



STATE OF HAWAII
DEPARTMENT OF TAXATION
830 PUNCHBOWL STREET, ROOM 221
HONOLULU, HAWAII 96813
<http://tax.hawaii.gov/>
Phone: (808) 587-1540 / Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Thursday, February 1, 2018
Time: 2:00 P.M.
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 1605, Relating to Amending or Repealing Hawaii General Excise Tax Laws for the Purpose of Deleting Obsolete or Unnecessary Provisions

The Department of Taxation (Department) supports the intent of H.B. 1605 and recommends one amendment to the bill.

H.B. 1605, which is effective on July 1, 2018, amends various provisions relating to the general excise tax (GET) in chapter 237 of the Hawaii Revised Statutes (HRS), for the purpose of removing unnecessary or redundant provisions, including:

- Deleting provisions in sections 237-13(1) and (2) relating to the tax on manufacturers and producers for sales of products delivered outside the State;
- Deleting a provision in section 237-13(2) excluding stocks, bonds, and other evidence of indebtedness from the imposition of tax on the sale of tangible personal property;
- Deleting provisions in section 237-13(3) making the subcontractor deduction applicable to specialty contractors; and
- Amending a provision in section 237-13(6)(C) relating to the tax on telecommunication services.

With respect to section 237-13(6)(C), the Department recommends that the proposed amendment be removed from the bill because it may create ambiguity and result in a substantive change in law. Section 237-13(6)(C) currently provides:

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.

HRS § 237-13(6)(C) (emphasis added). The proposed amendment would change the notwithstanding clause to read “notwithstanding any provision in this section.”

As background, the public service company (PSC) tax, chapter 239 of the HRS, applies to PSCs, which include businesses that provide telecommunication services. HRS § 239-2, 269-1. The PSC tax is “in lieu of all taxes” except those expressly listed in section 239-5. HRS § 239-5. The GET is not listed in section 239-5 as one of the exceptions. Section 237-13(6)(C) imposes the GET on businesses who sell telecommunication services (including PSCs) and is measured based on the gross income from services that are originated or terminated in the State. HRS § 237-13(6)(C). Although section 237-13(6)(C) may seemingly contradict section 239-5, the language in section 237-13(6)(C) clarifies that the imposition of the GET is “notwithstanding any other state law . . . to the contrary.”

As a side note, section 237-23(a)(1) provides an exemption to the GET for gross income received by a PSC that is subject to the PSC tax. The PSC tax is imposed on the PSC’s “gross income,” which is defined as income from *intrastate* telecommunication services (*i.e.*, services originating and terminating in the State). Accordingly, pursuant to the exemption in section 237-23(a)(1), the GET applies to a PSC’s income from *interstate* telecommunication services (*i.e.*, services that originate in the State but terminate outside the State or vice versa.)

The Department is concerned that deletion of the phrase “notwithstanding any other state law” in section 237-13(6)(C) may lead to ambiguity due to the language in section 239-5 that the PSC tax applies in lieu of all other taxes. Additionally, the proposed language “notwithstanding any provision in this section” may be read to override the following sentence, which provides that gross income must be apportioned if required by the U.S. Constitution. Accordingly, the Department recommends that section 237-13(6)(C) is left unamended.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Repeal Unnecessary or Obsolete Provisions

BILL NUMBER: HB 1605

INTRODUCED BY: LUKE, CULLEN

EXECUTIVE SUMMARY: Removes unnecessary or obsolete language in section 237-13, HRS.

SYNOPSIS: Section 237-13, HRS, is amended as follows.

Section 237-13(1) is amended to remove language stating that the tax is imposed on the value of products prior to entry into interstate commerce. This language is obsolete in view of the exemption for exported goods in section 237-29.5, HRS.

Section 237-13(2)(A) is amended to delete a reference to bonds, other evidence of debt, or stocks, because those are explicitly exempted in section 237-3(a), HRS.

Section 237-13(2)(A) is also amended to remove language stating that the tax is imposed on the value of products sold for delivery outside the State. This language is obsolete in view of the exemption for exported goods in section 237-29.5, HRS.

Section 237-13(2)(D) is amended to delete reference to the taxation of multiple activities. This language is redundant because section 237-14, HRS, already provides for this.

Section 237-13(3)(B) is amended to remove the requirement that a subcontractor be licensed by DCCA, which requirement was abrogated by the Department in Department of Taxation Announcement No. 99-25.

Section 237-13(6)(C) is amended to clarify the laws overridden by the provision; “notwithstanding any other state law” (with one exception) is overbroad.

EFFECTIVE DATE: July 1, 2018.

STAFF COMMENTS: This bill was drafted by the Tax Foundation of Hawaii to improve Hawaii’s tax laws. It is not intended to affect any law that is currently being enforced.

Digested 1/30/2018