
A BILL FOR AN ACT

RELATING TO THE IMPOSITION OF USE TAX ON IMPORTED CONTRACTING.

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

1 SECTION 1. Section 238-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "use" to read as follows:
3 ""Use" (and any nounal, verbal, adjectival, adverbial, and
4 other equivalent form of the term) herein used interchangeably
5 means any use, whether the use is of such nature as to cause the
6 property, services, or contracting to be appreciably consumed or
7 not, or the keeping of the property or services for such use or
8 for sale, the exercise of any right or power over tangible or
9 intangible personal property incident to the ownership of that
10 property, and shall include control over tangible or intangible
11 property by a seller who is licensed or who should be licensed
12 under chapter 237, who directs the importation of the property
13 into the State for sale and delivery to a purchaser in the
14 State, liability and free on board (FOB) to the contrary
15 notwithstanding, regardless of where title passes, but the term
16 "use" shall not include:

17 (1) Temporary use of property, not of a perishable or
18 quickly consumable nature, where the property is



1 imported into the State for temporary use (not sale)
2 therein by the person importing the same and is not
3 intended to be, and is not, kept permanently in the
4 State. For example, without limiting the generality
5 of the foregoing language:

6 (A) In the case of a contractor importing permanent
7 equipment for the performance of a construction
8 contract, with intent to remove, and who does
9 remove, the equipment out of the State upon
10 completing the contract;

11 (B) In the case of moving picture films imported for
12 use in theaters in the State with intent or under
13 contract to transport the same out of the State
14 after completion of such use; and

15 (C) In the case of a transient visitor importing an
16 automobile or other belongings into the State to
17 be used by the transient visitor while therein
18 but which are to be used and are removed upon the
19 transient visitor's departure from the State;

20 (2) Use by the taxpayer of property acquired by the
21 taxpayer solely by way of gift;



- 1 (3) Use which is limited to the receipt of articles and
2 the return thereof, to the person from whom acquired,
3 immediately or within a reasonable time either after
4 temporary trial or without trial;
- 5 (4) Use of goods imported into the State by the owner of a
6 vessel or vessels engaged in interstate or foreign
7 commerce and held for and used only as ship stores for
8 the vessels;
- 9 (5) The use or keeping for use of household goods,
10 personal effects, and private automobiles imported
11 into the State for nonbusiness use by a person who:
12 (A) Acquired them in another state, territory,
13 district, or country;
14 (B) At the time of the acquisition was a bona fide
15 resident of another state, territory, district,
16 or country;
17 (C) Acquired the property for use outside the State;
18 and
19 (D) Made actual and substantial use thereof outside
20 this State;
- 21 provided that as to an article acquired less than
22 three months prior to the time of its importation into



1 the State it shall be presumed, until and unless
2 clearly proved to the contrary, that it was acquired
3 for use in the State and that its use outside the
4 State was not actual and substantial;

5 (6) The leasing or renting of any aircraft or the keeping
6 of any aircraft solely for leasing or renting to
7 lessees or renters using the aircraft for commercial
8 transportation of passengers and goods or the
9 acquisition or importation of any such aircraft or
10 aircraft engines by any lessee or renter engaged in
11 interstate air transportation. For purposes of this
12 paragraph, "leasing" includes all forms of lease,
13 regardless of whether the lease is an operating lease
14 or financing lease. The definition of "interstate air
15 transportation" is the same as in 49 U.S.C. 40102;

16 (7) The use of oceangoing vehicles for passenger or
17 passenger and goods transportation from one point to
18 another within the State as a public utility as
19 defined in chapter 269;

20 (8) The use of material, parts, or tools imported or
21 purchased by a person licensed under chapter 237 which
22 are used for aircraft service and maintenance, or the



1 construction of an aircraft service and maintenance
2 facility as those terms are defined in section 237-
3 24.9;

4 (9) The use of services or contracting imported for resale
5 where the contracting or services are for resale,
6 consumption, or use outside the State pursuant to
7 section 237-29.53(a);

8 [~~(10)~~ ~~The use of contracting imported or purchased by a~~
9 ~~contractor as defined in section 237-6 who is:~~

10 ~~(A) Licensed under chapter 237;~~

11 ~~(B) Engaged in business as a contractor; and~~

12 ~~(C) Subject to the tax imposed under section 238-~~
13 ~~2-3;] and~~

14 [~~(11)~~] (10) The use of property, services, or contracting
15 imported by foreign diplomats and consular officials
16 who are holding cards issued or authorized by the
17 United States Department of State granting them an
18 exemption from state taxes.

19 With regard to purchases made and distributed under the
20 authority of chapter 421, a cooperative association shall be
21 deemed the user thereof."



1 SECTION 2. Section 238-2.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§238-2.3 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 rates 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
14 237 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 237 on services at the rate of one-half



1 of one per cent or the rate of tax imposed under
2 section 237-13.3; [~~or~~]

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

11 (C) A contractor importing or purchasing contracting
12 that become identifiable elements, excluding
13 overhead, of the finished work or project
14 required under the contract; provided that:

15 (i) The gross proceeds derived by the contractor
16 are subject to the tax under section 237-
17 13(3) as a contractor; and

18 (ii) The contractor could have deducted amounts
19 paid to the subcontractor under section 237-
20 13(3)(B) if the subcontractor was subject to
21 general excise tax under chapter 237;



1 there shall be no tax imposed on the value of the
2 imported or purchased services or contracting;
3 provided that if the manufacturer is also engaged in
4 business as a retailer as classified under chapter
5 237, paragraph (2) shall apply to the manufacturer,
6 but the director of taxation shall refund to the
7 manufacturer, in the manner provided under section
8 231-23(c), that amount of tax that the manufacturer,
9 to the satisfaction of the director, shall establish
10 to have been paid by the manufacturer to the director
11 with respect to services that have been used by the
12 manufacturer for the purposes stated in this
13 paragraph.

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

16 (A) Engaged in a service business or calling in which
17 the imported or purchased services or contracting
18 become identifiable elements, excluding overhead,
19 of the services rendered by the importer or
20 purchaser, and the gross income from those
21 services when sold by the importer or purchaser



1 is subject to the tax imposed under chapter 237
2 at the highest rate;

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

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

19 the tax shall be one-half of one per cent of the value
20 of the imported or purchased services or contracting;
21 and



1 (3) In all other cases, the importer or purchaser is
2 subject to the tax at the rate of four per cent on the
3 value of the imported or purchased services or
4 contracting."

5 SECTION 3. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 4. This Act shall take effect on July 1, 2013.



Report Title:

Use Tax Imposition on Imported Contracting

Description:

Clarifies taxation of contracting under use and general excise tax laws. (SD1)

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