 1        (2) The authorization is necessary because it is either  
2        impractical at the time of acquisition to determine  
3        the manner in which the tangible personal property or  
4        services will be used or it will facilitate improved  
5        compliance with the tax laws of the State; and  
6        (3) The person requesting authorization for direct payment  
7        maintains accurate and complete records of all  
8        purchases or leases and uses of tangible personal  
9        property or services purchased pursuant to the direct  
10       payment authorization in a form acceptable to the  
11       department.

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

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

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

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

- 20        (1) To any buyer on a buy-sell basis, a deposit-commission  
21        basis, or any similar basis, that the director



1 prescribes by rule adopted pursuant to chapter 91, for  
2 resale other than in a permanent retail establishment;

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

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

10 (B) The sales of consumer products by the person are  
11 performed pursuant to a written contract that  
12 provides that the person will not be treated as  
13 an employee with respect to those sales for  
14 federal or state tax purposes.

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

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

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



1           **"§237-13 Imposition of tax.** There is hereby levied and  
2 shall be assessed and collected annually privilege taxes against  
3 persons on account of their business and other activities in the  
4 State measured by the application of rates against values of  
5 products, gross proceeds of sales, or gross income, whichever is  
6 specified, as follows:

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

8                   ~~(A) Upon every person engaging or continuing within~~  
9                   ~~the State in the business of manufacturing,~~  
10                   ~~including compounding, canning, preserving,~~  
11                   ~~packing, printing, publishing, milling,~~  
12                   ~~processing, refining, or preparing for sale,~~  
13                   ~~profit, or commercial use, either directly or~~  
14                   ~~through the activity of others, in whole or in~~  
15                   ~~part, any article or articles, substance or~~  
16                   ~~substances, commodity or commodities, the amount~~  
17                   ~~of the tax to be equal to the value of the~~  
18                   ~~articles, substances, or commodities,~~  
19                   ~~manufactured, compounded, canned, preserved,~~  
20                   ~~packed, printed, milled, processed, refined, or~~  
21                   ~~prepared for sale, as shown by the gross proceeds~~  
22                   ~~derived from the sale thereof by the manufacturer~~



1 ~~or person compounding, preparing, or printing~~  
2 ~~them, multiplied by one half of one per cent.~~

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

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



1                   ~~for assessment, as provided by this paragraph, as~~  
2                   ~~follows:~~

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

13                  ~~(ii) If the products have not been sold at the~~  
14                  ~~time of their entry into interstate or~~  
15                  ~~foreign commerce, and in cases governed by~~  
16                  ~~clause (i) in which the products are sold~~  
17                  ~~under circumstances such that the gross~~  
18                  ~~proceeds of sale are not indicative of the~~  
19                  ~~true value of the products, the value of the~~  
20                  ~~products constituting the basis for~~  
21                  ~~assessment shall correspond as nearly as~~  
22                  ~~possible to the gross proceeds of sales for~~



1 ~~delivery outside the State, adjusted as~~  
2 ~~provided in clause (i), or if sufficient~~  
3 ~~data are not available, sales in the State,~~  
4 ~~of similar products of like quality and~~  
5 ~~character and in similar quantities, made by~~  
6 ~~the taxpayer (unless not indicative of the~~  
7 ~~true value) or by others. Sales outside the~~  
8 ~~State, adjusted as provided in clause (i),~~  
9 ~~may be considered when they constitute the~~  
10 ~~best available data. The department shall~~  
11 ~~prescribe uniform and equitable rules for~~  
12 ~~ascertaining the values;~~

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

19 ~~(iv) In all cases in which products leave the~~  
20 ~~State in an unfinished condition, the basis~~  
21 ~~for assessment shall be adjusted so as to~~  
22 ~~deduct the portion of the value as is~~



1                   ~~attributable to the finishing of the goods~~  
2                   ~~outside the State.~~

3       ~~(2)]~~ (1) Tax on business of selling tangible personal  
4       property~~[, producing.]~~:

5           (A) Upon every person engaging or continuing in the  
6           business of selling any tangible personal  
7           property ~~[whatsoever]~~ (not including, however,  
8           bonds or other evidence of indebtedness, or  
9           stocks), unless subject to chapter A, there is  
10          ~~[likewise]~~ hereby levied, and shall be assessed  
11          and collected, a tax equivalent to four per cent  
12          of the gross proceeds of sales of the business;  
13          ~~[provided that insofar as the sale of tangible~~  
14          ~~personal property is a wholesale sale under~~  
15          ~~section 237-4(a)(8)(B), the sale shall be subject~~  
16          ~~to section 237-13.3. Upon every person engaging~~  
17          ~~or continuing within this State in the business~~  
18          ~~of a producer, the tax shall be equal to one-half~~  
19          ~~of one per cent of the gross proceeds of sales of~~  
20          ~~the business, or the value of the products, for~~  
21          ~~sale, if sold for delivery outside the State or~~  
22          ~~shipped or transported out of the State, and the~~



1 ~~value of the products shall be determined in the~~  
2 ~~same manner as the value of manufactured products~~  
3 ~~covered in the cases under paragraph (1)(C).]~~

4 (B) Gross proceeds of sales of tangible property,  
5 unless subject to chapter A, in interstate and  
6 foreign commerce shall constitute a part of the  
7 measure of the tax imposed on persons in the  
8 business of selling tangible personal property,  
9 to the extent, under the conditions, and in  
10 accordance with the provisions of the  
11 Constitution of the United States and the Acts of  
12 the Congress of the United States [~~which~~] that  
13 may be now in force or may be hereafter adopted,  
14 and whenever there occurs in the State an  
15 activity to which, under the Constitution and  
16 Acts of Congress, there may be attributed gross  
17 proceeds of sales, the gross proceeds shall be so  
18 attributed[-

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



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

9 ~~[+D+]~~ (C) When a manufacturer or a producer~~[7]~~ as  
10 defined under section A-3, engaged in ~~[such]~~ the  
11 business of manufacturing or producing in the  
12 State, also is engaged in selling the  
13 manufacturer's or producer's products in the  
14 State at wholesale~~[7]~~ and taxed under chapter A,  
15 retail, or in any other manner, the tax for the  
16 privilege of engaging in the business of selling  
17 the products in the State shall apply to the  
18 manufacturer or producer as well as the tax for  
19 the privilege of manufacturing or producing in  
20 the State, and the manufacturer or producer shall  
21 make the returns of the gross proceeds of the  
22 wholesale, retail, or other sales required for



1 the privilege of selling in the State, as well as  
2 making the returns of the value or gross proceeds  
3 of sales of the products required for the  
4 privilege of manufacturing or producing in the  
5 State. The manufacturer or producer shall pay  
6 the tax imposed in this chapter for the privilege  
7 of selling its products in the State, and the  
8 value or gross proceeds of sales of the products,  
9 thus subjected to tax, may be deducted insofar as  
10 duplicated as to the same products by the measure  
11 of the tax upon the manufacturer or producer for  
12 the privilege of manufacturing or producing in  
13 the State[+] under chapter A; provided that no  
14 producer of agricultural products who sells the  
15 products to a purchaser who will process the  
16 products outside the State shall be required to  
17 pay the tax imposed in this chapter for the  
18 privilege of producing or selling those  
19 products[-]; and

20 [(+E)] (D) A taxpayer selling to a federal cost-plus  
21 contractor may make the election provided for by  
22 paragraph [(+3)-(C)-] (2) (C), and in that case the



1 tax shall be computed pursuant to the election,  
2 notwithstanding this paragraph [~~or paragraph (1)~~]  
3 to the contrary[-];

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

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

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

18 ~~(3)~~ (2) Tax upon contractors[-]:

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



1 (B) In computing the tax levied under this paragraph,  
2 there shall be deducted from the gross income of  
3 the taxpayer so much thereof as has been included  
4 in the measure of the tax levied under  
5 subparagraph (A) on:

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

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

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

18 provided that any person claiming a deduction  
19 under this paragraph shall be required to show in  
20 the person's return the name and general excise  
21 number of the person paying the tax on the amount  
22 deducted by the person[-]i



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

6 (i) The gross income exempted shall constitute  
7 reimbursement of costs incurred for  
8 materials, plant, or equipment purchased  
9 from a taxpayer licensed under this chapter,  
10 not exceeding the gross proceeds of sale of  
11 the taxpayer on account of the transaction;  
12 and

13 (ii) The taxpayer making the sale shall have  
14 certified to the department that the  
15 taxpayer is taxable with respect to the  
16 gross proceeds of the sale, and that the  
17 taxpayer elects to have the tax on gross  
18 income computed the same as upon a sale to  
19 the state government[-];

20 (D) A person who, as a business or as a part of a  
21 business in which the person is engaged, erects,  
22 constructs, or improves any building or



1 structure, of any kind or description, or makes,  
2 constructs, or improves any road, street,  
3 sidewalk, sewer, or water system, or other  
4 improvements on land held by the person (whether  
5 held as a leasehold, fee simple, or otherwise),  
6 upon the sale or other disposition of the land or  
7 improvements, even if the work was not done  
8 pursuant to a contract, shall be liable to the  
9 same tax as if engaged in the business of  
10 contracting, unless the person shows that at the  
11 time the person was engaged in making the  
12 improvements the person intended, and for the  
13 period of at least one year after completion of  
14 the building, structure, or other improvements  
15 the person continued to intend to hold and not  
16 sell or otherwise dispose of the land or  
17 improvements. The tax in respect of the  
18 improvements shall be measured by the amount of  
19 the proceeds of the sale or other disposition  
20 that is attributable to the erection,  
21 construction, or improvement of [~~such~~] the  
22 building or structure, or the making,



1           constructing, or improving of the road, street,  
2           sidewalk, sewer, or water system, or other  
3           improvements. The measure of tax in respect of  
4           the improvements shall not exceed the amount  
5           ~~[which]~~ that would have been taxable had the work  
6           been performed by another, subject as in other  
7           cases to the deductions allowed by subparagraph  
8           (B). Upon the election of the taxpayer, this  
9           paragraph may be applied notwithstanding that the  
10          improvements were not made by the taxpayer, or  
11          were not made as a business or as a part of a  
12          business, or were made with the intention of  
13          holding the same. However, this paragraph shall  
14          not apply in respect of any proceeds that  
15          constitute or are in the nature of rent; all  
16          ~~[such]~~ gross income shall be taxable under  
17          paragraph ~~[+9)+]~~ (6); provided that insofar as  
18          the business of renting or leasing real property  
19          under a lease is taxed under section 237-16.5,  
20          the tax shall be levied by section 237-16.5~~[+]~~;

21          ~~[-4)]~~ (3) Tax upon theaters, amusements, radio broadcasting  
22          stations, etc.:



1           ~~[(A)]~~ Upon every person engaging or continuing within  
2                           the State in the business of operating a theater,  
3                           opera house, moving picture show, vaudeville,  
4                           amusement park, dance hall, skating rink, radio  
5                           broadcasting station, or any other place at which  
6                           amusements are offered to the public, unless  
7                           taxed under section A-6, the tax shall be equal  
8                           to four per cent of the gross income of the  
9                           business~~[, and in the case of a sale of an~~  
10                          ~~amusement at wholesale under section~~  
11                          ~~237-4(a)(13), the tax shall be subject to section~~  
12                          ~~237-13.3.~~

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

18                          ~~(i) Any licensed seller who furnishes a~~  
19   ~~certificate shall be obligated to pay to the~~  
20   ~~person rendering the amusement, upon demand,~~  
21   ~~the amount of additional tax that is imposed~~



1                   ~~upon the seller whenever the sale is not at~~  
2                   ~~wholesale; and~~

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

8                   [+5+] (4) Tax upon sales representatives, etc. Upon every  
9                   person classified as a representative or purchasing  
10                  agent under section 237-1, engaging or continuing  
11                  within the State in the business of performing  
12                  services for another, other than as an employee, there  
13                  is likewise hereby levied and shall be assessed and  
14                  collected a tax equal to four per cent of the  
15                  commissions and other compensation attributable to the  
16                  services so rendered by the person[-], unless taxable  
17                  under chapter A or C;

18                  [+6+] (5) Tax on service business[-]:

19                  (A) Upon every person engaging or continuing within  
20                  the State in any service business or calling  
21                  including professional services not otherwise  
22                  specifically taxed under this chapter, chapter A,



1            or C, there is likewise hereby levied and shall  
2            be assessed and collected a tax equal to four per  
3            cent of the gross income of the business[, and in  
4            the case of a wholesaler under section 237-  
5            4(a)(10), the tax shall be equal to one half of  
6            one per cent of the gross income of the business.  
7            Notwithstanding the foregoing, a wholesaler under  
8            section 237-4(a)(10) shall be subject to section  
9            237-13.3.

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

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

21           ~~(ii)~~ The absence of a certificate in itself shall  
22           give rise to the presumption that the sale



1                   is not at wholesale unless the person  
2                   rendering the sale is exclusively rendering  
3                   services at wholesale.

4       (C) ~~Where any person engaging or continuing within~~  
5       ~~the State in any service business or calling~~  
6       ~~renders those services upon the order of or at~~  
7       ~~the request of another taxpayer who is engaged in~~  
8       ~~the service business and who, in fact, acts as or~~  
9       ~~acts in the nature of an intermediary between the~~  
10      ~~person rendering those services and the ultimate~~  
11      ~~recipient of the benefits of those services, so~~  
12      ~~much of the gross income as is received by the~~  
13      ~~person rendering the services shall be subjected~~  
14      ~~to the tax at the rate of one half of one per~~  
15      ~~cent and all of the gross income received by the~~  
16      ~~intermediary from the principal shall be~~  
17      ~~subjected to a tax at the rate of four per cent.~~  
18      ~~Where the taxpayer is subject to both this~~  
19      ~~subparagraph and to the lowest tax rate under~~  
20      ~~subparagraph (A), the taxpayer shall be taxed~~  
21      ~~under this subparagraph. This subparagraph shall~~  
22      ~~be repealed on January 1, 2006.]~~;



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

1           [~~(E)~~] (C) Where any person is engaged in the business  
2           of a home service provider, the tax shall be  
3           imposed on the gross income received or derived  
4           from providing interstate or foreign mobile  
5           telecommunications services to a customer with a  
6           place of primary use in this State when [~~such~~]  
7           the services originate in one state and terminate  
8           in another state, territory, or foreign country;  
9           provided that all charges for mobile  
10          telecommunications services [~~which~~] that are  
11          billed by or for the home service provider are  
12          deemed to be provided by the home service  
13          provider at the customer's place of primary use,  
14          regardless of where the mobile telecommunications  
15          originate, terminate, or pass through; provided  
16          further that the income from charges specifically  
17          derived from interstate or foreign mobile  
18          telecommunications services, as determined by  
19          books and records that are kept in the regular  
20          course of business by the home service provider  
21          in accordance with section 239-24, shall be  
22          apportioned under any apportionment factor or



1 formula adopted under [~~section 237-13(6)(D).~~]  
2 subparagraph (B). Gross income shall not  
3 include:

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

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

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

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

18 For the purposes of this paragraph, "charges for  
19 mobile telecommunications services", "customer",  
20 "home service provider", "mobile  
21 telecommunications services", "place of primary

1 use", and "serving carrier" have the same meaning  
2 as in section 239-22[-]; and

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

8 ~~(8) Tax on receipts of sugar benefit payments. Upon the~~  
9 ~~amounts received from the United States government by~~  
10 ~~any producer of sugar (or the producer's legal~~  
11 ~~representative or heirs), as defined under and by~~  
12 ~~virtue of the Sugar Act of 1948, as amended, or other~~  
13 ~~Acts of the Congress of the United States relating~~  
14 ~~thereto, there is hereby levied a tax of one half of~~  
15 ~~one per cent of the gross amount received; provided~~  
16 ~~that the tax levied hereunder on any amount so~~  
17 ~~received and actually disbursed to another by a~~  
18 ~~producer in the form of a benefit payment shall be~~  
19 ~~paid by the person or persons to whom the amount is~~  
20 ~~actually disbursed, and the producer actually making a~~  
21 ~~benefit payment to another shall be entitled to claim~~  
22 ~~on the producer's return a deduction from the gross~~



1           ~~amount taxable hereunder in the sum of the amount so~~  
2           ~~disbursed. The amounts taxed under this paragraph~~  
3           ~~shall not be taxable under any other paragraph,~~  
4           ~~subsection, or section of this chapter.~~

5           +9+] (6) Tax on other business. Upon every person  
6 engaging or continuing within the State in any business, trade,  
7 activity, occupation, or calling not included in the preceding  
8 paragraphs or any other provisions of this chapter, there is  
9 likewise hereby levied and shall be assessed and collected, a  
10 tax equal to four per cent of the gross income thereof. In  
11 addition, the rate prescribed by this paragraph shall apply to a  
12 business taxable under one or more of the preceding paragraphs  
13 or other provisions of this chapter, as to any gross income  
14 thereof not taxed thereunder as gross income or gross proceeds  
15 of sales or by taxing an equivalent value of products, unless  
16 specifically exempted[-] or subject to tax under chapter A or  
17 C."

18           SECTION 14. Section 237-13.8, Hawaii Revised Statutes, is  
19 amended by amending subsection (c) to read as follows:

20           "(c) When a person licensed under this chapter sells  
21 prepaid telephone calling services to a licensed retail  
22 merchant, jobber, or other licensed seller for purposes of



1 resale, the person shall be taxed under section A-13. All other  
2 sales of prepaid telephone calling services shall be taxed as  
3 retail sales of tangible personal property."

4 SECTION 15. Section 237-18, Hawaii Revised Statutes,  
5 amended to read as follows:

6 **"§237-18 Further provisions as to application of tax. (a)**

7 Where a coin operated device produces gross income which is  
8 divided between the owner or operator of the device, on the one  
9 hand, and the owner or operator of the premises where the device  
10 is located, on the other hand, the tax imposed by this chapter  
11 shall apply to each [~~such~~] person with respect to the person's  
12 portion of the proceeds, and no more.

13 (b) Where gate receipts or other admissions are divided  
14 between the person furnishing or producing a play, concert,  
15 lecture, athletic event, or similar spectacle (including any  
16 motion picture showing) on the one hand, and a promoter  
17 (including any proprietor or other operator of a motion picture  
18 house) offering the spectacle to the public, on the other hand,  
19 the tax imposed by this chapter, if the promoter is subject to  
20 the tax imposed by this chapter, shall apply only to the  
21 promoter measured by the whole of the proceeds, and the promoter  
22 shall be authorized to deduct and withhold from the portion of



1 the proceeds payable to the person furnishing or producing the  
2 spectacle the amount of the tax payable by the person upon such  
3 portion. No tax shall apply to a promoter with respect to  
4 ~~[such]~~ the portion of the proceeds as is payable to a person  
5 furnishing or producing the spectacle, who is exempted by  
6 section 237-23 from taxation upon ~~[such]~~ the activity.

7 ~~(c) Where, through the activity of a person taxable under~~  
8 ~~section 237-13(6), a product has been milled, processed, or~~  
9 ~~otherwise manufactured upon the order of another taxpayer who is~~  
10 ~~a manufacturer taxable upon the value of the entire manufactured~~  
11 ~~products, which consists in part of the value of the services~~  
12 ~~taxable under section 237-13(6), so much gross income as is~~  
13 ~~derived from the rendering of the services shall be subjected to~~  
14 ~~tax on the person rendering the services at the rate of one half~~  
15 ~~of one per cent, and the value of the entire product shall be~~  
16 ~~included in the measure of the tax imposed on the other taxpayer~~  
17 ~~as elsewhere provided.~~

18 ~~(d) Where, through the activity of a person taxable under~~  
19 ~~section 237-13(6), there have been rendered to a cane planter~~  
20 ~~services consisting in the harvesting or hauling of the cane, or~~  
21 ~~consisting in road maintenance, under a contract between the~~  
22 ~~person rendering the services and the cane planter, covering the~~



1 ~~services and also the milling of the sugar, the services of~~  
2 ~~harvesting and hauling the cane and road maintenance shall be~~  
3 ~~treated the same as the service of milling the cane, as provided~~  
4 ~~by subsection (c), and the value of the entire product,~~  
5 ~~manufactured or sold for the cane planter under the contract,~~  
6 ~~shall be included in the measure of the tax imposed on the~~  
7 ~~person as elsewhere provided.~~

8 ~~(e)]~~ (c) Where ~~[insurance agents, including general~~  
9 ~~agents, subagents, or solicitors, who are not employees and are~~  
10 ~~licensed pursuant to chapter 431, or]~~ real estate brokers or  
11 salespersons, who are not employees and are licensed pursuant to  
12 chapter 467, produce commissions ~~[which]~~ that are divided  
13 between ~~[such general agents, subagents, or solicitors, or~~  
14 ~~between such]~~ real estate brokers or salespersons, ~~[as the case~~  
15 ~~may be,]~~ the tax levied under section ~~[237-13(6)]~~ 237-13(5) as  
16 to real estate brokers or salespersons ~~[, or under section~~  
17 ~~237-13(7) as to insurance general agents, subagents, or~~  
18 ~~solicitors]~~ shall apply to each ~~[such]~~ person with respect to  
19 the person's portion of the commissions, and no more.

20 ~~[+f)]~~ (d) Where tourism related services are furnished  
21 through arrangements made by a travel agency or tour packager  
22 and the gross income is divided between the provider of the



1 services and the travel agency or tour packager, the tax imposed  
2 by this chapter shall apply to each [~~such~~] person with respect  
3 to [~~such~~] the person's respective portion of the proceeds, and  
4 no more.

5 As used in this subsection "tourism related services" means  
6 catamaran cruises, canoe rides, dinner cruises, lei greetings,  
7 transportation included in a tour package, sightseeing tours not  
8 subject to chapter 239, admissions to luaus, dinner shows,  
9 extravaganzas, cultural and educational facilities, and other  
10 services rendered directly to the customer or tourist, but only  
11 if the providers of the services other than air transportation  
12 are subject to a four per cent tax under this chapter or chapter  
13 239.

14 [~~(g)~~] (e) Where transient accommodations are furnished  
15 through arrangements made by a travel agency or tour packager at  
16 noncommissioned negotiated contract rates and the gross income  
17 is divided between the operator of transient accommodations on  
18 the one hand and the travel agency or tour packager on the other  
19 hand, the tax imposed by this chapter shall apply to each [~~such~~]  
20 person with respect to [~~such~~] the person's respective portion of  
21 the proceeds, and no more.



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

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

10 As used in this subsection:

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

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

20 "Motor carrier" means a common carrier or contract carrier  
21 transporting persons or property for compensation on the public



1 highways, other than a public utility as defined under section  
2 239-2 or taxicab.

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

7 SECTION 16. Section 237-21, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§237-21 Apportionment.** If any person [~~other than~~  
10 ~~persons liable to the tax on manufacturers as provided by~~  
11 ~~section 237-13(1),~~] is engaged in business both within and  
12 without the State or in selling goods for delivery outside the  
13 State, and if under the Constitution or laws of the United  
14 States or section 237-29.5 the entire gross income of [~~such~~] the  
15 person cannot be included in the measure of this tax, there  
16 shall be apportioned to the State and included in the measure of  
17 the tax that portion of the gross income [~~which~~] that is derived  
18 from activities within the State, to the extent that the  
19 apportionment is required by the Constitution or laws of the  
20 United States or section 237-29.5. [~~In the case of a tax upon~~  
21 ~~the production of property in the State the apportionment shall~~  
22 ~~be determined as in the case of the tax on manufacturers.] In~~



1 other cases, if and to the extent that the apportionment cannot  
2 be accurately made by separate accounting methods, there shall  
3 be apportioned to the State and included in the measure of this  
4 tax that proportion of the total gross income, so requiring  
5 apportionment, which the cost of doing business within the  
6 State, applicable to the gross income, bears to the cost of  
7 doing business both within and without the State, applicable to  
8 the gross income."

9 SECTION 17. Section 237-24, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§237-24 Amounts not taxable.** This chapter shall not  
12 apply to the following amounts:

- 13 (1) Amounts received under life insurance policies and  
14 contracts paid by reason of the death of the insured;
- 15 (2) Amounts received (other than amounts paid by reason of  
16 death of the insured) under life insurance, endowment,  
17 or annuity contracts, either during the term or at  
18 maturity or upon surrender of the contract;
- 19 (3) Amounts received under any accident insurance or  
20 health insurance policy or contract or under workers'  
21 compensation acts or employers' liability acts, as  
22 compensation for personal injuries, death, or



1 sickness, including also the amount of any damages or  
2 other compensation received, whether as a result of  
3 action or by private agreement between the parties on  
4 account of the personal injuries, death, or sickness;

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

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

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

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

21 (8) Amounts collected by distributors as fuel taxes on  
22 "liquid fuel" imposed by chapter 243, and the amounts



1 collected by ~~[such]~~ distributors as a fuel tax imposed  
2 by any Act of the Congress of the United States;

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

5 ~~[(10) The amounts of taxes on cigarettes and tobacco  
6 products imposed by chapter 245 on wholesalers or  
7 dealers holding licenses under that chapter and  
8 selling the products at wholesale;~~

9 ~~+(11)]~~ (10) Federal excise taxes imposed on articles sold at  
10 retail and collected from the purchasers thereof and  
11 paid to the federal government by the retailer;

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

16 ~~+(13)]~~ (11) ~~[An amount up to, but not in excess of, \$2,000 a  
17 year of gross income]~~ Amounts received by any blind,  
18 deaf, or totally disabled person engaging, or  
19 continuing, in any business, trade, activity,  
20 occupation, or calling within the State; a corporation  
21 all of whose outstanding shares are owned by an  
22 individual or individuals who are blind, deaf, or



1           totally disabled; a general, limited, or limited  
2           liability partnership, all of whose partners are  
3           blind, deaf, or totally disabled; or a limited  
4           liability company, all of whose members are blind,  
5           deaf, or totally disabled;

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

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

13       ~~(B) The value or gross proceeds of sale of the sugar,~~  
14       ~~and other products manufactured from the~~  
15       ~~sugarcane, is included in the measure of the tax~~  
16       ~~levied on the manufacturer under section~~  
17       ~~237-13(1) or (2);~~

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



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

4       ~~(15)]~~ (12) Money paid by the State or eleemosynary child-  
5           placing organizations to foster parents for their care  
6           of children in foster homes; and

7       ~~(16)]~~ (13) Amounts received by a cooperative housing  
8           corporation from its shareholders in reimbursement of  
9           funds paid by ~~[such]~~ the corporation for lease rental,  
10          real property taxes, and other expenses of operating  
11          and maintaining the cooperative land and improvements;  
12          provided that ~~[such a]~~ the cooperative corporation is  
13          a corporation:

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

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

21           (C) No stockholder of which is entitled (either  
22           conditionally or unconditionally) to receive any



1 distribution not out of earnings and profits of  
2 the corporation except in a complete or partial  
3 liquidation of the corporation."

4 SECTION 18. Section 237-24.3, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§237-24.3 Additional amounts not taxable.** In addition to  
7 the amounts not taxable under section 237-24, this chapter shall  
8 not apply to:

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

18 (2) Amounts received from sales of:

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

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



1 (C) Agricultural, meat, or fish products;  
2 to any person or common carrier in interstate or  
3 foreign commerce, or both, whether ocean-going or air,  
4 for consumption out-of-state on the shipper's vessels  
5 or airplanes;

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

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

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

15 in reimbursement of sums paid for common expenses;

16 (4) Amounts received or accrued from:

17 (A) The loading or unloading of cargo from ships,  
18 barges, vessels, or aircraft, whether or not the  
19 ships, barges, vessels, or aircraft travel  
20 between the State and other states or countries  
21 or between the islands of the State;



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

5 (C) The transportation of pilots or governmental  
6 officials to ships, barges, or vessels offshore;  
7 rigging gear; checking freight and similar  
8 services; standby charges; and use of moorings  
9 and running mooring lines;

10 (5) Amounts received by an employee benefit plan by way of  
11 contributions, dividends, interest, and other income;  
12 and amounts received by a nonprofit organization or  
13 office, as payments for costs and expenses incurred  
14 for the administration of an employee benefit plan;  
15 provided that this exemption shall not apply to any  
16 gross rental income or gross rental proceeds received  
17 after June 30, 1994, as income from investments in  
18 real property in this State; and provided further that  
19 gross rental income or gross rental proceeds from  
20 investments in real property received by an employee  
21 benefit plan after June 30, 1994, under written  
22 contracts executed prior to July 1, 1994, shall not be



1           taxed until the contracts are renegotiated, renewed,  
2           or extended, or until after December 31, 1998,  
3           whichever is earlier. For the purposes of this  
4           paragraph, "employee benefit plan" means any plan as  
5           defined in section 1002(3) of title 29 of the United  
6           States Code, as amended;

7           (6) Amounts received for purchases made with United States  
8           Department of Agriculture food coupons under the  
9           federal food stamp program, and amounts received for  
10          purchases made with United States Department of  
11          Agriculture food vouchers under the Special  
12          Supplemental Foods Program for Women, Infants and  
13          Children;

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



1 (A) "Prescription drugs" are those drugs defined  
2 under section 328-1 and dispensed by filling or  
3 refilling a written or oral prescription by a  
4 practitioner licensed under law to administer the  
5 drug and sold by a licensed pharmacist under  
6 section 328-16 or practitioners licensed to  
7 administer drugs; and

8 (B) "Prosthetic device" means [~~any artificial device~~  
9 ~~or appliance, instrument, apparatus, or~~  
10 ~~contrivance, including their components, parts,~~  
11 ~~accessories, and replacements thereof, used to~~  
12 ~~replace a missing or surgically removed part of~~  
13 ~~the human body, which is prescribed by a licensed~~  
14 ~~practitioner of medicine, osteopathy, or podiatry~~  
15 ~~and which is sold by the practitioner or which is~~  
16 ~~dispensed and sold by a dealer of prosthetic~~  
17 ~~devices; provided that "prosthetic device" shall~~  
18 ~~not mean any auditory, ophthalmic, dental, or~~  
19 ~~ocular device or appliance, instrument,~~  
20 ~~apparatus, or contrivance;] a replacement,  
21 corrective, or supportive device including repair~~



1                   and replacement parts for the device, worn on or  
2                   in the body to:

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

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

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

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

12                  (8) Taxes on transient accommodations imposed by chapter  
13                  237D and passed on and collected by operators holding  
14                  certificates of registration under that chapter;

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



1           (10) Amounts received by a labor organization for real  
2           property leased to:

3           (A) A labor organization; or

4           (B) A trust fund established by a labor organization  
5           for the benefit of its members, families, and  
6           dependents for medical or hospital care, pensions  
7           on retirement or death of employees,  
8           apprenticeship and training, and other membership  
9           service programs.

10           As used in this paragraph, "labor organization" means  
11           a labor organization exempt from federal income tax  
12           under section 501(c)(5) of the Internal Revenue Code,  
13           as amended;

14           (11) Amounts received from foreign diplomats and consular  
15           officials who are holding cards issued or authorized  
16           by the United States Department of State granting them  
17           an exemption from state taxes; and

18           (12) Amounts received as rent for the rental or leasing of  
19           aircraft or aircraft engines used by the lessees or  
20           renters for interstate air transportation of  
21           passengers and goods. For purposes of this paragraph,  
22           payments made pursuant to a lease shall be considered



1           rent regardless of whether the lease is an operating  
2           lease or a financing lease. The definition of  
3           "interstate air transportation" is the same as in 49  
4           U.S.C. 40102."

5           SECTION 19. Section 237-34, Hawaii Revised Statutes, is  
6           amended by amending subsection (b) to read as follows:

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



- 1 (1) Trustees;
- 2 (2) Partners;
- 3 (3) Persons named in a board resolution or a one per cent
- 4 shareholder in case of a corporate return;
- 5 (4) The person authorized to act for a corporation in
- 6 dissolution;
- 7 (5) The shareholder of an S corporation;
- 8 (6) The personal representative, trustee, heir, or
- 9 beneficiary of an estate or trust in case of the
- 10 estate's or decedent's return;
- 11 (7) The committee, trustee, or guardian of any person in
- 12 paragraphs (1) to (6) who is incompetent;
- 13 (8) The trustee in bankruptcy or receiver, and the
- 14 attorney-in-fact of any person in paragraphs (1) to
- 15 (7);
- 16 (9) Persons duly authorized by the State in connection
- 17 with their official duties;
- 18 (10) Any duly accredited tax official of the United States
- 19 or of any state or territory;
- 20 (11) The Multistate Tax Commission or its authorized
- 21 representative;
- 22 (12) Members of a limited liability company; [and]



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

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

6 Any violation of this subsection shall be a misdemeanor."

7 SECTION 20. Section 238-2, Hawaii Revised Statutes, is  
 8 amended to read as follows:

9 **"§238-2 Imposition of tax on tangible personal property;**  
 10 **exemptions.** There is hereby levied an excise tax on the use in  
 11 this State of tangible personal property [~~which~~] that is  
 12 imported by a taxpayer in this State whether owned, purchased  
 13 from an unlicensed seller, or however acquired for use in this  
 14 State[-], unless subject to tax or exempt from tax under chapter  
 15 B. The tax imposed by this chapter shall accrue when the  
 16 property is acquired by the importer or purchaser and becomes  
 17 subject to the taxing jurisdiction of the State. The [~~rates~~]  
 18 rate of the tax hereby imposed [~~and the exemptions thereof are~~  
 19 ~~as follows:~~

20 (1) ~~If the importer or purchaser is licensed under chapter~~  
 21 ~~237 and is:~~



1           ~~(A) A wholesaler or jobber importing or purchasing~~  
2           ~~for purposes of sale or resale, or~~  
3           ~~(B) A manufacturer importing or purchasing material~~  
4           ~~or commodities which are to be incorporated by~~  
5           ~~the manufacturer into a finished or saleable~~  
6           ~~product (including the container or package in~~  
7           ~~which the product is contained) wherein it will~~  
8           ~~remain in such form as to be perceptible to the~~  
9           ~~senses, and which finished or saleable product is~~  
10           ~~to be sold in such manner as to result in a~~  
11           ~~further tax on the activity of the manufacturer~~  
12           ~~as the manufacturer or as a wholesaler, and not~~  
13           ~~as a retailer,~~  
14           ~~there shall be no tax; provided that if the~~  
15           ~~wholesaler, jobber, or manufacturer is also engaged in~~  
16           ~~business as a retailer (so classed under chapter 237),~~  
17           ~~paragraph (2) shall apply to the wholesaler, jobber,~~  
18           ~~or manufacturer, but the director of taxation shall~~  
19           ~~refund to the wholesaler, jobber, or manufacturer, in~~  
20           ~~the manner provided under section 231-23(c) such~~  
21           ~~amount of tax as the wholesaler, jobber, or~~  
22           ~~manufacturer shall, to the satisfaction of the~~



1           ~~director, establish to have been paid by the~~  
2           ~~wholesaler, jobber, or manufacturer to the director~~  
3           ~~with respect to property which has been used by the~~  
4           ~~wholesaler, jobber, or manufacturer for the purposes~~  
5           ~~stated in this paragraph;~~

6           ~~(2) If the importer or purchaser is licensed under chapter~~  
7           ~~237 and is:~~

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

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



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

7           ~~(D) A person engaged in a service business or calling~~  
8           ~~as defined in section 237-7, or a person~~  
9           ~~furnishing transient accommodations subject to~~  
10          ~~the tax imposed by section 237D-2, in which the~~  
11          ~~import or purchase of tangible personal property~~  
12          ~~would have qualified as a sale at wholesale as~~  
13          ~~defined in section 237-4(a)(8) had the seller of~~  
14          ~~the property been subject to the tax in chapter~~  
15          ~~237; or~~

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



1           ~~receive the magazines or similar printed~~  
2           ~~materials,~~  
3           ~~the tax shall be one half of one per cent of the~~  
4           ~~purchase price of the property, if the purchase and~~  
5           ~~sale are consummated in Hawaii; or, if there is no~~  
6           ~~purchase price applicable thereto, or if the purchase~~  
7           ~~or sale is consummated outside of Hawaii, then one-~~  
8           ~~half of one per cent of the value of such property,~~  
9           ~~and~~  
10          ~~(3) In all other cases,] is~~ four per cent of the value of  
11          the property.

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

17          SECTION 21. Section 238-2.3, Hawaii Revised Statutes, is  
18          amended to read as follows:

19          "**§238-2.3 Imposition of tax on imported services or**  
20          **contracting; exemptions.** There is hereby levied an excise tax  
21          on the value of services or contracting as defined in section  
22          237-6 that are performed by an unlicensed seller at a point



1 outside the State and imported or purchased for use in this  
 2 State[-], unless subject to tax or exempt from tax under chapter  
 3 B. The tax imposed by this chapter shall accrue when the  
 4 service or contracting as defined in section 237-6 is received  
 5 by the importer or purchaser and becomes subject to the taxing  
 6 jurisdiction of the State. The [rates] rate of the tax hereby  
 7 imposed [~~and the exemptions from the tax are as follows:~~

8 ~~(1) If the importer or purchaser is licensed under chapter~~  
 9 ~~237 and is:~~

10 ~~(A) Engaged in a service business or calling in which~~  
 11 ~~the imported or purchased services or contracting~~  
 12 ~~become identifiable elements, excluding overhead,~~  
 13 ~~of the services rendered by the importer or~~  
 14 ~~purchaser, and the gross income of the importer~~  
 15 ~~or purchaser is subject to the tax imposed under~~  
 16 ~~chapter 237 on services at the rate of one half~~  
 17 ~~of one per cent or the rate of tax imposed under~~  
 18 ~~section 237-13.3; or~~

19 ~~(B) A manufacturer importing or purchasing services~~  
 20 ~~or contracting that become identifiable elements,~~  
 21 ~~excluding overhead, of a finished or saleable~~  
 22 ~~product (including the container or package in~~



1           ~~which the product is contained) and the finished~~  
2           ~~or saleable product is to be sold in a manner~~  
3           ~~that results in a further tax on the manufacturer~~  
4           ~~as a wholesaler, and not a retailer,~~  
5           ~~there shall be no tax imposed on the value of the~~  
6           ~~imported or purchased services or contracting,~~  
7           ~~provided that if the manufacturer is also engaged in~~  
8           ~~business as a retailer as classified under chapter~~  
9           ~~237, paragraph (2) shall apply to the manufacturer,~~  
10          ~~but the director of taxation shall refund to the~~  
11          ~~manufacturer, in the manner provided under section~~  
12          ~~231-23(c), that amount of tax that the manufacturer,~~  
13          ~~to the satisfaction of the director, shall establish~~  
14          ~~to have been paid by the manufacturer to the director~~  
15          ~~with respect to services that have been used by the~~  
16          ~~manufacturer for the purposes stated in this~~  
17          ~~paragraph.~~

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

20          ~~(A) Engaged in a service business or calling in which~~  
21                 ~~the imported or purchased services or contracting~~  
22                 ~~become identifiable elements, excluding overhead,~~



1 ~~of the services rendered by the importer or~~  
2 ~~purchaser, and the gross income from those~~  
3 ~~services when sold by the importer or purchaser~~  
4 ~~is subject to the tax imposed under chapter 237~~  
5 ~~at the highest rate;~~

6 ~~(B) A manufacturer importing or purchasing services~~  
7 ~~or contracting that become identifiable elements,~~  
8 ~~excluding overhead, of the finished or saleable~~  
9 ~~manufactured product (including the container or~~  
10 ~~package in which the product is contained) and~~  
11 ~~the finished or saleable product is to be sold in~~  
12 ~~a manner that results in a further tax under~~  
13 ~~chapter 237 on the activity of the manufacturer~~  
14 ~~as a retailer; or~~

15 ~~(C) A contractor importing or purchasing services or~~  
16 ~~contracting that become identifiable elements,~~  
17 ~~excluding overhead, of the finished work or~~  
18 ~~project required, under the contract, and where~~  
19 ~~the gross proceeds derived by the contractor are~~  
20 ~~subject to the tax under section 237-13(3) as a~~  
21 ~~contractor,~~

1           ~~the tax shall be one half of one per cent of the value~~  
2           ~~of the imported or purchased services or contracting,~~  
3           ~~and~~  
4           ~~(3) In all other cases, the importer or purchaser is~~  
5           ~~subject to the tax at the rate of] is four per cent on~~  
6           the value of the imported or purchased services or  
7           contracting."

8           SECTION 22. Section 238-2.6, Hawaii Revised Statutes, is  
9           amended by amending subsection (a) to read as follows:

10           "(a) The county surcharge on state tax, upon the adoption  
11           of a county ordinance and in accordance with the requirements of  
12           section 46-16.8, shall be levied, assessed, and collected as  
13           provided in this section on the value of property and services  
14           taxable under this chapter. No county shall set the surcharge  
15           on state tax at a rate greater than one-half of one per cent of  
16           the value of property taxable under this chapter. All  
17           provisions of this chapter shall apply to the county surcharge  
18           on state tax. No county shall conduct an independent audit of  
19           sellers registered under the streamlined sales tax agreement.

20           With respect to the surcharge, the director shall have all the  
21           rights and powers provided under this chapter. In addition, the  
22           director of taxation shall have the exclusive rights and power



1 to determine the county or counties in which a person imports or  
2 purchases tangible personal property and, in the case of a  
3 person importing or purchasing tangible property in more than  
4 one county, the director shall determine, through apportionment  
5 or other means, that portion of the surcharge on state tax  
6 attributable to the importation or purchase in each county."

7 SECTION 23. Section 237-4, Hawaii Revised Statutes, is  
8 repealed.

9 ~~["§237-4 "Wholesaler", "jobber", defined. (a)~~

10 ~~"Wholesaler" or "jobber" applies only to a person making sales~~  
11 ~~at wholesale. Only the following are sales at wholesale:~~

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

14 ~~(2) Sales to a licensed manufacturer of materials or~~  
15 ~~commodities that are to be incorporated by the~~  
16 ~~manufacturer into a finished or saleable product~~  
17 ~~(including the container or package in which the~~  
18 ~~product is contained) during the course of its~~  
19 ~~preservation, manufacture, or processing, including~~  
20 ~~preparation for market, and that will remain in such~~  
21 ~~finished or saleable product in such form as to be~~  
22 ~~perceptible to the senses, which finished or saleable~~



1 ~~product is to be sold and not otherwise used by the~~  
2 ~~manufacturer;~~

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

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

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



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



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



1           ~~incorporated in a manufactured product as described in~~  
2           ~~paragraph (2);~~

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

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

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

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

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

13           ~~(B) Where:~~

14           ~~(i) Tangible personal property is sold upon the~~  
15           ~~order or request of a licensed seller for~~  
16           ~~the purpose of rendering a service in the~~  
17           ~~course of the person's service business or~~  
18           ~~calling, or 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           ~~(ii) The tangible personal property becomes or is~~  
2           ~~used as an identifiable element of the~~  
3           ~~service rendered; and~~

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

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

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

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

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

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

19          ~~(A) Either:~~

20                 ~~(i) In the context of a service to service~~  
21                 ~~transaction, a service is rendered upon the~~  
22                 ~~order or request of a licensed seller for~~



1 ~~the purpose of rendering another service in~~  
2 ~~the course of the seller's service business~~  
3 ~~or calling;~~

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

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

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

21 ~~(B) The benefit of the service passes to the customer~~  
22 ~~of the licensed seller, licensed contractor, or~~



1 ~~person furnishing transient accommodations as an~~  
2 ~~identifiable element of the other service or~~  
3 ~~property to be sold, the contracting, or the~~  
4 ~~furnishing of transient accommodations;~~

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

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

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

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

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



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

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

19       ~~(13) Sales of amusements subject to taxation under section~~  
20       ~~237-13(4) to a licensed seller engaging in a business~~  
21       ~~or calling whenever:~~

22       ~~(A) Either:~~



- 1           ~~(i) In the context of an amusement to service~~
- 2           ~~transaction, an amusement is rendered upon~~
- 3           ~~the order or request of a licensed seller~~
- 4           ~~for the purpose of rendering another service~~
- 5           ~~in the course of the seller's service~~
- 6           ~~business or calling;~~
- 7           ~~(ii) In the context of an amusement to tangible~~
- 8           ~~personal property transaction, an amusement~~
- 9           ~~is rendered upon the order or request of a~~
- 10           ~~licensed seller for the purpose of selling~~
- 11           ~~tangible personal property; or~~
- 12           ~~(iii) In the context of an amusement to amusement~~
- 13           ~~transaction, an amusement is rendered upon~~
- 14           ~~the order or request of a licensed seller~~
- 15           ~~for the purpose of rendering another~~
- 16           ~~amusement in the course of the person's~~
- 17           ~~amusement business;~~
- 18           ~~(B) The benefit of the amusement passes to the~~
- 19           ~~customer of the licensed seller as an~~
- 20           ~~identifiable element of the other service,~~
- 21           ~~tangible personal property to be sold, or~~
- 22           ~~amusement;~~



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

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

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

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

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

17          ~~(14) Sales by a printer to a publisher of magazines or~~  
18          ~~similar printed materials containing advertisements,~~  
19          ~~when the publisher is under contract with the~~  
20          ~~advertisers to distribute a minimum number of~~  
21          ~~magazines or similar printed materials to the public~~  
22          ~~or defined segment of the public, whether or not there~~



1           ~~is a charge to the persons who actually receive the~~  
2           ~~magazines or similar printed materials.~~

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



1 SECTION 24. Section 237-5, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§237-5 "Producer" defined. "Producer" means any person~~  
4 ~~engaged in the business of raising and producing agricultural~~  
5 ~~products in their natural state, or in producing natural~~  
6 ~~resource products, or engaged in the business of fishing or~~  
7 ~~aquaculture, for sale, or for shipment or transportation out of~~  
8 ~~the State, of the agricultural or aquaculture products in their~~  
9 ~~natural or processed state, or butchered and dressed, or the~~  
10 ~~natural resource products, or fish.~~

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

15 SECTION 25. Section 237-13.3, Hawaii Revised Statutes, is  
16 repealed.

17 ~~["§237-13.3 Application of sections 237-4(a)(8),~~  
18 ~~237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and~~  
19 ~~237-13(6)(A). (a) Sections 237-4(a)(8), 237-4(a)(10),~~  
20 ~~237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to~~  
21 ~~the contrary notwithstanding, instead of the tax levied under~~  
22 ~~section 237-13(2)(A) on wholesale sales subject to section~~



1 ~~237-4(a)(8)(B), under section 237-13(4)(A) on a wholesaler~~  
 2 ~~subject to section 237-4(a)(13), and under section 237-13(6)(A)~~  
 3 ~~on a wholesaler subject to section 237-4(a)(10) at one-half of~~  
 4 ~~one per cent, during the period January 1, 2000, to December 31,~~  
 5 ~~2005, the tax shall be as follows:~~

- 6 ~~(1) In calendar year 2000, 3.5 per cent;~~
- 7 ~~(2) In calendar year 2001, 3.0 per cent;~~
- 8 ~~(3) In calendar year 2002, 2.5 per cent;~~
- 9 ~~(4) In calendar year 2003, 2.0 per cent;~~
- 10 ~~(5) In calendar year 2004, 1.5 per cent;~~
- 11 ~~(6) In calendar year 2005, 1.0 per cent; and~~
- 12 ~~(7) In calendar year 2006 and thereafter, the tax shall be~~  
 13 ~~0.5 per cent.~~

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

19 SECTION 26. Section 237-13.5, Hawaii Revised Statutes, is  
 20 repealed.

21 ~~["§237-13.5 Assessment on generated electricity. Any~~  
 22 ~~other provision of the law to the contrary notwithstanding, the~~

1 ~~levy and assessment of the general excise tax on the gross~~  
2 ~~proceeds from the sale of electric power to a public utility~~  
3 ~~company for resale to the public, shall be made only as a tax on~~  
4 ~~the business of a producer, at the rate assessed producers,~~  
5 ~~under section 237-13(2)(A)."]~~

6 SECTION 27. Section 237-15, Hawaii Revised Statutes, is  
7 repealed.

8 [~~"§237-15 Technicians. When technicians supply dentists~~  
9 ~~or physicians with dentures, orthodontic devices, braces, and~~  
10 ~~similar items which have been prepared by the technician in~~  
11 ~~accordance with specifications furnished by the dentist or~~  
12 ~~physician, and such items are to be used by the dentist or~~  
13 ~~physician in the dentist's or physician's professional practice~~  
14 ~~for a particular patient who is to pay the dentist or physician~~  
15 ~~for the same as a part of the dentist's or physician's~~  
16 ~~professional services, the technician shall be taxed as though~~  
17 ~~the technician were a manufacturer selling a product to a~~  
18 ~~licensed retailer, rather than at the rate of four per cent~~  
19 ~~which is generally applied to professions and services." ]~~

20 SECTION 28. Section 237-17, Hawaii Revised Statutes, is  
21 repealed.



1           ~~["§237-17 Persons with impaired sight, hearing, or who are~~  
2 ~~totally disabled. Anything in section 237-13 to the contrary~~  
3 ~~notwithstanding, the privilege tax levied, assessed, and~~  
4 ~~collected on account of the business or other activities of~~  
5 ~~individuals who are blind, deaf, or totally disabled,~~  
6 ~~corporations all of whose outstanding shares are owned by~~  
7 ~~individuals who are blind, deaf, or totally disabled, general,~~  
8 ~~limited, or limited liability partnerships, all of whose~~  
9 ~~partners are blind, deaf, or totally disabled, or limited~~  
10 ~~liability companies, all of whose members are blind, deaf, or~~  
11 ~~totally disabled, shall not exceed one half of one per cent of~~  
12 ~~the proceeds, sales, income, or other receipts subject to tax.~~  
13 ~~For the purpose of this chapter "blind", "deaf", or "totally~~  
14 ~~disabled" is defined as in section 235-1. The impairment of~~  
15 ~~sight or hearing, or the disability, shall be certified to as~~  
16 ~~provided in section 235-1." ]~~

17           SECTION 29. Section 237-29.55, Hawaii Revised Statutes, is  
18 repealed.

19           ~~["§237-29.55] Exemption for sale of tangible personal~~  
20 ~~property for resale at wholesale. (a) There shall be exempted~~  
21 ~~from, and excluded from the measure of, the taxes imposed by~~  
22 ~~this chapter all of the gross proceeds or gross income arising~~



1 ~~from the sale of tangible personal property imported to Hawaii~~  
2 ~~from a foreign or domestic source to a licensed taxpayer for~~  
3 ~~subsequent resale for the purpose of wholesale as defined under~~  
4 ~~section 237-4.~~

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

19 SECTION 30. Section 238-4, Hawaii Revised Statutes, is  
20 repealed.

21 ~~["§238-4 Certain property used by producers. If a~~  
22 ~~licensed producer, or a cooperative association acting under the~~



1 ~~authority of chapter 421 or 422, in order to sell to such~~  
2 ~~producer, or a licensed person, imports into the State or~~  
3 ~~acquires in the State commodities, materials, items, services,~~  
4 ~~or living things enumerated in section [237-4(a)(3) and (5) to~~  
5 ~~(7)], then section 237-4 shall apply. If section 237-4 applies~~  
6 ~~and the producer is engaged in the sale of the producer's~~  
7 ~~products at retail or in any manner other than at wholesale,~~  
8 ~~then the tax upon use of property in the State imposed by~~  
9 ~~section 238-2(2) shall apply the same as in the case of a~~  
10 ~~purchaser who is a licensed retailer. In other such cases no~~  
11 ~~tax shall be imposed under this chapter." ]~~

12 SECTION 31. There is appropriated out of the general  
13 revenues of the State of Hawaii the sum of \$ \_\_\_\_\_, or so  
14 much thereof as may be necessary for fiscal year 2007-2008, for  
15 technical assistance and briefings to enable the auditor to  
16 carry out its responsibilities under this Act.

17 Technical assistance may include analysis of the fiscal and  
18 legal impacts of proposed conformance with the existing general  
19 excise tax law and other laws and any other issues that might  
20 result from the implementation of a streamlined sales and use  
21 tax under the streamlined sales and use tax agreement. Funds  
22 may also be expended for preparation of proposed legislation by



1 contracting with a legal professional with a background and  
2 practice in taxation.

3 The president of the senate and the speaker of the house of  
4 representatives shall appoint the following to a committee to  
5 hold the meetings necessary to carry out this Act:

6 (1) Two legislative members each; and

7 (2) One public member each.

8 The director of taxation, or a representative, shall be an ex  
9 officio member. The members of the committee may elect a chair  
10 or co-chairs.

11 The sum appropriated shall be expended by the office of the  
12 auditor for the purposes of this Act. The office of the auditor  
13 shall secure the services necessary to support the project in as  
14 expeditious a manner as possible and without regard to chapter  
15 103D, Hawaii Revised Statutes. The legislative reference bureau  
16 shall assist the auditor or contractor in drafting any  
17 appropriate legislation.

18 SECTION 32. Notwithstanding the provisions of any law  
19 making it unlawful for any person, officer, or employee of the  
20 State to make known information imparted by any tax return or  
21 permit any tax return to be seen or examined by any person, it  
22 shall be lawful to permit a private contractor contracted under



1 section 31 of this Act to inspect any tax return of any  
2 taxpayer, or to furnish to the private contractor an abstract of  
3 the return or supply the private contractor with information  
4 concerning any item contained in the return or disclosed by the  
5 report of any investigation of the return or of the subject  
6 matter of the return only for the purposes of conforming the  
7 State's general excise and use taxes to be operative with the  
8 Streamlined Sales Tax Project's Model Agreement and Act.

9 SECTION 33. In codifying the new chapters and sections  
10 added to the Hawaii Revised Statutes by this Act, the revisor of  
11 statutes shall substitute appropriate section numbers for the  
12 letters used in designating the new chapters and sections in  
13 this Act.

14 SECTION 34. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 35. This Act shall take effect on January 1, 2009,  
17 provided that sections 31 and 32 shall take effect on July 1,  
18 2007.

19

INTRODUCED BY:



JAN 23 2007



**Report Title:**

Streamlined Sales and Use Tax Amendments

**Description:**

Adopts amendments to Hawaii tax laws to implement the streamlined sales and use tax agreement.

