A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX WHOLESALE RATE IMPOSED UPON SALE OF TANGIBLE PERSONAL PROPERTY.

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

SECTION 1. Section 3 of Act 135, Session Laws of Hawaii 2003, inadvertently repealed the one-half of one per cent general excise tax rate imposed upon the wholesale sale of tangible personal property. The purpose of this Act is to undo the inadvertent repeal to clarify that the proper general excise tax rate imposed upon the wholesale sale of tangible personal property is one-half of one per cent.

SECTION 2. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

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

(1) Tax on manufacturers.
(A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.

(B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.
(C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:

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

(ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the
true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values;

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

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

(2) Tax on business of selling tangible personal property; producing.

(A) Upon every person engaging or continuing in the business of selling any tangible personal
property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that, in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business; and provided further that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8), the sale shall be subject to section 237-13.3. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).
(B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.

(C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the
value or gross proceeds of sales of the products
shall be included only in determining the measure
of the tax imposed upon the manufacturer or
producer.
(D) When a manufacturer or producer, engaged in such
business in the State, also is engaged in selling
the manufacturer's or producer's products in the
State at wholesale, retail, or in any other
manner, the tax for the privilege of engaging in
the business of selling the products in the State
shall apply to the manufacturer or producer as
well as the tax for the privilege of
manufacturing or producing in the State, and the
manufacturer or producer shall make the returns
of the gross proceeds of the wholesale, retail,
or other sales required for the privilege of
selling in the State, as well as making the
returns of the value or gross proceeds of sales
of the products required for the privilege of
manufacturing or producing in the State. The
manufacturer or producer shall pay the tax
imposed in this chapter for the privilege of
selling its products in the State, and the value
or gross proceeds of sales of the products, thus
subjected to tax, may be deducted insofar as
duplicated as to the same products by the measure
of the tax upon the manufacturer or producer for
the privilege of manufacturing or producing in
the State; provided that no producer of
agricultural products who sells the products to a
purchaser who will process the products outside
the State shall be required to pay the tax
imposed in this chapter for the privilege of
producing or selling those products.

(E) A taxpayer selling to a federal cost-plus
contractor may make the election provided for by
paragraph (3)(C), and in that case the tax shall
be computed pursuant to the election,
notwithstanding this paragraph or paragraph (1)
to the contrary.

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

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

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

(3) Tax upon contractors.

(A) Upon every person engaging or continuing within
the State in the business of contracting, the tax
shall be equal to four per cent of the gross
income of the business.

(B) In computing the tax levied under this paragraph,
there shall be deducted from the gross income of
the taxpayer so much thereof as has been included
in the measure of the tax levied under
subparagraph (A), on:
(i) Another taxpayer who is a contractor, as defined in section 237-6;
(ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or
(iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State;

provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.

(C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:
(i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and

(ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.

(D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise),
upon the sale or other disposition of the land or
improvements, even if the work was not done
pursuant to a contract, shall be liable to the
same tax as if engaged in the business of
contracting, unless the person shows that at the
time the person was engaged in making the
improvements the person intended, and for the
period of at least one year after completion of
the building, structure, or other improvements
the person continued to intend to hold and not
sell or otherwise dispose of the land or
improvements. The tax in respect of the
improvements shall be measured by the amount of
the proceeds of the sale or other disposition
that is attributable to the erection,
construction, or improvement of such building or
structure, or the making, constructing, or
improving of the road, street, sidewalk, sewer,
or water system, or other improvements. The
measure of tax in respect of the improvements
shall not exceed the amount which would have been
taxable had the work been performed by another,
subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

(4) Tax upon theaters, amusements, radio broadcasting stations, etc.

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

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

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

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.
(5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.

(6) Tax on service business.

(A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business. Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.
(B) The department may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

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

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

(C) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, other than as a home service provider, the tax shall be imposed on that portion of gross income received by a person from service which is
originated or terminated in this State and is
charged to a telephone number, customer, or
account in this State notwithstanding any other
state law (except for the exemption under section
237-23(a)(1)) to the contrary. If, under the
Constitution and laws of the United States, the
entire gross income as determined under this
paragraph of a business selling interstate or
foreign common carrier telecommunication services
cannot be included in the measure of the tax, the
gross income shall be apportioned as provided in
section 237-21; provided that the apportionment
factor and formula shall be the same for all
persons providing those services in the State.

(D) Where any person is engaged in the business of a
home service provider, the tax shall be imposed
on the gross income received or derived from
providing interstate or foreign mobile
telecommunications services to a customer with a
place of primary use in this State when such
services originate in one state and terminate in
another state, territory, or foreign country;
provided that all charges for mobile telecommunications services which are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the income from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-24, shall be apportioned under any apportionment factor or formula adopted under subparagraph (C). Gross income shall not include:

(i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;
(ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;

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

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

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

(7) Tax on insurance producers. Upon every person engaged as a licensed producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to 0.15 per cent of the commissions due to that activity.
(8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.

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

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

SECTION 4. This Act shall take effect upon its approval.
Report Title:
General Excise Tax; Wholesale Rate Imposed Upon Sale of Tangible Personal Property

Description:
Clarifies that wholesale sales of tangible personal property are subject to the one-half of one per cent general excise tax rate.
(SD1)

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