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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, established 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 was formed to provide additional tax policy

1 support and guidance. This Act is a culmination of those  
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.

21 The contents of this Act are updated to reflect the  
22 Streamlined Sales Tax Governing Board's amendments to the

1 Streamlined Sales and Use Tax Agreement through 2008. The State  
2 of Hawaii would benefit tremendously by adopting legislation  
3 that would enable the State to be in compliance with the  
4 Streamlined Sales and Use Tax Agreement prior to the adoption of  
5 federal legislation that is contemplated to be adopted in 2009.

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

9 **"CHAPTER**

10 **TAX ON WHOLESALERS, SERVICE BUSINESSES, AND CONTRACTORS**

11 **§A-1 Definitions.** "Department" means the department of  
12 taxation.

13 The definitions contained in sections 237-1, 237-2, and  
14 237-3 shall apply to this chapter.

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

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

20 (2) Sales to a licensed manufacturer of materials or  
21 commodities that are to be incorporated by the  
22 manufacturer into a finished or saleable product

1 (including the container or package in which the  
2 product is contained) during the course of its  
3 preservation, manufacture, or processing, including  
4 preparation for market, and that will remain in a  
5 finished or saleable product in a form as to be  
6 perceptible to the senses, which finished or saleable  
7 product is to be sold and not otherwise used by the  
8 manufacturer;

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

19 (4) Sales to a licensed contractor of materials or  
20 commodities that are to be incorporated by the  
21 contractor into the finished work or project required  
22 by the contract and that will remain in a finished

1 work or project in a form as to be perceptible to the  
2 senses;

3 (5) Sales to a licensed producer, or to a cooperative  
4 association described in section 237-23(a)(7) for sale  
5 to a licensed producer, or to a licensed person  
6 operating a feed lot, of poultry or animal feed,  
7 hatching eggs, semen, replacement stock, breeding  
8 services for the purpose of raising or producing  
9 animal or poultry products for disposition as  
10 described in section A-3 or for incorporation into a  
11 manufactured product as described in paragraph (2) or  
12 for the purpose of breeding, hatching, milking, or egg  
13 laying other than for the customer's own consumption  
14 of the meat, poultry, eggs, or milk so produced;  
15 provided that in the case of a feed lot operator, only  
16 the segregated cost of the feed furnished by the feed  
17 lot operator as part of the feed lot operator's  
18 service to a licensed producer of poultry or animals  
19 to be butchered or to a cooperative association  
20 described in section 237-23(a)(7) of these licensed  
21 producers shall be deemed to be a sale at wholesale;  
22 and provided further that any amount derived from the

1           furnishing of feed lot services, other than the  
2           segregated cost of feed, shall be deemed taxable at  
3           the service business rate specified in section  
4           A-6(a)(4). This paragraph shall not apply to the sale  
5           of feed for poultry or animals to be used for hauling,  
6           transportation, or sports purposes;

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

16          (7) Sales to a licensed producer, or to a cooperative  
17          association described in section 237-23(a)(7) for sale  
18          to a licensed producer; of polypropylene shade cloth;  
19          of polyfilm; of polyethylene film; of cartons and  
20          other containers, wrappers, and sacks, and binders to  
21          be used for packaging eggs, vegetables, fruits, and  
22          other agricultural and aquacultural products; of

1 seedlings and cuttings for producing nursery plants or  
2 aquacultural products; or of chick containers; which  
3 cartons and other containers, wrappers, and sacks,  
4 binders, seedlings, cuttings, and containers are to be  
5 used as described in section A-3, or to be  
6 incorporated in a manufactured product as described in  
7 paragraph (2);

8 (8) Sales of tangible personal property where:

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

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

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

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

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

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

5 (A) Either:

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

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

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



- 1 (iv) In the context of a service-to-transient  
2 accommodations rental transaction, a service  
3 is rendered upon the order or request of a  
4 person subject to tax under section 237D-2  
5 for the purpose of furnishing transient  
6 accommodations;
- 7 (B) The benefit of the service passes to the customer  
8 of the licensed seller, licensed contractor, or  
9 person furnishing transient accommodations as an  
10 identifiable element of the other service or  
11 property to be sold, the contracting, or the  
12 furnishing of transient accommodations;
- 13 (C) The cost of the service does not constitute  
14 overhead to the licensed seller, licensed  
15 contractor, or person furnishing transient  
16 accommodations;
- 17 (D) The gross income of the licensed seller is not  
18 divided between the licensed seller and another  
19 licensed seller, contractor, or person furnishing  
20 transient accommodations for imposition of the  
21 tax under this chapter or chapter 237;

- 1 (E) The gross income of the licensed seller is not  
2 subject to a deduction under this chapter,  
3 chapter 237, or chapter 237D; and
- 4 (F) The resale of the service, tangible personal  
5 property, contracting, or transient  
6 accommodations is subject to the tax imposed  
7 under this chapter or chapter 237 at the highest  
8 rate;
- 9 (11) Sales to a licensed retail merchant, jobber, or other  
10 licensed seller of bulk condiments or prepackaged  
11 single-serving packets of condiments that are provided  
12 to customers by the licensed retail merchant, jobber,  
13 or other licensed seller;
- 14 (12) Sales to a licensed retail merchant, jobber, or other  
15 licensed seller of tangible personal property that  
16 will be incorporated or processed by the licensed  
17 retail merchant, jobber, or other licensed seller into  
18 a finished or saleable product during the course of  
19 its preparation for market (including disposable,  
20 nonreturnable containers, packages, or wrappers, in  
21 which the product is contained and that are generally  
22 known and most commonly used to contain food or

1 beverage for transfer or delivery), and which finished  
2 or saleable product is to be sold and not otherwise  
3 used by the licensed retail merchant, jobber, or other  
4 licensed seller;

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

8 (A) Either:

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

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

20 (iii) In the context of an amusement-to-amusement  
21 transaction, an amusement is rendered upon  
22 the order or request of a licensed seller

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

1           As used in this paragraph, "amusement" means  
2           entertainment provided as part of a show for which  
3           there is an admission charge; and

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

12       (b) If the use tax law under chapter B is finally held by  
13       a court of competent jurisdiction to be unconstitutional or  
14       invalid insofar as it purports to tax the use or consumption of  
15       tangible personal property imported into the State in interstate  
16       or foreign commerce, or both, wholesalers and jobbers shall be  
17       taxed thereafter under this chapter in accordance with the  
18       following definition (which shall supersede the definitions for  
19       "wholesaler" or "jobber" in subsection (a)): "Wholesaler" or  
20       "jobber" means a person, or an organized division thereof,  
21       definitely organized to render and rendering a general  
22       distribution service that buys and maintains at the person's

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

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

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

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

4           **§A-5 Licensing; tax year.** Sections 237-9, 237-9.5,  
5 237-11, and 237-12 shall be applicable for this chapter.

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

12           (1) Tax on manufacturers:

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

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

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

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



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

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

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

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

18 (iii) At the election of the taxpayer and with the  
19 approval of the department, the taxpayer may  
20 make the taxpayer's returns under clause (i)  
21 even though the products have not been sold

1                   at the time of their entry into interstate  
2                   or foreign commerce; and

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

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

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

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

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

- 1 (5) Tax on sales by wholesalers:
- 2 (A) Upon every person who is engaged in the business
- 3 of a wholesaler or jobber under section A-2 or
- 4 selling any tangible personal property whatsoever
- 5 (not including, however, bonds or other evidences
- 6 of indebtedness, or stocks), there is hereby
- 7 levied, and shall be assessed and collected, a
- 8 tax equivalent to one-half of one per cent of the
- 9 gross proceeds of sales of the business as a
- 10 wholesaler or jobber as defined in section A-2;
- 11 and
- 12 (B) Gross proceeds of sales of tangible property in
- 13 interstate and foreign commerce shall constitute
- 14 a part of the measure of the tax imposed on
- 15 persons in the business of selling tangible
- 16 personal property as a wholesaler, to the extent,
- 17 under the conditions, and in accordance with the
- 18 provisions of the Constitution of the United
- 19 States and the Acts of Congress of the United
- 20 States that may be now in force or may be
- 21 hereafter adopted, and whenever there occurs in
- 22 the State an activity to which, under the

1                   Constitution and Acts of Congress, there may be  
2                   attributed gross proceeds of sales, the gross  
3                   proceeds shall be so attributed.

4           (b)   When a manufacturer or producer, engaged in business  
5 in the State, also is engaged in selling the manufacturer's or  
6 producer's products in the State at wholesale taxed under this  
7 chapter, retail under chapter 237, or in any other manner, the  
8 tax for the privilege of engaging in the business of selling the  
9 products in the State shall apply to the manufacturer or  
10 producer as well as the tax for the privilege of manufacturing  
11 or producing in the State, and the manufacturer or producer  
12 shall make the returns of the gross proceeds of the wholesale,  
13 retail under chapter 237, or other sales required for the  
14 privilege of selling in the State, as well as making the returns  
15 of the value or gross proceeds of sales of the products required  
16 for the privilege of manufacturing or producing in the State.  
17 The manufacturer or producer shall pay the tax imposed in this  
18 chapter for the privilege of selling its products in the State,  
19 and the value or gross proceeds of sales of the products, thus  
20 subjected to tax, may be deducted insofar as duplicated as to  
21 the same products by the measure of the tax upon the  
22 manufacturer or producer for the privilege of manufacturing or

1 producing in the State under this chapter; provided that no  
2 producer of agricultural products who sells the products to a  
3 purchaser who will process the products outside the State shall  
4 be required to pay the tax imposed in this chapter for the  
5 privilege of producing or selling those products.

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

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

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

20       (b) The department may require that the person rendering  
21 an amusement at wholesale take from the licensed seller a

1 certificate, in a form prescribed by the department, certifying  
2 that the sale is a sale at wholesale; provided that:

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

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

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

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

21 (2) The absence of a certificate in itself shall give rise  
22 to the presumption that the sale is not at wholesale,



1           unless the person rendering the sale is exclusively  
2           rendering services at wholesale.

3           **§A-8 Tax on receipts of sugar benefit payments.** Upon the  
4 amounts received from the United States government by any  
5 producer of sugar (or the producer's legal representative or  
6 heirs), as defined under and by virtue of the Sugar Act of 1948,  
7 as amended, or other Acts of the Congress of the United States  
8 relating thereto, there is hereby levied a tax of one-half of  
9 one per cent of the gross amount received; provided that the tax  
10 levied hereunder on any amount so received and actually  
11 disbursed to another by a producer in the form of a benefit  
12 payment shall be paid by the person or persons to whom the  
13 amount is actually disbursed, and the producer actually making a  
14 benefit payment to another shall be entitled to claim on the  
15 producer's return a deduction from the gross amount taxable  
16 hereunder in the sum of the amount so disbursed. The amounts  
17 taxed under this section shall not be taxable under any other  
18 paragraph, subsection, or section of this chapter or chapter  
19 237.

20           **§A-9 Segregation of gross income, etc., on records and in**  
21 **returns.** The imposition of taxes and the application of tax  
22 rates do not depend upon the business in which the taxpayer is

1 primarily engaged. One business may be subject to two or more  
2 tax rates under this chapter and chapter 237. If a business is  
3 within the purview of two or more of the paragraphs of section  
4 237-13 or other provisions of this chapter or chapter 237, all  
5 of them apply, each provision being applicable to the  
6 appropriate item of gross income, gross proceeds of sales, or  
7 value of products. However, any person engaging or continuing  
8 in a business having gross income, gross proceeds of sales, and  
9 value of products, or any of these as the case may be, taxable  
10 at different rates, shall be subject to taxation upon the  
11 aggregate amount of the gross income, gross proceeds of sales,  
12 and value of products of the business at the highest rate  
13 applicable to any part of the aggregate, unless the person shall  
14 segregate the parts taxable at different rates upon the person's  
15 records and in the person's returns, and shall sustain the  
16 burden of proving that the segregation was correctly made.

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

1           **SA-11 Technicians.** When technicians supply dentists or  
2 physicians with dentures, orthodontic devices, braces, and  
3 similar items which have been prepared by the technician in  
4 accordance with specifications furnished by the dentist or  
5 physician, and these items are to be used by the dentist or  
6 physician in the dentist's or physician's professional practice  
7 for a particular patient who is to pay the dentist or physician  
8 for the same as a part of the dentist's or physician's  
9 professional services, the technician shall be taxed as though  
10 the technician were a manufacturer selling a product under  
11 A-6(a) (1) to a licensed retailer, rather than pursuant to  
12 chapter 237, at the rate of four per cent that is generally  
13 applied to professions and services.

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

1 and the value of the entire product shall be included in the  
2 measure of the tax imposed on the other taxpayer as elsewhere  
3 provided.

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

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

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

6 (c) When a person licensed under this chapter sells  
7 prepaid telephone calling services to a licensed retail  
8 merchant, jobber, or other licensed seller for purposes of  
9 resale, the person shall be taxed as a wholesaler selling  
10 tangible personal property.

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

14 **§A-14 Apportionment.** In the case of a tax upon the  
15 production of property in the State, the apportionment shall be  
16 determined as in the case of the tax on manufacturers provided  
17 in section A-6(a)(1).

18 **§A-15 Conformity to constitution.** Section 237-22 shall  
19 apply to this chapter.

20 **§A-16 Exemptions.** The exemptions provided in sections  
21 237-23, 237-26, 237-27, 237-27.5, 237-29, 237-29.5, and  
22 237-29.53 shall apply to this chapter.

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

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

7           (2) The amounts of federal taxes imposed on sugar  
8 manufactured in the State, paid by the manufacturer to  
9 the federal government;

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

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

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

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

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

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

18 **§A-18 Exemption for sale of tangible personal property for**  
19 **resale at wholesale.** (a) There shall be exempted from, and  
20 excluded from the measure of, the taxes imposed by this chapter  
21 all of the gross proceeds or gross income arising from the sale  
22 of tangible personal property imported to Hawaii from a foreign

1 or domestic source to a licensed taxpayer for subsequent resale  
2 for the purpose of sale at wholesale as defined under section  
3 A-2.

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

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



1 SECTION 3. 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 IMPORT OF GOODS, SERVICES, AND CONTRACTING FOR RESALE

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

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

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

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

21 (B) A manufacturer importing or purchasing material  
22 or commodities that are to be incorporated by the

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

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

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

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

19 the tax shall be one-half of one per cent of the  
20 purchase price of the property, if the purchase and  
21 sale are consummated in Hawaii; or, if there is no  
22 purchase price applicable thereto, or if the purchase

1           or sale is consummated outside of Hawaii, then  
2           one-half of one per cent of the value of the property.

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

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

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

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

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

- 1           (2) If the importer or purchaser is a person licensed  
2           under chapter 237 and is:
- 3           (A) Engaged in a service business or calling in which  
4           the imported or purchased services or contracting  
5           become identifiable elements, excluding overhead,  
6           of the services rendered by the importer or  
7           purchaser, and the gross income from those  
8           services when sold by the importer or purchaser  
9           is subject to the tax imposed under chapter 237;
- 10          (B) A manufacturer importing or purchasing services  
11          or contracting that become identifiable elements,  
12          excluding overhead, of the finished or saleable  
13          manufactured product (including the container or  
14          package in which the product is contained) and  
15          the finished or saleable product is to be sold in  
16          a manner that results in a further tax under  
17          chapter 237 on the activity of the manufacturer  
18          as a retailer; or
- 19          (C) A contractor importing or purchasing services or  
20          contracting that become identifiable elements,  
21          excluding overhead, of the finished work or  
22          project required under the contract, and where

1           the gross proceeds derived by the contractor are  
2           subject to the tax under section 237-13(2) as a  
3           contractor;

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

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

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





1 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39,  
2 237-40, 237-41, 237-42, 237-43, 237-46, 237-47, 237-49, and  
3 237-A to 237-F shall apply to this chapter."

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

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

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

16 **"§237-A General sourcing rules.**

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

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

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

8           (C) When subparagraph (A) or (B) do not apply, the  
9           sale is sourced to the location indicated by an  
10           address for the purchaser that is available from  
11           the business records of the seller that are  
12           maintained in the ordinary course of the seller's  
13           business when use of this address does not  
14           constitute bad faith;

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

1           (E) When none of the previous rules of subparagraph  
2           (A), (B), (C), or (D) apply, including the  
3           circumstance in which the seller is without  
4           sufficient information to apply the previous  
5           rules, then the location shall be determined by  
6           the address from which tangible personal property  
7           was shipped, from which the digital good or the  
8           computer software delivered electronically was  
9           first available for transmission by the seller,  
10           or from which the service was provided  
11           (disregarding for these purposes any location  
12           that merely provided the digital transfer of the  
13           product sold);

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

17           (A) For a lease or rental that requires recurring  
18           periodic payments, the first periodic payment is  
19           sourced the same as a retail sale in accordance  
20           with paragraph (1). Periodic payments made  
21           subsequent to the first payment are sourced to  
22           the primary property location for each period

1           covered by the payment. The primary property  
2           location shall be as indicated by an address for  
3           the property provided by the lessee that is  
4           available to the lessor from its records  
5           maintained in the ordinary course of business,  
6           when use of this address does not constitute bad  
7           faith. The property location shall not be  
8           altered by intermittent use at different  
9           locations, such as use of business property that  
10          accompanies employees on business trips and  
11          service calls; or

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

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

20          (3) The lease or rental of motor vehicles, trailers,  
21          semi-trailers, or aircraft that do not qualify as

1 transportation equipment, as defined in paragraph (4),  
2 shall be sourced as follows:

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

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

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

- 1        (4) The retail sale, including lease or rental, of  
2        transportation equipment shall be sourced the same as  
3        a retail sale in accordance with paragraph (1),  
4        notwithstanding the exclusion of lease or rental in  
5        paragraph (1). "Transportation equipment" means any  
6        of the following:
- 7        (A) Locomotives and rail cars that are utilized for  
8        the carriage of persons or property in interstate  
9        commerce;
- 10       (B) Trucks and truck-tractors with a gross vehicle  
11       weight rating of ten thousand one pounds or  
12       greater, trailers, semi-trailers, or passenger  
13       buses that are:
- 14       (i) Registered through the international  
15       registration plan; and
- 16       (ii) Operated under authority of a carrier  
17       authorized and certificated by the United  
18       States Department of Transportation or  
19       another federal authority to engage in the  
20       carriage of persons or property in  
21       interstate commerce;

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

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

10           **§237-B General sourcing definitions.** For the purposes of  
11 section 237-A(1), the terms "receive" and "receipt" mean:

- 12           (1) Taking possession of tangible personal property;  
13           (2) Making first use of services; or  
14           (3) Taking possession or making first use of digital  
15           goods,

16 whichever comes first.

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

19           **§237-C Telecommunications sourcing rule.** (a) Except for  
20 the defined telecommunications services in subsection (c), the  
21 sale of telecommunications service sold on a call-by-call basis  
22 shall be sourced to:



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

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

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

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

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

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

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

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

4       (3) A sale of prepaid calling service or a sale of a  
5       prepaid wireless calling service is sourced in  
6       accordance with section 237-A; provided that in the  
7       case of a sale of prepaid wireless calling service,  
8       section 237-A(1) (E) shall apply in addition to an  
9       option to use the location associated with the mobile  
10       telephone number; or

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

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

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

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

8           Service for segments of a channel located in more than  
9           one jurisdiction or levels of jurisdiction and where  
10          the segments are not separately billed shall be  
11          sourced in each jurisdiction based on the percentage  
12          determined by dividing the number of customer channel  
13          termination points in the jurisdiction by the total  
14          number of customer channel termination points in all  
15          jurisdictions.

16          **§237-D Telecommunications sourcing definitions.** For the  
17          purpose of section 237-C, the following definitions shall apply:

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

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

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

7       "Customer":

8       (1) Means the person or entity that contracts with the  
9 seller of telecommunications services. If the end  
10 user of telecommunications services is not the  
11 contracting party, the end user of the  
12 telecommunications service is the customer of the  
13 telecommunications service, but this sentence only  
14 applies for the purpose of sourcing sales of  
15 telecommunications services under section 237-C; and  
16       (2) Does not include a reseller of telecommunications  
17 service or for mobile telecommunications service of a  
18 serving carrier under an agreement to serve the  
19 customer outside the home service provider's licensed  
20 service area.

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

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

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

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

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

18       "Post-paid calling service" means the telecommunications  
19 service obtained by making a payment on a call-by-call basis  
20 either through the use of a credit card or payment mechanism  
21 such as a bank card, travel card, or debit card, or by charge  
22 made to a telephone number that is not associated with the

1 origination or termination of the telecommunications service. A  
2 post-paid calling service includes a telecommunications service,  
3 except a prepaid wireless calling service, that would be a  
4 prepaid calling service except it is not exclusively a  
5 telecommunications service.

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

12 "Prepaid wireless calling service" means a  
13 telecommunications service that provides the right to utilize  
14 mobile wireless service as well as other non-telecommunications  
15 services, including the download of digital products delivered  
16 electronically, content and ancillary services, which must be  
17 paid for in advance and is sold in predetermined units or  
18 dollars of which the number declines with use in a known amount.

19 "Private communication service" means a telecommunications  
20 service that entitles the customer to exclusive or priority use  
21 of a communications channel or group of channels between or  
22 among termination points, regardless of the manner in which the

1 channel or channels are connected, and includes switching  
2 capacity, extension lines, stations, and any other associated  
3 services that are provided in connection with the use of the  
4 channel or channels.

5 "Service address" means:

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

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

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

20 **§237-E Deduction for bad debts.** (a) A seller shall be  
21 allowed a deduction from taxable sales for bad debts. A seller  
22 may deduct the amount of bad debts from the seller's gross

1 sales, rentals, or services used for the computation of the tax.  
2 The amount of gross sales, rentals, or services deducted shall  
3 be charged off as uncollectible on the books and records of the  
4 seller at the time the debt becomes worthless and deducted on  
5 the return for the period during which the bad debt is written  
6 off as uncollectible in the claimant's books and records and  
7 shall be eligible to be deducted for income tax purposes.

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

15 If a consumer or other person pays all or part of a bad  
16 debt with respect to which a seller claimed a deduction under  
17 this section, the seller is liable for the amount of taxes  
18 deducted in connection with that portion of the debt for which  
19 payment is received and shall remit these taxes in the seller's  
20 next payment to the department. Any payments made on a bad debt  
21 shall be applied proportionally first to the taxable price of



1 the property and the tax on the property and second to any  
2 interest, service, or other charge.

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

12 (c) If a certified service provider assumed filing  
13 responsibility under chapter 255D, the certified service  
14 provider may claim, on behalf of the seller, any bad debt  
15 allowable to the seller and shall credit or refund that amount  
16 of bad debt allowed or refunded to the seller.

17 (d) If the books and records of a seller who, under  
18 chapter 255D claims a bad debt allowance, support an allocation  
19 of the bad debts among member states of that agreement, the  
20 seller may allocate the bad debt.

21 (e) As used in this section, "bad debt" means any portion  
22 of a debt resulting from a seller's collection of the use tax

1 under chapter 255D on the purchase of tangible personal property  
2 or services that is not otherwise deductible or excludable and  
3 is eligible to be claimed, or could be eligible to be claimed if  
4 the seller kept accounts on an accrual basis, as a deduction  
5 pursuant to section 166 (with respect to bad debts) of the  
6 Internal Revenue Code. A bad debt does not include any of the  
7 following:

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

19 **§237-F Direct mail sourcing.** (a) Notwithstanding the  
20 general sourcing provisions of section 237-A, a purchaser of  
21 direct mail who is not a holder of a direct pay permit shall  
22 provide to the seller, in conjunction with the purchase, either

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

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

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

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

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

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

1 SECTION 7. Section 237-1, Hawaii Revised Statutes, is  
2 amended by adding seven new definitions to be appropriately  
3 inserted and to read as follows:

4 "Department" means the department of taxation.

5 "Delivery charges" means charges by the seller for  
6 preparation and delivery to a location designated by the  
7 purchaser of personal property or services, including but not  
8 limited to transportation, shipping, postage, handling, crating,  
9 and packing. If a shipment includes both exempt and taxable  
10 property, the seller shall allocate the delivery charge by  
11 using:

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

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

18 "Direct mail":

19 (1) Means printed material delivered or distributed by  
20 United States mail or other delivery service to a mass  
21 audience or to addresses on a mailing list provided by  
22 the purchaser, or at the direction of the purchaser,

1 in cases in which the cost of the items are not billed  
2 directly to the recipients;

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

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

8 "Lease or rental":

9 (1) Means any transfer of possession or control of  
10 tangible personal property for a fixed or  
11 indeterminate term for consideration;

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

13 (3) Does not include:

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

18 (B) A transfer of possession or control of property  
19 under an agreement that requires the transfer of  
20 title upon completion of required payments and  
21 payment of an option price that does not exceed

1           the greater of \$100 or one per cent of the total  
2           required payments;

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

11           (D) Agreements covering motor vehicles and trailers  
12           where the amount of consideration may be  
13           increased or decreased by reference to the amount  
14           realized upon sale or disposition of the property  
15           as defined in section 7701(h) (with respect to  
16           motor vehicle operating leases) of the Internal  
17           Revenue Code.

18           For the purposes of this chapter, the definition of "lease  
19           or rental" shall be used regardless of whether a transaction is  
20           characterized as a lease or rental under generally accepted  
21           accounting principles, the federal Internal Revenue Code, or

1 other provisions of federal, state, or local law; provided that  
2 this definition shall not apply to section 237-16.5 or 237-43.

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

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

- 10 (1) The seller's cost of the property sold;  
11 (2) The cost of the materials used, labor or service cost,  
12 losses, all costs of transportation to the seller, all  
13 taxes imposed on the seller, and any other expense of  
14 the seller;  
15 (3) Charges by the seller for any services necessary to  
16 complete the sale, other than delivery and  
17 installation charges;  
18 (4) Delivery and installation charges; or  
19 (5) Installation charges.

20 "Tangible personal property" means personal property that  
21 can be seen, weighed, measured, felt, or touched, or that is in



1 any manner perceptible to the senses. Tangible personal  
2 property includes gas, steam, and prewritten computer software."

3 SECTION 8. Chapter 239, Hawaii Revised Statutes, is  
4 amended by adding a new section to part II to be appropriately  
5 designated and to read as follows:

6 "§239- Treatment of conflicts. In a case where the tax  
7 under chapter 237 and this part may be applied to the same gross  
8 income or gross proceeds, the tax shall only be levied,  
9 assessed, and collected under chapter 237."

10 SECTION 9. Chapter 255D, Hawaii Revised Statutes, is  
11 amended by adding nine new sections to be appropriately  
12 designated and to read as follows:

13 "§255D-A Relief from certain liability. All sellers and  
14 certified service providers as defined in section 255D-2 using  
15 databases pursuant to section 255D-D(f) and (g) shall be  
16 relieved from liability to the state and local jurisdictions for  
17 having charged and collected the incorrect amount of sales or  
18 use tax resulting from the seller or certified service provider  
19 relying on erroneous data provided by the State on tax rates,  
20 boundaries, or taxing jurisdiction assignments.

21 §255D-B Rounding rule. For the purpose of calculating the  
22 amount of the sales or use tax:

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

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

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

9       **§255D-C Amnesty for registration under this chapter.** (a)  
10      The department shall provide amnesty for uncollected or unpaid  
11      sales tax under chapter 237 or use tax under chapter 238,  
12      including any county surcharge, to a seller who registers to pay  
13      or to collect and remit applicable sales or use tax on  
14      transactions made to purchasers in the State in accordance with  
15      the terms of the streamlined sales and use tax agreement;  
16      provided that the seller was not so registered in the State in  
17      the twelve-month period preceding the effective date of the  
18      State's participation in the streamlined sales and use tax  
19      agreement.

20      (b) The amnesty shall preclude assessment for uncollected  
21      or unpaid sales tax under chapter 237 or use tax under chapter  
22      238 together with penalty or interest for sales made during the

1 period the seller was not registered in the State; provided  
2 registration occurs within twelve months of the effective date  
3 of the State's participation in the streamlined sales and use  
4 tax agreement.

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

10 (d) The amnesty shall not be available for sales or use  
11 taxes already paid or remitted to the State or to taxes  
12 collected by the seller.

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

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

1       §255D-D Local rate and boundary changes. (a) Any rate  
2 changes by a local jurisdiction shall be effective only on the  
3 first day of a calendar quarter after a minimum of sixty days  
4 notice to sellers.

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

10       (c) For sales and use tax purposes only, local  
11 jurisdiction boundary changes apply only on the first day of a  
12 calendar quarter after a minimum of sixty days notice to  
13 sellers.

14       (d) The department shall provide and maintain a database  
15 that describes boundary changes for all taxing jurisdictions.  
16 The database shall include a description of the change and the  
17 effective date of the change for sales tax under chapter 237 and  
18 use tax under chapter 238 purposes.

19       (e) The department shall provide and maintain a database  
20 of all sales tax rates under chapter 237 and use tax rates under  
21 chapter 238 for all of the jurisdictions levying taxes within  
22 the State. For the identification of states, counties, and

1 cities, codes corresponding to the rates shall be provided  
2 according to Federal Information Processing Standards as  
3 developed by the National Institute of Standards and Technology.  
4 For the identification of all other jurisdictions, codes  
5 corresponding to the rates shall be in the format determined by  
6 the Streamlined Sales Tax Governing Board, Incorporated.

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

1 Incorporated, that makes this designation from the street  
2 address and the five digit zip code of the purchaser.

3 (g) The State shall participate with other states in the  
4 development of an address-based system for assigning taxing  
5 jurisdictions. The system shall meet the requirements developed  
6 pursuant to the federal Mobile Telecommunications Sourcing Act  
7 (4 U.S.C. 116). If any state develops an address-based  
8 assignment system pursuant to the Mobile Telecommunications  
9 Sourcing Act, a seller may use that system in place of the  
10 system provided for in subsection (e).

11 **§255D-E Certified service provider; agent of the seller.**

12 (a) A certified service provider is the agent of a seller, with  
13 whom the certified service provider has contracted for the  
14 collection and remittance of sales and use taxes. As the  
15 seller's agent, the certified service provider is liable for  
16 sales and use tax due to the State on all sales transactions it  
17 processes for the seller unless the seller made a material  
18 misrepresentation or committed fraud.

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

1        §255D-F Confidentiality of records. (a) Except as  
2        provided in subsection (c), a certified service provider shall  
3        not retain or disclose the personally identifiable information  
4        of consumers. A certified service provider's system shall be  
5        designed and tested to ensure the privacy of consumers by  
6        protecting their anonymity.

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

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

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

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

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

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

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

12       (2) Provide records pursuant to chapter 92F, disclosure  
13 laws with governmental agencies, or other regulations;

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

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

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



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

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

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

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

17       **§255D-G Liability for uncollected tax.** (a) A seller  
18 registered under the agreement is not liable for any uncollected  
19 or nonremitted tax on transactions with purchasers in the State  
20 before the date of registration, if the seller was not licensed  
21 or registered under chapter 237 in the twelve-month period  
22 preceding the effective date of the State's participation in the

1 agreement. The seller is also not responsible for any penalty  
2 or interest that may be due on those transactions. This  
3 subsection applies only if the seller is registered in this  
4 State within twelve months of the effective date of this State's  
5 participation in the agreement.

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

- 7 (1) Any tax liability of the registered seller for  
8 transactions that are subject to sales or use tax in  
9 the State in which the registered seller is the  
10 purchaser;
- 11 (2) Any sales or use taxes already paid or remitted to the  
12 State or to taxes collected by the seller; and
- 13 (3) Any transactions for which the seller received notice  
14 of the commencement of an audit and the audit is not  
15 finally resolved, including related administrative or  
16 judicial processes.

17 (c) Subsection (a) applies to the seller absent the  
18 seller's fraud or intentional misrepresentation of a material  
19 fact, only if the seller continues to be registered under the  
20 agreement and continues collection and remittance of applicable  
21 sales and use taxes in the State for at least thirty-six months.

1 The statute of limitations applicable to assessing a tax  
2 liability shall be tolled during the thirty-six-month period.

3 **§255D-H Rate changes.** (a) The department shall publish  
4 on its website a notification to sellers registered under the  
5 agreement of a change in tax rate or tax base within five  
6 business days of receiving notice of the changes to the tax rate  
7 or tax base or of an amendment to sales and use tax rules.  
8 Whenever possible, a tax rate or tax base change should occur on  
9 the first day of a calendar quarter.

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

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

18 **§255D-I Customer refund procedures.** A cause of action  
19 against a seller for overcollected sales or use taxes does not  
20 accrue until sixty days after a purchaser has provided written  
21 notice to the seller. The purchaser shall provide sufficient  
22 information in the notice to determine the validity of the

1 request. In matters relating to the request, a seller is  
2 presumed to have a reasonable business practice if, in the  
3 collection of sales or use tax, the seller has a certified  
4 service provider or a system, including a proprietary system,  
5 certified by the department, and has remitted to this State all  
6 taxes collected, less any deductions, credits, or collection  
7 allowances."

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

10 "(a) "Gross income" means the gross receipts, cash or  
11 accrued, of the taxpayer received as compensation for personal  
12 services and the gross receipts of the taxpayer derived from  
13 trade, business, commerce, or sales and the value proceeding or  
14 accruing from the sale of tangible personal property, or  
15 service, or both, and all receipts, actual or accrued as  
16 hereinafter provided, by reason of the investment of the capital  
17 of the business engaged in, including interest, discount,  
18 rentals, royalties, fees, or other emoluments however designated  
19 and without any deductions on account of the cost of property  
20 sold, the cost of materials used, labor cost, taxes, royalties,  
21 interest, or discount paid or any other expenses whatsoever.

22 Every taxpayer shall be presumed to be dealing on a cash basis

1 unless the taxpayer proves to the satisfaction of the department  
2 of taxation that the taxpayer is dealing on an accrual basis and  
3 the taxpayer's books are so kept, or unless the taxpayer employs  
4 or is required to employ the accrual basis for the purposes of  
5 the tax imposed by chapter 235 for any taxable year in which  
6 event the taxpayer shall report the taxpayer's gross income for  
7 the purposes of this chapter on the accrual basis for the same  
8 period.

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

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

15 "(a) The county surcharge on state tax, upon the adoption  
16 of county ordinances and in accordance with the requirements of  
17 section 46-16.8, shall be levied, assessed, and collected as  
18 provided in this section on all gross proceeds and gross income  
19 taxable under this chapter. No county shall set the surcharge  
20 on state tax at a rate greater than one-half of one per cent of  
21 all gross proceeds and gross income taxable under this chapter.  
22 All provisions of this chapter shall apply to the county

1 surcharge on state tax. With respect to the surcharge, the  
2 director of taxation shall have all the rights and powers  
3 provided under this chapter. No county shall conduct an  
4 independent tax audit of sellers registered under the  
5 streamlined sales and use tax agreement. In addition, the  
6 director of taxation shall have the exclusive rights and power  
7 to determine the county or counties in which a person is engaged  
8 in business and, in the case of a person engaged in business in  
9 more than one county, the director shall determine, through  
10 apportionment or other means, that portion of the surcharge on  
11 state tax attributable to business conducted in each county."

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

14 "**§237-9 Licenses; penalty.** (a) Except as provided in  
15 this section, any person who has a gross income or gross  
16 proceeds of sales or value of products upon which a privilege  
17 tax is imposed by this chapter, as a condition precedent to  
18 engaging or continuing in [~~such~~] the business, shall in writing  
19 apply for and obtain from the department of taxation, upon a  
20 one-time payment of the sum of \$20, a license to engage in and  
21 to conduct such business, upon condition that the person shall  
22 pay the taxes accruing to the State under this chapter, and the

1 person shall thereby be duly licensed to engage in and conduct  
2 the business. Any person licensed or holding a license under  
3 this chapter before January 1, 1990, shall pay a one-time  
4 license renewal fee of \$20 on or before January 31, 1990, as a  
5 condition precedent to engaging or continuing in business. The  
6 license shall not be transferable and shall be valid only for  
7 the person in whose name it is issued and for the transaction of  
8 business at the place designated therein. The license may be  
9 inspected and examined, and shall at all times be conspicuously  
10 displayed at the place for which it is issued.

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

15 (b) Licenses and applications therefor shall be in such  
16 form as the department shall prescribe, except that where the  
17 licensee is engaged in two or more forms of business of  
18 different classification, the license shall so state on its  
19 face. The license provided for by this section shall be  
20 effective until canceled in writing. Any application for the  
21 reissuance of a previously canceled license identification  
22 number after December 31, 1989, shall be regarded as a new

1 license application and subject to the payment of the one-time  
2 license fee of \$20. The director may revoke or cancel any  
3 license issued under this chapter for cause as provided by rules  
4 adopted pursuant to chapter 91.

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

15 (d) The director may permit a person engaged in network  
16 marketing, multi-level marketing, or other similar business to  
17 obtain the license required under this section for purposes of  
18 becoming a tax collection agent on behalf of its direct sellers.  
19 The tax collection agent shall report, collect, and pay over the  
20 taxes due under this chapter and chapter 238 on behalf of its  
21 direct sellers who are covered by the tax collection agreement.  
22 The tax collection agent's direct sellers shall be deemed to be



1 licensed under this chapter; provided that the licensure shall  
2 apply solely to the business activity conducted directly through  
3 the marketing arrangement. Under this section, a tax collection  
4 agent shall:

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

10 (2) If required by the director as a condition of  
11 obtaining the license, furnish with the annual return,  
12 a list (including identification numbers) of all  
13 direct sellers for the taxable year who have been  
14 provided (by the tax collection agent) information  
15 returns required under section 6041A (with respect to  
16 returns regarding payments of remuneration for  
17 services and direct sales) of the Internal Revenue  
18 Code [~~of 1986, as amended,~~] and any other information  
19 that is relevant to ensure proper payment of taxes due  
20 under this section; and

21 (3) Be personally liable for the taxes due and collected  
22 under the tax collection agreement if taxes are

1 collected, but not reported or paid, together with  
2 penalties and interest as provided by law.

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

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

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

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

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

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

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

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

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

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

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

17 (B) The sales of consumer products by the person are  
18 performed pursuant to a written contract that  
19 provides that the person will not be treated as  
20 an employee with respect to those sales for  
21 federal or state tax purposes.

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

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

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

9 "**§237-13 Imposition of tax.** There is hereby levied and  
10 shall be assessed and collected annually privilege taxes against  
11 persons on account of their business and other activities in the  
12 State measured by the application of rates against values of  
13 products, gross proceeds of sales, or gross income, whichever is  
14 specified, as follows:

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

16 ~~(A) Upon every person engaging or continuing within~~  
17 ~~the State in the business of manufacturing,~~  
18 ~~including compounding, canning, preserving,~~  
19 ~~packing, printing, publishing, milling,~~  
20 ~~processing, refining, or preparing for sale,~~  
21 ~~profit, or commercial use, either directly or~~  
22 ~~through the activity of others, in whole or in~~

1 ~~part, any article or articles, substance or~~  
2 ~~substances, commodity or commodities, the amount~~  
3 ~~of the tax to be equal to the value of the~~  
4 ~~articles, substances, or commodities,~~  
5 ~~manufactured, compounded, canned, preserved,~~  
6 ~~packed, printed, milled, processed, refined, or~~  
7 ~~prepared for sale, as shown by the gross proceeds~~  
8 ~~derived from the sale thereof by the manufacturer~~  
9 ~~or person compounding, preparing, or printing~~  
10 ~~them, multiplied by one half of one per cent.~~

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

15 ~~(C) If any person liable for the tax on manufacturers~~  
16 ~~ships or transports the person's product, or any~~  
17 ~~part thereof, out of the State, whether in a~~  
18 ~~finished or unfinished condition, or sells the~~  
19 ~~same for delivery to points outside the State~~  
20 ~~(for example, consigned to a mainland purchaser~~  
21 ~~via common carrier f.o.b. Honolulu), the value of~~  
22 ~~the products in the condition or form in which~~

1 ~~they exist immediately before entering interstate~~  
2 ~~or foreign commerce, determined as hereinafter~~  
3 ~~provided, shall be the basis for the assessment~~  
4 ~~of the tax imposed by this paragraph. This tax~~  
5 ~~shall be due and payable as of the date of entry~~  
6 ~~of the products into interstate or foreign~~  
7 ~~commerce, whether the products are then sold or~~  
8 ~~not. The department shall determine the basis~~  
9 ~~for assessment, as provided by this paragraph, as~~  
10 ~~follows:~~

- 11 ~~(i) If the products at the time of their entry~~  
12 ~~into interstate or foreign commerce already~~  
13 ~~have been sold, the gross proceeds of sale,~~  
14 ~~less the transportation expenses, if any,~~  
15 ~~incurred in realizing the gross proceeds for~~  
16 ~~transportation from the time of entry of the~~  
17 ~~products into interstate or foreign~~  
18 ~~commerce, including insurance and storage in~~  
19 ~~transit, shall be the measure of the value~~  
20 ~~of the products;~~
- 21 ~~(ii) If the products have not been sold at the~~  
22 ~~time of their entry into interstate or~~

1 ~~foreign commerce, and in cases governed by~~  
2 ~~clause (i) in which the products are sold~~  
3 ~~under circumstances such that the gross~~  
4 ~~proceeds of sale are not indicative of the~~  
5 ~~true value of the products, the value of the~~  
6 ~~products constituting the basis for~~  
7 ~~assessment shall correspond as nearly as~~  
8 ~~possible to the gross proceeds of sales for~~  
9 ~~delivery outside the State, adjusted as~~  
10 ~~provided in clause (i), or if sufficient~~  
11 ~~data are not available, sales in the State,~~  
12 ~~of similar products of like quality and~~  
13 ~~character and in similar quantities, made by~~  
14 ~~the taxpayer (unless not indicative of the~~  
15 ~~true value) or by others. Sales outside the~~  
16 ~~State, adjusted as provided in clause (i),~~  
17 ~~may be considered when they constitute the~~  
18 ~~best available data. The department shall~~  
19 ~~prescribe uniform and equitable rules for~~  
20 ~~ascertaining the values;~~

21 ~~(iii) At the election of the taxpayer and with the~~  
22 ~~approval of the department, the taxpayer may~~

1 ~~make the taxpayer's returns under clause (i)~~  
2 ~~even though the products have not been sold~~  
3 ~~at the time of their entry into interstate~~  
4 ~~or foreign commerce; and~~

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

11 ~~(2)]~~ (1) Tax on business of selling tangible personal  
12 property[~~; producing.~~]:

13 (A) Upon every person engaging or continuing in the  
14 business of selling any tangible personal  
15 property [~~whatsoever~~] (not including, however,  
16 bonds or other evidence of indebtedness, or  
17 stocks), unless subject to chapter A, there is  
18 [~~likewise~~] hereby levied, and shall be assessed  
19 and collected, a tax equivalent to four per cent  
20 of the gross proceeds of sales of the business;  
21 [~~provided that insofar as the sale of tangible~~  
22 ~~personal property is a wholesale sale under~~



1 ~~section [237-4(a)(8)], the sale shall be subject~~  
2 ~~to section 237-13.3. Upon every person engaging~~  
3 ~~or continuing within this State in the business~~  
4 ~~of a producer, the tax shall be equal to one-half~~  
5 ~~of one per cent of the gross proceeds of sales of~~  
6 ~~the business, or the value of the products, for~~  
7 ~~sale, if sold for delivery outside the State or~~  
8 ~~shipped or transported out of the State, and the~~  
9 ~~value of the products shall be determined in the~~  
10 ~~same manner as the value of manufactured products~~  
11 ~~covered in the cases under paragraph (1)(C).]~~

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

1 activity to which, under the Constitution and  
2 Acts of Congress, there may be attributed gross  
3 proceeds of sales, the gross proceeds shall be so  
4 attributed[~~—~~

5 ~~(C) No manufacturer or producer, engaged in such~~  
6 ~~business in the State and selling the~~  
7 ~~manufacturer's or producer's products for~~  
8 ~~delivery outside of the State (for example,~~  
9 ~~consigned to a mainland purchaser via common~~  
10 ~~carrier f.o.b. Honolulu), shall be required to~~  
11 ~~pay the tax imposed in this chapter for the~~  
12 ~~privilege of so selling the products, and the~~  
13 ~~value or gross proceeds of sales of the products~~  
14 ~~shall be included only in determining the measure~~  
15 ~~of the tax imposed upon the manufacturer or~~  
16 ~~producer.];~~

17 [~~(D)~~] (C) When a manufacturer or a producer[~~—~~] as  
18 defined under section A-3, engaged in [~~such~~] the  
19 business of manufacturing or producing in the  
20 State, also is engaged in selling the  
21 manufacturer's or producer's products in the  
22 State at wholesale[~~—~~] and taxed under chapter A,

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

1 products to a purchaser who will process the  
2 products outside the State shall be required to  
3 pay the tax imposed in this chapter for the  
4 privilege of producing or selling those  
5 products~~[-]~~; and

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

12 ~~[-F-]~~ ~~The department, by rule, may require that a~~  
13 ~~seller take from the purchaser of tangible~~  
14 ~~personal property a certificate, in a form~~  
15 ~~prescribed by the department, certifying that the~~  
16 ~~sale is a sale at wholesale; provided that:~~

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

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

5       ~~(3)]~~ (2) Tax upon contractors~~[-]~~:

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

10                  (B) In computing the tax levied under this paragraph,  
11                  there shall be deducted from the gross income of  
12                  the taxpayer so much thereof as has been included  
13                  in the measure of the tax levied under  
14                  subparagraph (A), on:

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

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

21                   (iii) A specialty contractor who is not licensed  
22                   by the department of commerce and consumer

1                   affairs pursuant to section 444-9, but who  
2                   performs contracting activities on federal  
3                   military installations and nowhere else in  
4                   this State;

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

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

15                   (i) The gross income exempted shall constitute  
16                   reimbursement of costs incurred for  
17                   materials, plant, or equipment purchased  
18                   from a taxpayer licensed under this chapter,  
19                   not exceeding the gross proceeds of sale of  
20                   the taxpayer on account of the transaction;  
21                   and

1           (ii) The taxpayer making the sale shall have  
2           certified to the department that the  
3           taxpayer is taxable with respect to the  
4           gross proceeds of the sale, and that the  
5           taxpayer elects to have the tax on gross  
6           income computed the same as upon a sale to  
7           the state government[-];

8           (D) A person who, as a business or as a part of a  
9           business in which the person is engaged, erects,  
10          constructs, or improves any building or  
11          structure, of any kind or description, or makes,  
12          constructs, or improves any road, street,  
13          sidewalk, sewer, or water system, or other  
14          improvements on land held by the person (whether  
15          held as a leasehold, fee simple, or otherwise),  
16          upon the sale or other disposition of the land or  
17          improvements, even if the work was not done  
18          pursuant to a contract, shall be liable to the  
19          same tax as if engaged in the business of  
20          contracting, unless the person shows that at the  
21          time the person was engaged in making the  
22          improvements the person intended, and for the

1 period of at least one year after completion of  
2 the building, structure, or other improvements  
3 the person continued to intend to hold and not  
4 sell or otherwise dispose of the land or  
5 improvements. The tax in respect of the  
6 improvements shall be measured by the amount of  
7 the proceeds of the sale or other disposition  
8 that is attributable to the erection,  
9 construction, or improvement of [~~such~~] the  
10 building or structure, or the making,  
11 constructing, or improving of the road, street,  
12 sidewalk, sewer, or water system, or other  
13 improvements. The measure of tax in respect of  
14 the improvements shall not exceed the amount  
15 [~~which~~] that would have been taxable had the work  
16 been performed by another, subject as in other  
17 cases to the deductions allowed by subparagraph  
18 (B). Upon the election of the taxpayer, this  
19 paragraph may be applied notwithstanding that the  
20 improvements were not made by the taxpayer, or  
21 were not made as a business or as a part of a  
22 business, or were made with the intention of



1 holding the same. However, this paragraph shall  
2 not apply in respect of any proceeds that  
3 constitute or are in the nature of rent; all  
4 [~~such~~] gross income shall be taxable under  
5 paragraph [~~(9)~~] (6); provided that insofar as  
6 the business of renting or leasing real property  
7 under a lease is taxed under section 237-16.5,  
8 the tax shall be levied by section 237-16.5[~~;~~];  
9 [~~(4)~~] (3) Tax upon theaters, amusements, radio broadcasting  
10 stations, etc.  
11 [~~(A)~~] Upon every person engaging or continuing within  
12 the State in the business of operating a theater,  
13 opera house, moving picture show, vaudeville,  
14 amusement park, dance hall, skating rink, radio  
15 broadcasting station, or any other place at which  
16 amusements are offered to the public, unless  
17 taxed under section A-6, the tax shall be equal  
18 to four per cent of the gross income of the  
19 business[~~, and in the case of a sale of an~~  
20 ~~amusement at wholesale under section~~  
21 ~~237-4(a)(13), the tax shall be subject to section~~  
22 ~~237-13.3.~~

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

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

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

17           ~~(+5)~~ (4) Tax upon sales representatives, etc. Upon every  
18           person classified as a representative or purchasing  
19           agent under section 237-1, engaging or continuing  
20           within the State in the business of performing  
21           services for another, other than as an employee, there  
22           is likewise hereby levied and shall be assessed and

1 collected a tax equal to four per cent of the  
2 commissions and other compensation attributable to the  
3 services so rendered by the person~~[ ]~~, unless taxable  
4 under chapter A or C;

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

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

19 ~~(B) The department may require that the person~~  
20 ~~rendering a service at wholesale take from the~~  
21 ~~licensed seller a certificate, in a form~~

1 ~~prescribed by the department, certifying that the~~  
2 ~~sale is a sale at wholesale; provided that:~~

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

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

14 ~~[-(C)]~~ (B) Where any person is engaged in the business  
15 of selling interstate or foreign common carrier  
16 ~~[telecommunication]~~ telecommunications services  
17 within and without the State, other than as a  
18 home service provider, the tax shall be imposed  
19 on that portion of gross income received by a  
20 person from service which is originated or  
21 terminated in this State and is charged to a  
22 telephone number, customer, or account in this

1 State notwithstanding any other state law (except  
2 for the exemption under section 237-23(a)(1)) to  
3 the contrary. If, under the Constitution and  
4 laws of the United States, the entire gross  
5 income as determined under this paragraph of a  
6 business selling interstate or foreign common  
7 carrier [~~telecommunication~~] telecommunications  
8 services cannot be included in the measure of the  
9 tax, the gross income shall be apportioned as  
10 provided in section 237-21; provided that the  
11 apportionment factor and formula shall be the  
12 same for all persons providing those services in  
13 the State[~~-~~];

14 [~~(D)~~] (C) Where any person is engaged in the business  
15 of a home service provider, the tax shall be  
16 imposed on the gross income received or derived  
17 from providing interstate or foreign mobile  
18 telecommunications services to a customer with a  
19 place of primary use in this State when [~~such~~]  
20 the services originate in one state and terminate  
21 in another state, territory, or foreign country;  
22 provided that all charges for mobile

1 telecommunications services [~~which~~] that are  
2 billed by or for the home service provider are  
3 deemed to be provided by the home service  
4 provider at the customer's place of primary use,  
5 regardless of where the mobile telecommunications  
6 originate, terminate, or pass through; provided  
7 further that the income from charges specifically  
8 derived from interstate or foreign mobile  
9 telecommunications services, as determined by  
10 books and records that are kept in the regular  
11 course of business by the home service provider  
12 in accordance with section 239-24, shall be  
13 apportioned under any apportionment factor or  
14 formula adopted under [~~subparagraph (C).~~]  
15 subparagraph (B). Gross income shall not  
16 include:  
17 (i) Gross receipts from mobile  
18 telecommunications services provided to a  
19 customer with a place of primary use outside  
20 this State;

- 1 (ii) Gross receipts from mobile  
2 telecommunications services that are subject  
3 to the tax imposed by chapter 239;
- 4 (iii) Gross receipts from mobile  
5 telecommunications services taxed under  
6 section 237-13.8; and
- 7 (iv) Gross receipts of a home service provider  
8 acting as a serving carrier providing mobile  
9 telecommunications services to another home  
10 service provider's customer.

11 For the purposes of this paragraph, [~~"charges for~~  
12 ~~mobile telecommunications services"~~,] "customer",  
13 "home service provider", "mobile  
14 telecommunications services", [~~"place of primary~~  
15 ~~use", and "serving carrier"~~] and "place of  
16 primary use" have the same meaning as in section  
17 [~~239-22.~~] 237-D and "charges for mobile  
18 telecommunications services" and "serving  
19 carrier" have the same meaning as in section 239-  
20 22; and

21 [~~(7) Tax on insurance producers. Upon every person engaged~~  
22 ~~as a licensed producer pursuant to chapter 431, there~~

1 ~~is hereby levied and shall be assessed and collected a~~  
2 ~~tax equal to 0.15 per cent of the commissions due to~~  
3 ~~that activity.~~

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



1       ~~(9)]~~ (6) Tax on other business. Upon every person  
2           engaging or continuing within the State in any  
3           business, trade, activity, occupation, or calling not  
4           included in the preceding paragraphs or any other  
5           provisions of this chapter, there is likewise hereby  
6           levied and shall be assessed and collected, a tax  
7           equal to four per cent of the gross income thereof.  
8           In addition, the rate prescribed by this paragraph  
9           shall apply to a business taxable under one or more of  
10          the preceding paragraphs or other provisions of this  
11          chapter, as to any gross income thereof not taxed  
12          thereunder as gross income or gross proceeds of sales  
13          or by taxing an equivalent value of products, unless  
14          specifically exempted~~[-]~~ or subject to tax under  
15          chapter A or C."

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

18               "(c) When a person licensed under this chapter sells  
19          prepaid telephone calling services to a licensed retail  
20          merchant, jobber, or other licensed seller for purposes of  
21          resale, the person shall be taxed as a wholesaler selling  
22          tangible personal property~~[-]~~ under section A-13. All other

1 sales of prepaid telephone calling services shall be taxed as  
2 retail sales of tangible personal property."

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

5 **"§237-18 Further provisions as to application of tax. (a)**

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

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

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

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

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

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

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

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

1 by this chapter shall apply to each [~~such~~] person with respect  
2 to [~~such~~] the person's respective portion of the proceeds, and  
3 no more.

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

13 [~~(g)~~] (e) Where transient accommodations are furnished  
14 through arrangements made by a travel agency or tour packager at  
15 noncommissioned negotiated contract rates and the gross income  
16 is divided between the operator of transient accommodations on  
17 the one hand and the travel agency or tour packager on the other  
18 hand, the tax imposed by this chapter shall apply to each [~~such~~]  
19 person with respect to [~~such~~] the person's respective portion of  
20 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          ~~classified 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, submanager, or board  
7           of directors of:

8           (A) An association of owners of a condominium  
9           property regime established in accordance with  
10          chapter 514A or 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           "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 drug  
5           and sold by a licensed pharmacist under section 328-16  
6           or practitioners licensed to administer drugs; and

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

1           (A) Artificially replace a missing portion of the  
2           body;

3           (B) Prevent or correct physical deformity or  
4           malfunction; or

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

6           A prosthetic device does not include corrective  
7           eyeglasses, contact lenses, hearing aids, and dental  
8           prosthesis;

9           (8) Taxes on transient accommodations imposed by chapter  
10           237D and passed on and collected by operators holding  
11           certificates of registration under that chapter;

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

19           (10) Amounts received by a labor organization for real  
20           property leased to:

21           (A) A labor organization; or

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

7 As used in this paragraph, "labor organization" means  
8 a labor organization exempt from federal income tax  
9 under section 501(c)(5) (with respect to exemption  
10 from tax on corporations, certain trusts, etc.) of the  
11 Internal Revenue [~~Code, as amended;~~] Code;

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

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

1 "interstate air transportation" is the same as in 49  
2 U.S.C. 40102."

3 SECTION 19. Section 237-31, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§237-31 Remittances.** All remittances of taxes imposed by  
6 this chapter shall be made by money, bank draft, check,  
7 cashier's check, money order, or certificate of deposit to the  
8 office of the department of taxation to which the return was  
9 transmitted. The department shall issue its receipts therefor  
10 to the taxpayer and shall pay the moneys into the state treasury  
11 as a state realization, to be kept and accounted for as provided  
12 by law; provided that:

13 (1) The sum from all general excise tax revenues realized  
14 by the State that represents the difference between  
15 \$45,000,000 and the proceeds from the sale of any  
16 general obligation bonds authorized for that fiscal  
17 year for the purposes of the state educational  
18 facilities improvement special fund shall be deposited  
19 in the state treasury in each fiscal year to the  
20 credit of the state educational facilities improvement  
21 special fund;

1 (2) A sum, not to exceed \$5,000,000, from all general  
2 excise tax revenues realized by the State shall be  
3 deposited in the state treasury in each fiscal year to  
4 the credit of the compound interest bond reserve fund;  
5 [~~and~~]

6 (3) A sum, not to exceed the amount necessary to meet the  
7 obligations of the integrated tax information  
8 management systems performance-based contract may be  
9 retained and deposited in the state treasury to the  
10 credit of the integrated tax information management  
11 systems special fund. The sum retained by the  
12 director of taxation for deposit to the integrated tax  
13 information management systems special fund for each  
14 fiscal year shall be limited to amounts appropriated  
15 by the legislature. This paragraph shall be repealed  
16 on July 1, 2005[-]; and

17 (4) A sum equal to \_\_\_\_\_ per cent of all tax revenues  
18 realized by the State under chapters A, B, and C,  
19 respectively, from the effective date of this Act  
20 through December 31, 2014, shall be deposited in the  
21 state treasury in each fiscal year to the credit of  
22 the University of Hawaii to fund high-priority higher

1           education programs; provided that any moneys received  
2           under this section shall augment and not replace  
3           existing operating or capital improvement budgets;  
4           provided further that beginning January 1, 2015, all  
5           revenues realized by the State under chapters A, B,  
6           and C shall be deposited in the state treasury."

7           SECTION 20. Section 237-34, Hawaii Revised Statutes, is  
8 amended by amending subsection (b) to read as follows:

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

1 with a material interest in the return, return information, or  
2 report shall include:

3 (1) Trustees;

4 (2) Partners;

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

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

9 (5) The shareholder of an S corporation;

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

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

15 (8) The trustee in bankruptcy or receiver, and the  
16 attorney-in-fact of any person in paragraphs (1) to  
17 (7);

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

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

- 1 (11) The Multistate Tax Commission or its authorized  
2 representative;
- 3 (12) Members of a limited liability company; [~~and~~]
- 4 (13) A person contractually obligated to pay the taxes  
5 assessed against another when the latter person is  
6 under audit by the department[~~-~~]; and
- 7 (14) The Streamlined Sales Tax Governing Board, Inc., or  
8 its authorized representative.

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

10 SECTION 21. Section 238-2, Hawaii Revised Statutes, is  
11 amended to read as follows:

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



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

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

5       ~~(B) A manufacturer importing or purchasing material~~  
6       ~~or commodities which are to be incorporated by~~  
7       ~~the manufacturer into a finished or saleable~~  
8       ~~product (including the container or package in~~  
9       ~~which the product is contained) wherein it will~~  
10      ~~remain in such form as to be perceptible to the~~  
11      ~~senses, and which finished or saleable product is~~  
12      ~~to be sold in such manner as to result in a~~  
13      ~~further tax on the activity of the manufacturer~~  
14      ~~as the manufacturer or as a wholesaler, and not~~  
15      ~~as a retailer,~~

16      ~~there shall be no tax; provided that if the~~  
17      ~~wholesaler, jobber, or manufacturer is also engaged in~~  
18      ~~business as a retailer (so classed under chapter 237),~~  
19      ~~paragraph (2) shall apply to the wholesaler, jobber,~~  
20      ~~or manufacturer, but the director of taxation shall~~  
21      ~~refund to the wholesaler, jobber, or manufacturer, in~~  
22      ~~the manner provided under section 231-23(c) such~~

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

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

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

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

- 1           ~~activity of the manufacturer in selling such~~  
2           ~~products at retail;~~
- 3           ~~(C) A contractor importing or purchasing material or~~  
4           ~~commodities which are to be incorporated by the~~  
5           ~~contractor into the finished work or project~~  
6           ~~required by the contract and which will remain in~~  
7           ~~such finished work or project in such form as to~~  
8           ~~be perceptible to the senses;~~
- 9           ~~(D) A person engaged in a service business or calling~~  
10           ~~as defined in section 237-7, or a person~~  
11           ~~furnishing transient accommodations subject to~~  
12           ~~the tax imposed by section 237D-2, in which the~~  
13           ~~import or purchase of tangible personal property~~  
14           ~~would have qualified as a sale at wholesale as~~  
15           ~~defined in section 237-4(a)(8) had the seller of~~  
16           ~~the property been subject to the tax in chapter~~  
17           ~~237; or~~
- 18           ~~(E) A publisher of magazines or similar printed~~  
19           ~~materials containing advertisements, when the~~  
20           ~~publisher is under contract with the advertisers~~  
21           ~~to distribute a minimum number of magazines or~~  
22           ~~similar printed materials to the public or~~

1 ~~defined segment of the public, whether or not~~  
2 ~~there is a charge to the persons who actually~~  
3 ~~receive the magazines or similar printed~~  
4 ~~materials,~~  
5 ~~the tax shall be one-half of one per cent of the~~  
6 ~~purchase price of the property, if the purchase and~~  
7 ~~sale are consummated in Hawaii; or, if there is no~~  
8 ~~purchase price applicable thereto, or if the purchase~~  
9 ~~or sale is consummated outside of Hawaii, then one-~~  
10 ~~half of one per cent of the value of such property;~~  
11 ~~and~~  
12 ~~(3) In all other cases,~~ is four per cent of the value of  
13 the property.

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

19 SECTION 22. Section 238-2.3, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 **"§238-2.3 Imposition of tax on imported services or**  
22 **contracting; exemptions.** There is hereby levied an excise tax

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

10 ~~(1) If the importer or purchaser is licensed under chapter~~  
11 ~~237 and is:~~

12 ~~(A) Engaged in a service business or calling in which~~  
13 ~~the imported or purchased services or contracting~~  
14 ~~become identifiable elements, excluding overhead,~~  
15 ~~of the services rendered by the importer or~~  
16 ~~purchaser, and the gross income of the importer~~  
17 ~~or purchaser is subject to the tax imposed under~~  
18 ~~chapter 237 on services at the rate of one-half~~  
19 ~~of one per cent or the rate of tax imposed under~~  
20 ~~section 237-13.3; 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 on the manufacturer~~  
6 ~~as a wholesaler, and not a retailer;~~

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

20 ~~(2) If the importer or purchaser is a person licensed~~  
21 ~~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           ~~at the highest rate;~~
- 9           ~~(B) A manufacturer importing or purchasing services~~  
10           ~~or contracting that become identifiable elements,~~  
11           ~~excluding overhead, of the finished or saleable~~  
12           ~~manufactured product (including the container or~~  
13           ~~package in which the product is contained) and~~  
14           ~~the finished or saleable product is to be sold in~~  
15           ~~a manner that results in a further tax under~~  
16           ~~chapter 237 on the activity of the manufacturer~~  
17           ~~as a retailer; or~~
- 18           ~~(C) A contractor importing or purchasing services or~~  
19           ~~contracting that become identifiable elements,~~  
20           ~~excluding overhead, of the finished work or~~  
21           ~~project required, under the contract, and where~~  
22           ~~the gross proceeds derived by the contractor are~~

1                   ~~subject to the tax under section 237-13(3) 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                   and  
6                   ~~(3) In all other cases, the importer or purchaser is~~  
7                   ~~subject to the tax at the rate of] is four per cent on~~  
8                   the value of the imported or purchased services or  
9                   contracting."

10               SECTION 23. Section 238-2.6, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

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



1 have all the rights and powers provided under this chapter. In  
2 addition, the director of taxation shall have the exclusive  
3 rights and power to determine the county or counties in which a  
4 person imports or purchases tangible personal property and, in  
5 the case of a person importing or purchasing tangible property  
6 in more than one county, the director shall determine, through  
7 apportionment or other means, that portion of the surcharge on  
8 state tax attributable to the importation or purchase in each  
9 county."

10 SECTION 24. Section 237-4, Hawaii Revised Statutes, is  
11 repealed.

12 [~~"§237-4 "Wholesaler", "jobber", defined. (a)~~  
13 ~~"Wholesaler" or "jobber" applies only to a person making sales~~  
14 ~~at wholesale. Only the following are sales at wholesale:~~  
15 ~~(1) Sales to a licensed retail merchant, jobber, or other~~  
16 ~~licensed seller for purposes of resale;~~  
17 ~~(2) Sales to a licensed manufacturer of materials or~~  
18 ~~commodities that are to be incorporated by the~~  
19 ~~manufacturer into a finished or saleable product~~  
20 ~~(including the container or package in which the~~  
21 ~~product is contained) during the course of its~~  
22 ~~preservation, manufacture, or processing, including~~

1 ~~preparation for market, and that will remain in such~~  
2 ~~finished or saleable product in such form as to be~~  
3 ~~perceptible to the senses, which finished or saleable~~  
4 ~~product is to be sold and not otherwise used by the~~  
5 ~~manufacturer;~~

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

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

1       ~~(5) Sales to a licensed producer, or to a cooperative~~  
2       ~~association described in section 237-23(a)(7) for sale~~  
3       ~~to a licensed producer, or to a licensed person~~  
4       ~~operating a feed lot, of poultry or animal feed,~~  
5       ~~hatching eggs, semen, replacement stock, breeding~~  
6       ~~services for the purpose of raising or producing~~  
7       ~~animal or poultry products for disposition as~~  
8       ~~described in section 237-5 or for incorporation into a~~  
9       ~~manufactured product as described in paragraph (2) or~~  
10      ~~for the purpose of breeding, hatching, milking, or egg~~  
11      ~~laying other than for the customer's own consumption~~  
12      ~~of the meat, poultry, eggs, or milk so produced;~~  
13      ~~provided that in the case of a feed lot operator, only~~  
14      ~~the segregated cost of the feed furnished by the feed~~  
15      ~~lot operator as part of the feed lot operator's~~  
16      ~~service to a licensed producer of poultry or animals~~  
17      ~~to be butchered or to a cooperative association~~  
18      ~~described in section 237-23(a)(7) of such licensed~~  
19      ~~producers shall be deemed to be a sale at wholesale;~~  
20      ~~and provided further that any amount derived from the~~  
21      ~~furnishing of feed lot services, other than the~~  
22      ~~segregated cost of feed, shall be deemed taxable at~~

1 ~~the service business rate. This paragraph shall not~~  
2 ~~apply to the sale of feed for poultry or animals to be~~  
3 ~~used for hauling, transportation, or sports purposes;~~  
4 ~~(6) Sales to a licensed producer, or to a cooperative~~  
5 ~~association described in section 237-23(a)(7) for sale~~  
6 ~~to the producer, of seed or seedstock for producing~~  
7 ~~agricultural and aquacultural products, or bait for~~  
8 ~~catching fish (including the catching of bait for~~  
9 ~~catching fish), which agricultural and aquacultural~~  
10 ~~products or fish are to be disposed of as described in~~  
11 ~~section 237-5 or to be incorporated in a manufactured~~  
12 ~~product as described in paragraph (2);~~  
13 ~~(7) Sales to a licensed producer, or to a cooperative~~  
14 ~~association described in section 237-23(a)(7) for sale~~  
15 ~~to such producer; of polypropylene shade cloth; of~~  
16 ~~polyfilm; of polyethylene film; of cartons and such~~  
17 ~~other containers, wrappers, and sacks, and binders to~~  
18 ~~be used for packaging eggs, vegetables, fruits, and~~  
19 ~~other agricultural and aquacultural products; of~~  
20 ~~seedlings and cuttings for producing nursery plants or~~  
21 ~~aquacultural products; or of chick containers; which~~  
22 ~~cartons and such other containers, wrappers, and~~

1 ~~sacks, binders, seedlings, cuttings, and containers~~  
2 ~~are to be used as described in section 237-5, or to be~~  
3 ~~incorporated in a manufactured product as described in~~  
4 ~~paragraph (2);~~

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

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

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

16 ~~(C) The cost of the tangible personal property does~~  
17 ~~not constitute overhead to the licensed seller;~~  
18 ~~the sale shall be subject to section 237-13.3;~~

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

- 1       ~~(10) Sales of services to a licensed seller engaging in a~~
- 2           ~~business or calling whenever:~~
- 3           ~~(A) Either:~~
- 4               ~~(i) In the context of a service-to-service~~
- 5                   ~~transaction, a service is rendered upon the~~
- 6                   ~~order or request of a licensed seller for~~
- 7                   ~~the purpose of rendering another service in~~
- 8                   ~~the course of the seller's service business~~
- 9                   ~~or calling, including a dealer's furnishing~~
- 10                  ~~of goods or services to the purchaser of~~
- 11                  ~~tangible personal property to fulfill a~~
- 12                  ~~warranty obligation of the manufacturer of~~
- 13                  ~~the property;~~
- 14               ~~(ii) In the context of a service-to-tangible~~
- 15                   ~~personal property transaction, a service is~~
- 16                   ~~rendered upon the order or request of a~~
- 17                   ~~licensed seller for the purpose of~~
- 18                   ~~manufacturing, producing, or preparing~~
- 19                   ~~tangible personal property to be sold;~~
- 20               ~~(iii) In the context of a services-to-contracting~~
- 21                   ~~transaction, a service is rendered upon the~~
- 22                   ~~order or request of a licensed contractor as~~

- 1                   ~~defined in section 237-6 for the purpose of~~  
2                   ~~assisting that licensed contractor; or~~
- 3           ~~(iv) In the context of a services to transient~~  
4                   ~~accommodations rental transaction, a service~~  
5                   ~~is rendered upon the order or request of a~~  
6                   ~~person subject to tax under section 237D-2~~  
7                   ~~for the purpose of furnishing transient~~  
8                   ~~accommodations;~~
- 9           ~~(B) The benefit of the service passes to the customer~~  
10                   ~~of the licensed seller, licensed contractor, or~~  
11                   ~~person furnishing transient accommodations as an~~  
12                   ~~identifiable element of the other service or~~  
13                   ~~property to be sold, the contracting, or the~~  
14                   ~~furnishing of transient accommodations;~~
- 15           ~~(C) The cost of the service does not constitute~~  
16                   ~~overhead to the licensed seller, licensed~~  
17                   ~~contractor, or person furnishing transient~~  
18                   ~~accommodations;~~
- 19           ~~(D) The gross income of the licensed seller is not~~  
20                   ~~divided between the licensed seller and another~~  
21                   ~~licensed seller, contractor, or person furnishing~~

1 ~~transient accommodations for imposition of the~~  
2 ~~tax under this chapter;~~

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

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

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

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

17 ~~(12) Sales to a licensed retail merchant, jobber, or other~~  
18 ~~licensed seller of tangible personal property that~~  
19 ~~will be incorporated or processed by the licensed~~  
20 ~~retail merchant, jobber, or other licensed seller into~~  
21 ~~a finished or saleable product during the course of~~  
22 ~~its preparation for market (including disposable,~~



1           ~~nonreturnable containers, packages, or wrappers, in~~  
2           ~~which the product is contained and that are generally~~  
3           ~~known and most commonly used to contain food or~~  
4           ~~beverage for transfer or delivery), and which finished~~  
5           ~~or saleable product is to be sold and not otherwise~~  
6           ~~used by the licensed retail merchant, jobber, or other~~  
7           ~~licensed seller;~~

8           ~~(13) Sales of amusements subject to taxation under section~~  
9           ~~237-13(4) to a licensed seller engaging in a business~~  
10           ~~or calling whenever:~~

11           ~~(A) Either:~~

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

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

- 1           ~~(iii) In the context of an amusement-to-amusement~~  
2           ~~transaction, an amusement is rendered upon~~  
3           ~~the order or request of a licensed seller~~  
4           ~~for the purpose of rendering another~~  
5           ~~amusement in the course of the person's~~  
6           ~~amusement business;~~
- 7           ~~(B) The benefit of the amusement passes to the~~  
8           ~~customer of the licensed seller as an~~  
9           ~~identifiable element of the other service,~~  
10           ~~tangible personal property to be sold, or~~  
11           ~~amusement;~~
- 12           ~~(C) The cost of the amusement does not constitute~~  
13           ~~overhead to the licensed seller;~~
- 14           ~~(D) The gross income of the licensed seller is not~~  
15           ~~divided between the licensed seller and another~~  
16           ~~licensed seller, person furnishing transient~~  
17           ~~accommodations, or person rendering an amusement~~  
18           ~~for imposition of the tax under chapter 237;~~
- 19           ~~(E) The gross income of the licensed seller is not~~  
20           ~~subject to a deduction under this chapter; and~~

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

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

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

16           ~~(b) If the use tax law is finally held by a court of~~  
17                    ~~competent jurisdiction to be unconstitutional or invalid insofar~~  
18                    ~~as it purports to tax the use or consumption of tangible~~  
19                    ~~personal property imported into the State in interstate or~~  
20                    ~~foreign commerce or both, wholesalers and jobbers shall be taxed~~  
21                    ~~thereafter under this chapter in accordance with the following~~  
22                    ~~definition (which shall supersede the preceding paragraph~~

1 ~~otherwise defining "wholesaler" or "jobber"): "Wholesaler" or~~  
2 ~~"jobber" means a person, or a definitely organized division~~  
3 ~~thereof, definitely organized to render and rendering a general~~  
4 ~~distribution service that buys and maintains at the person's~~  
5 ~~place of business a stock or lines of merchandise that the~~  
6 ~~person distributes; and that the person, through salespersons,~~  
7 ~~advertising, or sales promotion devices, sells to licensed~~  
8 ~~retailers, to institutional or licensed commercial or industrial~~  
9 ~~users, in wholesale quantities and at wholesale rates. A~~  
10 ~~corporation deemed not to be carrying on a trade or business in~~  
11 ~~this State under section 235-6 shall nevertheless be deemed to~~  
12 ~~be a wholesaler and shall be subject to the tax imposed by this~~  
13 ~~chapter." ]~~

14 SECTION 25. Section 237-5, Hawaii Revised Statutes, is  
15 repealed.

16 [~~§237-5 "Producer" defined. "Producer" means any person~~  
17 ~~engaged in the business of raising and producing agricultural~~  
18 ~~products in their natural state, or in producing natural~~  
19 ~~resource products, or engaged in the business of fishing or~~  
20 ~~aquaculture, for sale, or for shipment or transportation out of~~  
21 ~~the State, of the agricultural or aquaculture products in their~~

1 ~~natural or processed state, or butchered and dressed, or the~~  
2 ~~natural resource products, or fish.~~

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

7 SECTION 26. Section 237-13.3, Hawaii Revised Statutes, is  
8 repealed.

9 ~~[ "§237-13.3 Application of sections 237-4(a)(8),~~  
10 ~~237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and~~  
11 ~~237-13(6)(A). (a) Sections 237-4(a)(8), 237-4(a)(10),~~  
12 ~~237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to~~  
13 ~~the contrary notwithstanding, instead of the tax levied under~~  
14 ~~section 237-13(2)(A) on wholesale sales subject to section~~  
15 ~~237-4(a)(8)(B), under section 237-13(4)(A) on a wholesaler~~  
16 ~~subject to section 237-4(a)(13), and under section 237-13(6)(A)~~  
17 ~~on a wholesaler subject to section 237-4(a)(10) at one half of~~  
18 ~~one per cent, during the period January 1, 2000, to December 31,~~  
19 ~~2005, the tax shall be as follows:~~

- 20 ~~(1) In calendar year 2000, 3.5 per cent;~~  
21 ~~(2) In calendar year 2001, 3.0 per cent;~~  
22 ~~(3) In calendar year 2002, 2.5 per cent;~~

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

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

11       SECTION 27. Section 237-13.5, Hawaii Revised Statutes, is  
12 repealed.

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

20       SECTION 28. Section 237-15, Hawaii Revised Statutes, is  
21 repealed.

1           ~~["§237-15 Technicians. When technicians supply dentists~~  
2 ~~or physicians with dentures, orthodontic devices, braces, and~~  
3 ~~similar items which have been prepared by the technician in~~  
4 ~~accordance with specifications furnished by the dentist or~~  
5 ~~physician, and such items are to be used by the dentist or~~  
6 ~~physician in the dentist's or physician's professional practice~~  
7 ~~for a particular patient who is to pay the dentist or physician~~  
8 ~~for the same as a part of the dentist's or physician's~~  
9 ~~professional services, the technician shall be taxed as though~~  
10 ~~the technician were a manufacturer selling a product to a~~  
11 ~~licensed retailer, rather than at the rate of four per cent~~  
12 ~~which is generally applied to professions and services."]~~

13           SECTION 29. Section 237-17, Hawaii Revised Statutes, is  
14 repealed.

15           ~~["§237-17 Persons with impaired sight, hearing, or who are~~  
16 ~~totally disabled. Anything in section 237-13 to the contrary~~  
17 ~~notwithstanding, the privilege tax levied, assessed, and~~  
18 ~~collected on account of the business or other activities of~~  
19 ~~individuals who are blind, deaf, or totally disabled,~~  
20 ~~corporations all of whose outstanding shares are owned by~~  
21 ~~individuals who are blind, deaf, or totally disabled, general,~~  
22 ~~limited, or limited liability partnerships, all of whose~~

1 ~~partners are blind, deaf, or totally disabled, or limited~~  
2 ~~liability companies, all of whose members are blind, deaf, or~~  
3 ~~totally disabled, shall not exceed one-half of one per cent of~~  
4 ~~the proceeds, sales, income, or other receipts subject to tax.~~  
5 ~~For the purpose of this chapter "blind", "deaf", or "totally~~  
6 ~~disabled" is defined as in section 235-1. The impairment of~~  
7 ~~sight or hearing, or the disability, shall be certified to as~~  
8 ~~provided in section 235-1."]~~

9 SECTION 30. Section 237-29.55, Hawaii Revised Statutes, is  
10 repealed.

11 ~~["**§237-29.55** Exemption for sale of tangible personal~~  
12 ~~property for resale at wholesale. (a) There shall be exempted~~  
13 ~~from, and excluded from the measure of, the taxes imposed by~~  
14 ~~this chapter all of the gross proceeds or gross income arising~~  
15 ~~from the sale of tangible personal property imported to Hawaii~~  
16 ~~from a foreign or domestic source to a licensed taxpayer for~~  
17 ~~subsequent resale for the purpose of wholesale as defined under~~  
18 ~~section 237-4.~~

19 ~~(b) The department, by rule, may provide that a seller may~~  
20 ~~take from the purchaser of imported tangible personal property,~~  
21 ~~a certificate, in a form that the department shall prescribe,~~  
22 ~~certifying that the purchaser of the imported tangible personal~~



1 ~~property shall resell the imported tangible personal property at~~  
2 ~~wholesale as defined under section 237-4. Any purchaser who~~  
3 ~~furnishes a certificate shall be obligated to pay to the seller,~~  
4 ~~upon demand, if the sale in fact is not a sale for the purpose~~  
5 ~~of resale at wholesale, the amount of the additional tax which~~  
6 ~~by reason thereof is imposed upon the seller. The absence of a~~  
7 ~~certificate, unless the sales of the business are exclusively a~~  
8 ~~sale for the purpose of resale at wholesale, in itself, shall~~  
9 ~~give rise to the presumption that the sale is not a sale for the~~  
10 ~~purpose of resale at wholesale." ]~~

11 SECTION 31. Section 238-4, Hawaii Revised Statutes, is  
12 repealed.

13 [~~"§238-4 Certain property used by producers. If a~~  
14 ~~licensed producer, or a cooperative association acting under the~~  
15 ~~authority of chapter 421 or 422, in order to sell to such~~  
16 ~~producer, or a licensed person, imports into the State or~~  
17 ~~acquires in the State commodities, materials, items, services,~~  
18 ~~or living things enumerated in section [237-4(a)(3) and (5) to~~  
19 ~~(7)], then section 237-4 shall apply. If section 237-4 applies~~  
20 ~~and the producer is engaged in the sale of the producer's~~  
21 ~~products at retail or in any manner other than at wholesale,~~  
22 ~~then the tax upon use of property in the State imposed by~~

1 ~~section 238-2(2) shall apply the same as in the case of a~~  
2 ~~purchaser who is a licensed retailer. In other such cases no~~  
3 ~~tax shall be imposed under this chapter."]~~

4 SECTION 32. (a) There is created a committee to oversee  
5 the department of taxation's implementation, administration, and  
6 compliance of the Streamlined Sales and Use Tax Agreement. The  
7 committee shall be administratively attached to the department  
8 of taxation. Members of the committee shall be reimbursed for  
9 expenses, including travel expenses.

10 (b) The president of the senate and the speaker of the  
11 house of representatives shall appoint four members each, which  
12 shall comprise a committee, the purpose of which is to hold  
13 meetings necessary to carry out this Act and to serve as part of  
14 the State's official delegation to the streamlined sales and use  
15 tax agreement governing board when establishing the State's  
16 criteria for compliance with the Streamlined Sales and Use Tax  
17 Agreement. The director of taxation, or a representative  
18 thereof, shall be an ex officio member. The members of the  
19 committee may elect a chair or co-chairs. Duties of the  
20 appointees shall include attending meetings of the governing  
21 board, technical reviews of Hawaii legislation and state tax  
22 operations, and working with the department of taxation to

**Report Title:**

Streamlined Sales and Use Tax Amendments

**Description:**

Adopts amendments to Hawaii tax laws to implement the streamlined sales and use tax agreement. (SD3)

1 ensure that all appropriate steps are taken in order to have  
2 Hawaii certified as a state in full compliance with the  
3 Streamlined Sales and Use Tax Agreement.

4 (c) The department of taxation may seek technical  
5 assistance that includes analysis of the fiscal and legal  
6 impacts of proposed conformance with the existing general excise  
7 tax law and other laws and any other issues that might result  
8 from the implementation of a streamlined sales and use tax under  
9 the Streamlined Sales and Use Tax Agreement, as well as for the  
10 preparation of proposed legislation by contracting with legal  
11 professionals that have a background and practice in taxation.

12 (d) The department of taxation shall secure the services  
13 necessary to support the project in as expeditious a manner as  
14 possible and without regard to chapter 103D, Hawaii Revised  
15 Statutes. The legislative reference bureau shall assist the  
16 department of taxation or contractor in drafting any appropriate  
17 legislation.

18 (e) The department of taxation shall obtain prior written  
19 approval from the committee for any services contracted for with  
20 outside entities, agencies, or persons for the implementation,  
21 administration, or compliance of the Streamlined Sales and Use  
22 Tax Agreement.

1           SECTION 33. Notwithstanding the provisions of any law  
2 making it unlawful for any person, officer, or employee of the  
3 State to disclose information from any tax return or permit any  
4 tax return to be seen or examined by any person, it shall be  
5 lawful to permit a private contractor, contracted under section  
6 32 of this Act, to inspect any tax return of any taxpayer, or to  
7 furnish to the private contractor an abstract of the return or  
8 supply the private contractor with information concerning any  
9 item contained in the return or disclosed by the report of any  
10 investigation of the return or of the subject matter of the  
11 return, except for the purpose of conforming the State's general  
12 excise and use taxes to be operative with the Streamlined Sales  
13 Tax Project's Model Agreement and Act.

14           SECTION 34. In codifying the new chapters and sections  
15 added to the Hawaii Revised Statutes, the revisor of statutes  
16 shall substitute appropriate section numbers for the letters  
17 used in designating the new chapters and sections.

18           SECTION 35. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20           SECTION 36. This Act shall take effect on the later of  
21 January 1, 2010, or when the United States Congress enacts  
22 legislation overturning *Quill v. North Dakota*, 504 U.S. 298

1 (1992), by consenting to the Streamlined Sales and Use Tax  
2 Agreement; provided that sections 32 and 33 shall take effect on  
3 approval; and provided further that the amendments made to  
4 section 237-24.3, Hawaii Revised Statutes, by this Act shall not  
5 be repealed when that section is reenacted on December 31, 2009,  
6 pursuant to section 4, Act 239, Session Laws of Hawaii 2007.