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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. Act 105, Session Laws of Hawaii 2011,  
2 temporarily suspended certain exemptions from the general excise  
3 tax for a period of two years, and these exemptions are scheduled  
4 to sunset on June 30, 2013. One of the suspended exemptions is  
5 for the general excise tax imposed on tangible personal property,  
6 including computer hardware, computer software, and  
7 telecommunications equipment, that is sold by a person licensed  
8 under chapter 237, Hawaii Revised Statutes, to the United States  
9 and to any state-chartered credit union, pursuant to section 237-  
10 25(a)(3), Hawaii Revised Statutes. The legislature finds that a  
11 consequence of not providing the exemption is that Hawaii  
12 businesses that sell computer hardware, computer software, and  
13 telecommunications equipment to the federal government must pay  
14 the general excise tax on those goods but cannot pass the amount  
15 of the tax on to the federal government, which in effect creates  
16 a financial burden for state businesses and puts them at a  
17 disadvantage when competing with out-of-state businesses.



1        Rather than crippling local businesses, the legislature  
2 finds that Hawaii needs to promote the growth of local  
3 businesses, including businesses that sell goods to the federal  
4 government, which tends to make large purchases from local  
5 vendors.

6        The purpose of this Act is to:

- 7        (1) Restore the general excise tax exemption for sales of
- 8                computer hardware, computer software, and
- 9                telecommunications equipment to the United States and
- 10               state-chartered credit unions, pursuant to section 237-
- 11               25(a)(3); and
- 12        (2) Make a housekeeping amendment to Act 105, Session Laws
- 13               of Hawaii 2011, to comply with federal law.

14        SECTION 2. Act 105, Session Laws of Hawaii 2011, is amended  
15 by amending section 2 to read as follows:

16        ""SECTION 2. Chapter 237, Hawaii Revised Statutes, is  
17 amended by adding two new sections to be appropriately designated  
18 and to read as follows:

19        "**§237-        Temporary suspension of exemption of certain**  
20 **amounts; levy of tax.** (a) Notwithstanding any other law to the  
21 contrary, the exemption of the following amounts from taxation



1 under this chapter shall be suspended from July 1, 2011, through  
2 June 30, 2013:

3 (1) Amounts deducted from the gross income received by  
4 contractors as described under section 237-13(3)(B);

5 (2) Reimbursements received by federal cost-plus  
6 contractors for the costs of purchased materials,  
7 plant, and equipment as described under section 237-  
8 13(3)(C);

9 ~~[(3) Gross receipts of home service providers acting as  
10 service carriers providing mobile telecommunications  
11 services to other home service providers as described  
12 under section 237-13(6)(D);~~

13 ~~+(4)]~~ (3) Amounts deducted from the gross income of real  
14 property lessees because of receipt from sublessees as  
15 described under section 237-16.5;

16 ~~[(5)]~~ (4) The value or gross income received by nonprofit  
17 organizations from certain conventions, conferences,  
18 trade show exhibits, or display spaces as described  
19 under section 237-16.8;

20 ~~[(6)]~~ (5) Amounts received by sugarcane producers as  
21 described under section 237-24(14);



1       ~~[(7)]~~ (6) Amounts received from the loading, transportation,  
2                   and unloading of agricultural commodities shipped  
3                   interisland as described under section 237-24.3(1);  
4       ~~[(8)]~~ (7) Amounts received from the sale of intoxicating  
5                   liquor, cigarettes and tobacco products, and  
6                   agricultural, meat, or fish products to persons or  
7                   common carriers engaged in interstate or foreign  
8                   commerce as described under section 237-24.3(2);  
9       ~~[(9)]~~ (8) Amounts received or accrued from the loading or  
10                   unloading of cargo as described under section 237-  
11                   24.3(4)(A);  
12       ~~[(10)]~~ (9) Amounts received or accrued from tugboat and  
13                   towage services as described under section 237-  
14                   24.3(4)(B);  
15       ~~[(11)]~~ (10) Amounts received or accrued from the  
16                   transportation of pilots or government officials and  
17                   other maritime-related services as described under  
18                   section 237-24.3(4)(C);  
19       ~~[(12)]~~ (11) Amounts received by labor organizations for real  
20                   property leases as described under section 237-  
21                   24.3(10);



- 1        [~~(13)~~] (12)    Amounts received as rent for aircraft or aircraft  
2                            engines used for interstate air transportation as  
3                            described under section 237-24.3(12);
- 4        [~~(14)~~] (13)    Amounts received by exchanges and exchange  
5                            members as described under section 237-24.5;
- 6        [~~(15)~~] (14)    Amounts received as high technology research and  
7                            development grants under section 206M-15 as described  
8                            under section 237-24.7(10);
- 9        [~~(16)~~] (15)    Amounts received from the servicing and  
10                           maintenance of aircraft or construction of aircraft  
11                           service and maintenance facilities as described under  
12                           section 237-24.9;
- 13        [~~(17)~~] (16)    Gross proceeds from the sale of the following:
- 14                           (A)    Intoxicating liquor to the United States  
15                                  (including any agency or instrumentality of the  
16                                  United States that is wholly owned or otherwise so  
17                                  constituted as to be immune from the levy of a tax  
18                                  under chapter 238 or 244D, but not including  
19                                  national banks) or any organization to which the  
20                                  sale is permitted by the proviso of "Class 3" of  
21                                  section 281-31 that is located on any Army, Navy,



1 or Air Force reservation as described under  
2 section 237-25(a)(1);  
3 (B) Tobacco products and cigarettes to the United  
4 States (including any agency or instrumentality  
5 thereof that is wholly owned or otherwise so  
6 constituted as to be immune from the levy of tax  
7 under chapter 238 or 245, but not including  
8 national banks) as described under section 237-  
9 25(a)(2); and  
10 (C) "Other tangible personal property" to the United  
11 States (including any agency, instrumentality, or  
12 federal credit union thereof, but not including  
13 national banks) and any state-chartered credit  
14 union as described under section 237-25(a)(3);  
15 provided that this subparagraph shall not apply to  
16 the sale of computer hardware, computer software,  
17 or telecommunications equipment to the United  
18 States (including any agency, instrumentality, or  
19 federal credit union thereof, but not including  
20 national banks) and any state-chartered credit  
21 union;



1       ~~[(18)]~~ (17) Amounts received by petroleum product refiners  
2           from other refiners for further refining of petroleum  
3           products as described under section 237-27;

4       ~~[(19)]~~ (18) Gross proceeds received from the construction,  
5           reconstruction, erection, operation, use, maintenance,  
6           or furnishing of air pollution control facilities, as  
7           described under section 237-27.5, that do not have  
8           valid certificates of exemption on July 1, 2011;

9       ~~[(20)]~~ (19) Gross proceeds received from shipbuilding and  
10          ship repairs as described under section 237-28.1;

11      ~~[(21)]~~ (20) Amounts received by telecommunications common  
12          carriers from call center operators for interstate or  
13          foreign telecommunications services as described under  
14          section 237-29.8;

15      ~~[(22)]~~ (21) Gross proceeds received by qualified businesses  
16          in enterprise zones, as described under section 209E-  
17          11, that do not have valid certificates of  
18          qualification from the department of business, economic  
19          development, and tourism on July 1, 2011; and

20      ~~[(23)]~~ (22) Gross proceeds received by contractors licensed  
21          under chapter 444 for construction within enterprise  
22          zones performed for qualified businesses within the



1 enterprise zones or businesses approved by the  
2 department of business, economic development, and  
3 tourism to enroll into the enterprise zone program, as  
4 described under section 209E-11.

5 (b) Except as otherwise provided under subsection (f), (g),  
6 or (h), there is levied, assessed, and collected annually against  
7 a taxpayer receiving or deriving previously exempt gross income  
8 or gross proceeds of sale from July 1, 2011, to June 30, 2013, a  
9 tax at the rate of four per cent on that previously exempt gross  
10 income or gross proceeds of sale.

11 (c) As used in this section, "previously exempt gross  
12 income or gross proceeds of sale" means the amount of the gross  
13 income or gross proceeds of sale, the exemption for which is  
14 suspended under subsection (a). The term also includes the value  
15 received by a nonprofit organization from conventions,  
16 conferences, trade show exhibits, and display spaces, the  
17 exemption for which is suspended under subsection [~~(a)(5)~~].  
18 (a)(4).

19 (d) The taxpayer, against whom the tax is levied and  
20 assessed under this section, shall be responsible for payment of  
21 the tax to the director of taxation.





1 (e) Notwithstanding section 237-8.6, no county surcharge  
2 shall be levied, assessed, or collected on any previously exempt  
3 gross income or gross proceeds of sale that is subject to  
4 taxation under subsection (b).

5 (f) This section shall not apply to gross income or gross  
6 proceeds from binding written contracts entered into prior to  
7 July 1, 2011, that do not permit the passing on of increased  
8 rates of taxes.

9 (g) This section shall not apply to gross income or gross  
10 proceeds from stevedoring services and related services, as  
11 defined in section 382-1, furnished to a company by its wholly  
12 owned subsidiary.

13 (h) The tax imposed under subsection (b) shall not apply to  
14 any gross income or gross proceeds of sale that cannot legally be  
15 so taxed under the Constitution or laws of the United States, but  
16 only so long as, and only to the extent to which the State is  
17 without power to impose the tax.

18 To the extent that any exemption, exclusion, or  
19 apportionment is necessary to comply with the preceding sentence,  
20 the director of taxation shall:

21 (1) Exempt or exclude the gross income or gross proceeds of  
22 sale from the tax under subsection (b); or



1           (2) Apportion the gross income or gross proceeds of sale  
 2           derived within the State by persons engaged in business  
 3           both within and without the State to determine the  
 4           gross income or gross proceeds of sale that is subject  
 5           to taxation under this chapter for the purposes of  
 6           section 237-21.

7           (i) This chapter shall apply to the payment, collection,  
 8 enforcement, and appeal of the tax levied under this section.

9           The director of taxation may establish additional  
 10 requirements, procedures, and forms pursuant to rules adopted  
 11 under chapter 91, to effectuate this section.

12           **§237- Information reporting.** Beginning July 1, 2011,  
 13 the director of taxation shall require information reporting on  
 14 all exclusions or exemptions of all amounts, persons, or  
 15 transactions from this chapter, except for the following:

- 16           (1) Amounts received that are exempt under section 237-  
 17           24(1) through (7); and
- 18           (2) Any other amounts, persons, or transactions as  
 19           determined by the director to be in the best interest  
 20           of tax administration and made by official  
 21           pronouncement."

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

3 SECTION 4. This Act shall take effect on July 1, 2050, and  
4 shall apply to gross income or gross proceeds received after June  
5 30, 2012.



**Report Title:**

Taxation; General Excise Tax; Exemptions; Repeal

**Description:**

Repeals the temporary suspension under Act 105, SLH 2011, on the general excise tax exemption on sales of computer hardware, computer software, and telecommunications equipment sold to the federal government and state-chartered credit unions. Amends Act 105, SLH 2011, to comply with federal law. Effective 07/01/2050. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

