

JAN 22 2016

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# A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX.

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

1           SECTION 1. Section 237-24, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§237-24 Amounts not taxable.** This chapter shall not  
4 apply to the following amounts:

- 5           (1) Amounts received under life insurance policies and  
6           contracts paid by reason of the death of the insured;
- 7           (2) Amounts received (other than amounts paid by reason of  
8           death of the insured) under life insurance, endowment,  
9           or annuity contracts, either during the term or at  
10           maturity or upon surrender of the contract;
- 11           (3) Amounts received under any accident insurance or  
12           health insurance policy or contract or under workers'  
13           compensation acts or employers' liability acts, as  
14           compensation for personal injuries, death, or  
15           sickness, including also the amount of any damages or  
16           other compensation received, whether as a result of



- 1           action or by private agreement between the parties on  
2           account of the personal injuries, death, or sickness;
- 3           (4) The value of all property of every kind and sort  
4           acquired by gift, bequest, or devise, and the value of  
5           all property acquired by descent or inheritance;
- 6           (5) Amounts received by any person as compensatory damages  
7           for any tort injury to the person, or to the person's  
8           character reputation, or received as compensatory  
9           damages for any tort injury to or destruction of  
10          property, whether as the result of action or by  
11          private agreement between the parties (provided that  
12          amounts received as punitive damages for tort injury  
13          or breach of contract injury shall be included in  
14          gross income);
- 15          (6) Amounts received as salaries or wages for services  
16          rendered by an employee to an employer;
- 17          (7) Amounts received as alimony and other similar payments  
18          and settlements;
- 19          (8) Amounts collected by distributors as fuel taxes on  
20          "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) 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) An amount up to, but not in excess of, \$2,000 a year  
17 of gross income received by any blind, deaf, or  
18 totally disabled person engaging, or continuing, in  
19 any business, trade, activity, occupation, or calling  
20 within the State; a corporation all of whose  
21 outstanding shares are owned by an individual or



1 individuals who are blind, deaf, or totally disabled;  
2 a general, limited, or limited liability partnership,  
3 all of whose partners are blind, deaf, or totally  
4 disabled; or a limited liability company, all of whose  
5 members are blind, 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 classed 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 the sale of the  
14 sugar, and other products manufactured from the  
15 sugarcane, are included in the measure of the tax  
16 levied on the manufacturer under section 237-  
17 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



1           all similar products manufactured by the  
2           manufacturer; and  
3           (D) The producer's gross proceeds of sales are  
4           reduced by reason of the tax on the value or sale  
5           of the manufactured products;  
6           (15) Money paid by the State or eleemosynary child-placing  
7           organizations to foster parents for their care of  
8           children in foster homes;  
9           (16) Amounts received by a cooperative housing corporation  
10          from its shareholders in reimbursement of funds paid  
11          by the corporation for lease rental, real property  
12          taxes, and other expenses of operating and maintaining  
13          the cooperative land and improvements; provided that  
14          the cooperative corporation is a corporation:  
15          (A) Having one and only one class of stock  
16          outstanding;  
17          (B) Each of the stockholders of which is entitled  
18          solely by reason of the stockholder's ownership  
19          of stock in the corporation, to occupy for  
20          dwelling purposes a house, or an apartment in a  
21          building owned or leased by the corporation; and



1 (C) No stockholder of which is entitled (either  
2 conditionally or unconditionally) to receive any  
3 distribution not out of earnings and profits of  
4 the corporation except in a complete or partial  
5 liquidation of the corporation; and

6 (17) Amounts received by a managed care support contractor  
7 of the TRICARE program that is established under Title  
8 10 United States Code chapter 55, as amended, for the  
9 actual cost or advancement to third party health care  
10 providers pursuant to a contract with the United  
11 States.

12 (18) Amounts received by a taxpayer licensed under this  
13 chapter from another licensed taxpayer:

14 (A) For the sale of goods that:

15 (i) Are not for resale;

16 (ii) Will be used or finally consumed within a  
17 business as part of the operation of the  
18 business; and

19 (iii) Would otherwise be taxed at a rate of four  
20 per cent under this chapter; or



1           (B) Who are a lessor and lessee subleasing real  
 2           property and would otherwise be taxed at a rate  
 3           of four per cent under this chapter; and

4           (19) Amounts taxable under section:

5           (A) 237-13(2) (A) on wholesale sales subject to  
 6           section 237-4(a) (8) (B);

7           (B) 237-13(4) (A) on a wholesaler subject to section  
 8           237-4(a) (13); and

9           (C) 237-13(6) (A) on a wholesaler subject to section  
 10           237-4(a) (10) at one-half of one per cent."

11           SECTION 2. Section 237-13.3, Hawaii Revised Statutes, is  
 12 repealed.

13           ~~["§237-13.3 Application of sections 237-4(a) (8), 237-~~  
 14 ~~4(a) (10), 237-4(a) (13), 237-13(2) (A), 237-13(4) (A), and 237-~~  
 15 ~~13(6) (A). (a) Sections 237-4(a) (8), 237-4(a) (10), 237-~~  
 16 ~~4(a) (13), 237-13(2) (A), 237-13(4) (A), and 237-13(6) (A) to the~~  
 17 ~~contrary notwithstanding, instead of the tax levied under~~  
 18 ~~section 237-13(2) (A) on wholesale sales subject to section 237-~~  
 19 ~~4(a) (8) (B), under section 237-13(4) (A) on a wholesaler subject~~  
 20 ~~to section 237-4(a) (13), and under section 237-13(6) (A) on a~~  
 21 ~~wholesaler subject to section 237-4(a) (10) at one-half of one~~



1 ~~per cent, during the period January 1, 2000, to December 31,~~  
2 ~~2005, the tax shall be as follows:~~

- 3       ~~(1) In calendar year 2000, 3.5 per cent;~~
- 4       ~~(2) In calendar year 2001, 3.0 per cent;~~
- 5       ~~(3) In calendar year 2002, 2.5 per cent;~~
- 6       ~~(4) In calendar year 2003, 2.0 per cent;~~
- 7       ~~(5) In calendar year 2004, 1.5 per cent;~~
- 8       ~~(6) In calendar year 2005, 1.0 per cent; and~~
- 9       ~~(7) In calendar year 2006 and thereafter, the tax shall be~~  
10           ~~0.5 per cent.~~

11       ~~(b) The department shall have the authority to implement~~  
12 ~~the tax rate changes in subsection (a) by prescribing tax forms~~  
13 ~~and instructions that require tax reporting and payment by~~  
14 ~~deduction, allocation, or any other method to determine tax~~  
15 ~~liability with due regard to the tax rate changes."}]~~

16       SECTION 3. Section 237-16.5, Hawaii Revised Statutes, is  
17 repealed.

18       ~~["§237-16.5 Tax on written real property leases; deduction~~  
19 ~~allowed. (a) This section relates to the leasing of real~~  
20 ~~property by a lessor to a lessee. There is hereby levied, and~~  
21 ~~shall be assessed and collected annually, a privilege tax~~





1 ~~against persons engaging or continuing within the State in the~~  
2 ~~business of leasing real property to another, equal to four per~~  
3 ~~cent of the gross proceeds or gross income received or derived~~  
4 ~~from the leasing; provided that where real property is subleased~~  
5 ~~by a lessee to a sublessee, the lessee, as provided in this~~  
6 ~~section, shall be allowed a deduction from the amount of gross~~  
7 ~~proceeds or gross income received from its sublease of the real~~  
8 ~~property. The deduction shall be in the amount allowed under~~  
9 ~~this section.~~

10 ~~All deductions under this section and the name and general~~  
11 ~~excise tax number of the lessee's lessor shall be reported on~~  
12 ~~the general excise tax return. Any deduction allowed under this~~  
13 ~~section shall only be allowed with respect to leases and~~  
14 ~~subleases in writing and relating to the same real property.~~

15 ~~(b) The lessee shall obtain from its lessor a certificate,~~  
16 ~~in the form as the department shall prescribe, certifying that~~  
17 ~~the lessor is subject to tax under this chapter on the gross~~  
18 ~~proceeds or gross income received from the lessee. The absence~~  
19 ~~of the certificate in itself shall give rise to the presumption~~  
20 ~~that the lessee is not allowed the deduction under this section.~~



1       ~~(c) If various real property or space leased to the lessee~~  
2 ~~have different rental values, then the total monetary gross~~  
3 ~~proceeds or gross income paid to a lessor for all real property~~  
4 ~~or space shall first be allocated to the fair rental value for~~  
5 ~~each real property or space. If the lessee leases less than one~~  
6 ~~hundred per cent of real property or space that was leased from~~  
7 ~~the lessor to a sublessee, then the total monetary gross~~  
8 ~~proceeds or gross income paid by the lessee for that real~~  
9 ~~property or space to its lessor shall be allocated. The~~  
10 ~~percentage of real property or space subleased shall be~~  
11 ~~multiplied by the monetary gross proceeds or gross income paid~~  
12 ~~for the real property or space by the lessee to its lessor. The~~  
13 ~~product of the preceding multiplication shall be deducted from~~  
14 ~~the monetary gross proceeds or gross income received for real~~  
15 ~~property or space by the lessee.~~

16       ~~Once the allocations are made, the appropriate deduction~~  
17 ~~under subsection (g) shall be made.~~

18       ~~(d) The lessor shall make allocations under this section~~  
19 ~~at the time the sublease is entered into and the allocations~~  
20 ~~shall not be changed during the term of the sublease. There~~  
21 ~~shall be a reasonable basis for the allocations, taking into~~



1 ~~consideration the size, quality, and location of the real~~  
2 ~~property or space subleased. In no event shall the total amount~~  
3 ~~allocated to all subleases exceed the total monetary gross~~  
4 ~~proceeds paid by the lessee to its lessor. The director may~~  
5 ~~redetermine the amount of the deduction under this section if~~  
6 ~~the director finds that the basis for allocation is not~~  
7 ~~reasonable or that redetermination is necessary to prevent the~~  
8 ~~avoidance of taxes.~~

9 ~~(c) As used in this section:~~

10 ~~"Lease" means the rental of real property under an~~  
11 ~~instrument in writing by which one conveys real property for a~~  
12 ~~specified term and for a specified consideration, and includes~~  
13 ~~the written extension or renegotiation of a lease, and any~~  
14 ~~holdover tenancy.~~

15 ~~"Lessee" means one who holds real property under lease, and~~  
16 ~~includes a sublessee.~~

17 ~~"Lessor" means one who conveys real property by lease, and~~  
18 ~~includes a sublessor.~~

19 ~~"Real property or space" means the area actually rented and~~  
20 ~~used by the lessee, and includes common elements as defined in~~  
21 ~~section 514A-3 or 514B-3.~~



1       ~~"Sublease" includes the rental of real property which is~~  
2 ~~held under a lease and is made in a written document by which~~  
3 ~~one conveys real property for a specified term and for a~~  
4 ~~specified consideration. A sublease includes the written~~  
5 ~~extension or renegotiation of a sublease and any holdover~~  
6 ~~tenancy under the written sublease.~~

7       ~~"Sublessee" means one who holds real property under a~~  
8 ~~sublease.~~

9       ~~"Sublessor" means one who conveys real property by~~  
10 ~~sublease.~~

11       ~~(f) This section shall not cause the tax upon a lessor,~~  
12 ~~with respect to any item of the lessor's gross proceeds or gross~~  
13 ~~income, to exceed four per cent.~~

14       ~~(g) After allocation under subsection (c), if necessary,~~  
15 ~~the deduction under this section shall be allowed from the gross~~  
16 ~~proceeds or gross income of the lessee received from its~~  
17 ~~sublease in an amount calculated by multiplying the gross~~  
18 ~~proceeds or gross income paid by the lessee to its lessor for~~  
19 ~~the lease of the real property by the following amount:~~

20       ~~(1) In calendar year 1998, .125;~~

21       ~~(2) In calendar year 1999, .25;~~



- 1       ~~(3) In calendar year 2000, .375;~~
- 2       ~~(4) In calendar year 2001, .50;~~
- 3       ~~(5) In calendar year 2002, .625;~~
- 4       ~~(6) In calendar year 2003, .75; and~~
- 5       ~~(7) In calendar year 2004, and thereafter, .875.~~

6       ~~The amount calculated under paragraphs (1) to (7) shall be~~  
 7       ~~deducted by the lessee from the lessee's total reported gross~~  
 8       ~~proceeds or gross income. The deduction allowed by this~~  
 9       ~~subsection may be taken by the fiscal and calendar year~~  
 10      ~~lessees." ]~~

11       SECTION 4. Statutory material to be repealed is bracketed  
 12      and stricken. New statutory material is underscored.

13       SECTION 5. This Act shall take effect on July 1, 2016.

14  
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INTRODUCED BY: *[Signature]*  
*Lorraine R. Frouge*  
*Clarence W. Nishikubo*

# S.B. NO. 2705

**Report Title:**

General Excise Tax; Intermediary Business Transactions

**Description:**

Repeals the GET on all intermediary business transactions.

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