

JAN 24 2019

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 237-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§237-13 Imposition of tax. There is hereby levied and
4 shall be assessed and collected annually privilege taxes against
5 persons on account of their business and other activities in the
6 State measured by the application of rates against values of
7 products, gross proceeds of sales, or gross income, whichever is
8 specified, as follows:

9 (1) Tax on manufacturers.

10 (A) Upon every person engaging or continuing within
11 the State in the business of manufacturing,
12 including compounding, canning, preserving,
13 packing, printing, publishing, milling,
14 processing, refining, or preparing for sale,
15 profit, or commercial use, either directly or
16 through the activity of others, in whole or in
17 part, any article or articles, substance or



1 substances, commodity or commodities, the amount
2 of the tax to be equal to the value of the
3 articles, substances, or commodities,
4 manufactured, compounded, canned, preserved,
5 packed, printed, milled, processed, refined, or
6 prepared for sale, as shown by the gross proceeds
7 derived from the sale thereof by the manufacturer
8 or person compounding, preparing, or printing
9 them, multiplied by one-half of one per cent.

10 (B) The measure of the tax on manufacturers is the
11 value of the entire product for sale.

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

14 (A) Upon every person engaging or continuing in the
15 business of selling any tangible personal
16 property whatsoever, there is likewise hereby
17 levied, and shall be assessed and collected, a
18 tax equivalent to [~~four~~] 4.5 per cent of the
19 gross proceeds of sales of the business; provided
20 that, in the case of a wholesaler, the tax shall
21 be equal to one-half of one per cent of the gross



1 proceeds of sales of the business; and provided
2 further that insofar as the sale of tangible
3 personal property is a wholesale sale under
4 section 237-4(a)(8), the tax shall be one-half of
5 one per cent of the gross proceeds. Upon every
6 person engaging or continuing within this State
7 in the business of a producer, the tax shall be
8 equal to one-half of one per cent of the gross
9 proceeds of sales of the business, or the value
10 of the products, for sale.

11 (B) Gross proceeds of sales of tangible property in
12 interstate and foreign commerce shall constitute
13 a part of the measure of the tax imposed on
14 persons in the business of selling tangible
15 personal property, to the extent, under the
16 conditions, and in accordance with the provisions
17 of the Constitution of the United States and the
18 Acts of the Congress of the United States which
19 may be now in force or may be hereafter adopted,
20 and whenever there occurs in the State an
21 activity to which, under the Constitution and



1 Acts of Congress, there may be attributed gross
2 proceeds of sales, the gross proceeds shall be so
3 attributed.

4 (C) No manufacturer or producer, engaged in such
5 business in the State and selling the
6 manufacturer's or producer's products for
7 delivery outside of the State (for example,
8 consigned to a mainland purchaser via common
9 carrier f.o.b. Honolulu), shall be required to
10 pay the tax imposed in this chapter for the
11 privilege of so selling the products, and the
12 value or gross proceeds of sales of the products
13 shall be included only in determining the measure
14 of the tax imposed upon the manufacturer or
15 producer.

16 (D) A manufacturer or producer, engaged in such
17 business in the State, shall pay the tax imposed
18 in this chapter for the privilege of selling its
19 products in the State, and the value or gross
20 proceeds of sales of the products, thus subjected
21 to tax, may be deducted insofar as duplicated as



1 to the same products by the measure of the tax
2 upon the manufacturer or producer for the
3 privilege of manufacturing or producing in the
4 State; provided that no producer of agricultural
5 products who sells the products to a purchaser
6 who will process the products outside the State
7 shall be required to pay the tax imposed in this
8 chapter for the privilege of producing or selling
9 those products.

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

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



- 1 (i) Any purchaser who furnishes a certificate
2 shall be obligated to pay to the seller,
3 upon demand, the amount of the additional
4 tax that is imposed upon the seller whenever
5 the sale in fact is not at wholesale; and
6 (ii) The absence of a certificate in itself shall
7 give rise to the presumption that the sale
8 is not at wholesale unless the sales of the
9 business are exclusively at wholesale.
- 10 (3) Tax upon contractors.
- 11 (A) Upon every person engaging or continuing within
12 the State in the business of contracting, the tax
13 shall be equal to [~~four~~] 4.5 per cent of the
14 gross income of the business.
- 15 (B) In computing the tax levied under this paragraph,
16 there shall be deducted from the gross income of
17 the taxpayer so much thereof as has been included
18 in the measure of the tax levied under
19 subparagraph (A), on another taxpayer who is a
20 contractor, as defined in section 237-6; provided
21 that any person claiming a deduction under this



1 paragraph shall be required to show in the
2 person's return the name and general excise
3 number of the person paying the tax on the amount
4 deducted by the person.

5 (C) In computing the tax levied under this paragraph
6 against any federal cost-plus contractor, there
7 shall be excluded from the gross income of the
8 contractor so much thereof as fulfills the
9 following requirements:

10 (i) The gross income exempted shall constitute
11 reimbursement of costs incurred for
12 materials, plant, or equipment purchased
13 from a taxpayer licensed under this chapter,
14 not exceeding the gross proceeds of sale of
15 the taxpayer on account of the transaction;
16 and

17 (ii) The taxpayer making the sale shall have
18 certified to the department that the
19 taxpayer is taxable with respect to the
20 gross proceeds of the sale, and that the
21 taxpayer elects to have the tax on gross



1 income computed the same as upon a sale to
2 the state government.

3 (D) A person who, as a business or as a part of a
4 business in which the person is engaged, erects,
5 constructs, or improves any building or
6 structure, of any kind or description, or makes,
7 constructs, or improves any road, street,
8 sidewalk, sewer, or water system, or other
9 improvements on land held by the person (whether
10 held as a leasehold, fee simple, or otherwise),
11 upon the sale or other disposition of the land or
12 improvements, even if the work was not done
13 pursuant to a contract, shall be liable to the
14 same tax as if engaged in the business of
15 contracting, unless the person shows that at the
16 time the person was engaged in making the
17 improvements the person intended, and for the
18 period of at least one year after completion of
19 the building, structure, or other improvements
20 the person continued to intend to hold and not
21 sell or otherwise dispose of the land or



1 improvements. The tax in respect of the
2 improvements shall be measured by the amount of
3 the proceeds of the sale or other disposition
4 that is attributable to the erection,
5 construction, or improvement of such building or
6 structure, or the making, constructing, or
7 improving of the road, street, sidewalk, sewer,
8 or water system, or other improvements. The
9 measure of tax in respect of the improvements
10 shall not exceed the amount which would have been
11 taxable had the work been performed by another,
12 subject as in other cases to the deductions
13 allowed by subparagraph (B). Upon the election
14 of the taxpayer, this paragraph may be applied
15 notwithstanding that the improvements were not
16 made by the taxpayer, or were not made as a
17 business or as a part of a business, or were made
18 with the intention of holding the same. However,
19 this paragraph shall not apply in respect of any
20 proceeds that constitute or are in the nature of
21 rent, which shall be taxable under paragraph (9);



1 provided that insofar as the business of renting
2 or leasing real property under a lease is taxed
3 under section 237-16.5, the tax shall be levied
4 by section 237-16.5.

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

7 (A) Upon every person engaging or continuing within
8 the State in the business of operating a theater,
9 opera house, moving picture show, vaudeville,
10 amusement park, dance hall, skating rink, radio
11 broadcasting station, or any other place at which
12 amusements are offered to the public, the tax
13 shall be equal to [~~four~~] 4.5 per cent of the
14 gross income of the business, and in the case of
15 a sale of an amusement at wholesale under section
16 237-4(a)(13), the tax shall be one-half of one
17 per cent of the gross income.

18 (B) The department may require that the person
19 rendering an amusement at wholesale take from the
20 licensed seller a certificate, in a form



1 prescribed by the department, certifying that the
2 sale is a sale at wholesale; provided that:

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

9 (ii) The absence of a certificate in itself shall
10 give rise to the presumption that the sale
11 is not at wholesale unless the person
12 rendering the sale is exclusively rendering
13 the amusement at wholesale.

14 (5) Tax upon sales representatives, etc. Upon every
15 person classified as a representative or purchasing
16 agent under section 237-1, engaging or continuing
17 within the State in the business of performing
18 services for another, other than as an employee, there
19 is likewise hereby levied and shall be assessed and
20 collected a tax equal to [~~four~~] 4.5 per cent of the



1 commissions and other compensation attributable to the
2 services so rendered by the person.

3 (6) Tax on service business.

4 (A) Upon every person engaging or continuing within
5 the State in any service business or calling
6 including professional services not otherwise
7 specifically taxed under this chapter, there is
8 likewise hereby levied and shall be assessed and
9 collected a tax equal to [~~four~~] 4.5 per cent of
10 the gross income of the business, and in the case
11 of a wholesaler under section 237-4(a)(10), the
12 tax shall be equal to one-half of one per cent of
13 the gross income of the business.

14 (B) The department may require that the person
15 rendering a service at wholesale take from the
16 licensed seller a certificate, in a form
17 prescribed by the department, certifying that the
18 sale is a sale at wholesale; provided that:

19 (i) Any licensed seller who furnishes a
20 certificate shall be obligated to pay to the
21 person rendering the service, upon demand,



1 the amount of additional tax that is imposed
2 upon the seller whenever the sale is not at
3 wholesale; and

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

9 (C) Where any person is engaged in the business of
10 selling interstate or foreign common carrier
11 telecommunication services within and without the
12 State, other than as a home service provider, the
13 tax shall be imposed on that portion of gross
14 income received by a person from service which is
15 originated or terminated in this State and is
16 charged to a telephone number, customer, or
17 account in this State notwithstanding any other
18 state law (except for the exemption under section
19 237-23(a)(1)) to the contrary. If, under the
20 Constitution and laws of the United States, the
21 entire gross income as determined under this



1 paragraph of a business selling interstate or
2 foreign common carrier telecommunication services
3 cannot be included in the measure of the tax, the
4 gross income shall be apportioned as provided in
5 section 237-21; provided that the apportionment
6 factor and formula shall be the same for all
7 persons providing those services in the State.

8 (D) Where any person is engaged in the business of a
9 home service provider, the tax shall be imposed
10 on the gross income received or derived from
11 providing interstate or foreign mobile
12 telecommunications services to a customer with a
13 place of primary use in this State when the
14 services originate in one state and terminate in
15 another state, territory, or foreign country;
16 provided that all charges for mobile
17 telecommunications services which are billed by
18 or for the home service provider are deemed to be
19 provided by the home service provider at the
20 customer's place of primary use, regardless of
21 where the mobile telecommunications originate,



1 terminate, or pass through; provided further that
2 the income from charges specifically derived from
3 interstate or foreign mobile telecommunications
4 services, as determined by books and records that
5 are kept in the regular course of business by the
6 home service provider in accordance with section
7 239-24, shall be apportioned under any
8 apportionment factor or formula adopted under
9 subparagraph (C). Gross income shall not
10 include:

11 (i) Gross receipts from mobile
12 telecommunications services provided to a
13 customer with a place of primary use outside
14 this State;

15 (ii) Gross receipts from mobile
16 telecommunications services that are subject
17 to the tax imposed by chapter 239;

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



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

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

11 (7) Tax on insurance producers. Upon every person engaged
12 as a licensed producer pursuant to chapter 431, there
13 is hereby levied and shall be assessed and collected a
14 tax equal to 0.15 per cent of the commissions due to
15 that activity.

16 (8) Tax on receipts of sugar benefit payments. Upon the
17 amounts received from the United States government by
18 any producer of sugar (or the producer's legal
19 representative or heirs), as defined under and by
20 virtue of the Sugar Act of 1948, as amended, or other
21 Acts of the Congress of the United States relating



1 thereto, there is hereby levied a tax of one-half of
2 one per cent of the gross amount received; provided
3 that the tax levied hereunder on any amount so
4 received and actually disbursed to another by a
5 producer in the form of a benefit payment shall be
6 paid by the person or persons to whom the amount is
7 actually disbursed, and the producer actually making a
8 benefit payment to another shall be entitled to claim
9 on the producer's return a deduction from the gross
10 amount taxable hereunder in the sum of the amount so
11 disbursed. The amounts taxed under this paragraph
12 shall not be taxable under any other paragraph,
13 subsection, or section of this chapter.

- 14 (9) Tax on other business. Upon every person engaging or
15 continuing within the State in any business, trade,
16 activity, occupation, or calling not included in the
17 preceding paragraphs or any other provisions of this
18 chapter, there is likewise hereby levied and shall be
19 assessed and collected, a tax equal to [~~four~~] 4.5 per
20 cent of the gross income thereof. In addition, the
21 rate prescribed by this paragraph shall apply to a



1 business taxable under one or more of the preceding
2 paragraphs or other provisions of this chapter, as to
3 any gross income thereof not taxed thereunder as gross
4 income or gross proceeds of sales or by taxing an
5 equivalent value of products, unless specifically
6 exempted."

7 SECTION 2. Section 237-31, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§237-31 Remittances.** (a) All remittances of taxes
10 imposed by this chapter shall be made by money, bank draft,
11 check, cashier's check, money order, or certificate of deposit
12 to the office of the department of taxation to which the return
13 was transmitted.

14 (b) The department shall issue its receipts therefor to
15 the taxpayer and shall pay the moneys into the state treasury as
16 a state realization, to be kept and accounted for as provided by
17 law; provided that:

- 18 (1) A sum, not to exceed \$5,000,000, from all general
19 excise tax revenues realized by the State shall be
20 deposited in the state treasury in each fiscal year to
21 the credit of the compound interest bond reserve fund;



1 (2) A sum from all general excise tax revenues realized by
2 the State that is equal to one-half of the total
3 amount of funds appropriated or transferred out of the
4 hurricane reserve trust fund under sections 4 and 5 of
5 Act 62, Session Laws of Hawaii 2011, shall be
6 deposited into the hurricane reserve trust fund in
7 fiscal year 2013-2014 and in fiscal year 2014-2015;
8 provided that the deposit required in each fiscal year
9 shall be made by October 1 of that fiscal year; and

10 [+] (3) [+] Commencing with fiscal year 2018-2019, a sum from all
11 general excise tax revenues realized by the State that
12 represents the difference between the state public
13 employer's annual required contribution for the
14 separate trust fund established under section 87A-42
15 and the amount of the state public employer's
16 contributions into that trust fund shall be deposited
17 to the credit of the State's annual required
18 contribution into that trust fund in each fiscal year,
19 as provided in section 87A-42.

20 (c) Notwithstanding subsection (b), the additional
21 revenues generated and collected from the increase in general



1 excise tax rates imposed by section 1 of Act , Session Laws
2 of Hawaii 2019, shall be distributed as follows:

3 (1) per cent or \$200,000,000, whichever is greater,
4 of the revenues shall be deposited into a special
5 account in the general fund for appropriation to and
6 expenditure for operations of the department of
7 education under chapter 302A; and

8 (2) per cent or \$50,000,000, whichever is greater,
9 of the revenues shall be deposited into a special
10 account in the general fund for appropriation to and
11 expenditure for operations of the University of Hawaii
12 under chapter 304A."

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

15 SECTION 4. This Act shall take effect upon its approval.

16

INTRODUCED BY: 



S.B. NO. 1474

Report Title:

General Excise Tax; Increase; Education; University of Hawaii

Description:

Increases the general excise tax by 0.5% to provide a dedicated funding source for the department of education and the University of Hawaii.

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