
A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

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

1 SECTION 1. Section 237-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§237-2 "Business", "engaging" in business, defined.

4 "Business" as used in this chapter, includes all activities
5 (personal, professional, or corporate), engaged in or caused to
6 be engaged in with the object of gain or economic benefit either
7 direct or indirect, but does not include casual sales.

8 The term "engaging" as used in this chapter with reference
9 to engaging or continuing in business also includes [~~the~~]:

10 (1) The exercise of corporate or franchise powers[-]; or

11 (2) (A) The sale of tangible personal property by a
12 person soliciting business through an independent
13 contractor or other representative if the person
14 enters into an agreement with a resident of this
15 state under which the resident, for a commission
16 or other consideration, directly or indirectly
17 refers potential customers, whether by a link on
18 an internet website or otherwise, to the person,



1 and if the cumulative gross receipts from sales
2 by the person to customers in the state who are
3 referred to the person by such a resident, is at
4 least \$10,000 in the twelve-month period ending
5 on the last day of the most recent calendar
6 quarter before the calendar quarter in which the
7 sale is made.

8 (B) This presumption may be rebutted by proof that
9 the resident with whom the person has an
10 agreement did not engage in any solicitation in
11 the state on behalf of the person that would
12 satisfy the nexus requirement of the United
13 States Constitution during twelve-month period in
14 question. Nothing in this section shall be
15 construed to narrow the scope of the terms
16 "person," "purchasing agent," or "representative"
17 as defined in section 237-1."

18 SECTION 2. The department of taxation shall adopt rules,
19 in accordance with chapter 91, Hawaii Revised Statutes,
20 implementing and providing guidance to taxpayers concerning
21 section 237-2, Hawaii Revised Statutes, as amended by this Act.



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 Statutory material to be repealed is bracketed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

3 SECTION 4. This Act shall take effect on July 1, 2009.



Report Title:

General Excise Tax; Definition of Engaging in Business

Description:

Amends the definition of engaging in business under section 237-2, HRS (general excise tax), to include persons who enter into an agreement with residents of the State where the person pays a commission for referral of potential customers. (HB1405 HD2)

