S.B. NO. 1474
S.D. 2

A BILL FOR AN ACT

RELATING TO TAXATION.

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

PART I

SECTION 1. 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.

(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, there is likewise hereby
levied, and shall be assessed and collected, a
tax equivalent to [four] 4.5 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 tax shall be one-half of
one per cent of the gross proceeds. 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.

(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) A manufacturer or producer, engaged in such
business in the State, 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 [\text{4.5\%} 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 another taxpayer who is a contractor, as defined in section 237-6; 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, which 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 [fee%] 4.5 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 one-half of one
per cent of the gross income.

(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] 4.5 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 4.5 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.

(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 the 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] 4.5 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 2. Section 237-15, Hawaii Revised Statutes, is amended to read as follows:

"§237-15 Technicians. When technicians supply dentists or physicians with dentures, orthodontic devices, braces, and similar items which have been prepared by the technician in accordance with specifications furnished by the dentist or physician, and such items are to be used by the dentist or physician in the dentist's or physician's professional practice for a particular patient who is to pay the dentist or physician for the same as a part of the dentist's or physician's professional services, the technician shall be taxed as though the technician were a manufacturer selling a product to a licensed retailer, rather than at the rate of [four] 4.5 per cent which is generally applied to professions and services."
SECTION 3. Section 237-16.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) This section relates to the leasing of real property by a lessor to a lessee. There is hereby levied, and shall be assessed and collected annually, a privilege tax against persons engaging or continuing within the State in the business of leasing real property to another, equal to [4.5 per cent of the gross proceeds or gross income received or derived from the leasing; provided that where real property is subleased by a lessee to a sublessee, the lessee, as provided in this section, shall be allowed a deduction from the amount of gross proceeds or gross income received from its sublease of the real property. The deduction shall be in the amount allowed under this section.

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

2. By amending subsection (f) to read:
"(f) This section shall not cause the tax upon a lessor, with respect to any item of the lessor's gross proceeds or gross income, to exceed 4.5 per cent."

SECTION 4. Section 237-18, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services and the travel agency or tour packager, the tax imposed by this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this subsection "tourism related services" means catamaran cruises, canoe rides, dinner cruises, lei greetings, transportation included in a tour package, sightseeing tours not subject to chapter 239, admissions to luaus, dinner shows, extravaganzas, cultural and educational facilities, and other services rendered directly to the customer or tourist, but only if the providers of the services other than air transportation are subject to a 4.5 per cent tax under this chapter or chapter 239."
PART II

SECTION 5. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

Commencing with fiscal year 2018-2019, a sum from all general excise tax revenues realized by the State that represents the difference between the state public employer's annual required contribution for the separate trust fund established under section 87A-42 and the amount of the state public employer's contributions into that trust fund shall be deposited to the credit of the State's annual required contribution into that trust fund in each fiscal year, as provided in section 87A-42.

(c) Notwithstanding subsection (b), the additional revenues generated and collected from the increase in general excise tax rates imposed by part I of Act [I], Session Laws of Hawaii 2019, shall be distributed as follows:

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

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

PART III

SECTION 6. Section 238-2, Hawaii Revised Statutes, is amended to read as follows:

"§238-2 Imposition of tax on tangible personal property; exemptions. There is hereby levied an excise tax on the use in this State of tangible personal property which is imported by a taxpayer in this State whether owned, purchased from an unlicensed seller, or however acquired for use in this State. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions thereof are as follows:

(1) If the importer or purchaser is licensed under chapter 237 and is:
(A) A wholesaler or jobber importing or purchasing for purposes of sale or resale; or

(B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer as the manufacturer or as a wholesaler, and not as a retailer,

there shall be no tax; provided that if the wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 237), paragraph (2) shall apply to the wholesaler, jobber, or manufacturer, but the director of taxation shall refund to the wholesaler, jobber, or manufacturer, in the manner provided under section 231-23(c) such amount of tax as the wholesaler, jobber, or
manufacturer shall, to the satisfaction of the
director, establish to have been paid by the
wholesaler, jobber, or manufacturer to the director
with respect to property which has been used by the
wholesaler, jobber, or manufacturer for the purposes
stated in this paragraph;

(2) If the importer or purchaser is licensed under chapter
237 and is:

(A) A retailer or other person importing or
purchasing for purposes of sale or resale, not
exempted by paragraph (1);

(B) A manufacturer importing or purchasing material
or commodities which are to be incorporated by
the manufacturer into a finished or saleable
product (including the container or package in
which the product is contained) wherein it will
remain in such form as to be perceptible to the
senses, and which finished or saleable product is
to be sold at retail in this State, in such
manner as to result in a further tax on the
activity of the manufacturer in selling such
products at retail;

(C) A contractor importing or purchasing material or
commodities which are to be incorporated by the
contractor into the finished work or project
required by the contract and which will remain in
such finished work or project in such form as to
be perceptible to the senses;

(D) A person engaged in a service business or calling
as defined in section 237-7, or a person
furnishing transient accommodations subject to
the tax imposed by section 237D-2, in which the
import or purchase of tangible personal property
would have qualified as a sale at wholesale as
defined in section 237-4(a)(8) had the seller of
the property been subject to the tax in chapter
237; or

(E) A publisher of magazines or similar printed
materials containing advertisements, when the
publisher is under contract with the advertisers
to distribute a minimum number of magazines or
similar printed materials to the public or
defined segment of the public, whether or not
there is a charge to the persons who actually
receive the magazines or similar printed
materials,
the tax shall be one-half of one per cent of the
purchase price of the property, if the purchase and
sale are consummated in Hawaii; or, if there is no
purchase price applicable thereto, or if the purchase
or sale is consummated outside of Hawaii, then one-
half of one per cent of the value of such property;
and
(3) In all other cases, 4.5 per cent of the value
of the property.

For purposes of this section, tangible personal property is
property that is imported by the taxpayer for use in this State,
notwithstanding the fact that title to the property, or the risk
of loss to the property, passes to the purchaser of the property
at a location outside this State."

SECTION 7. Section 238-2.2, Hawaii Revised Statutes, is
amended to read as follows:
"§238-2.2] Imposition of tax on intangible property.

There is hereby levied an excise tax on the value of intangible property acquired from an unlicensed seller and imported or used in the State. The tax imposed by this chapter shall accrue when the intangible property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rate of the tax hereby imposed shall be 4.5 per cent of the value of the intangible property."

SECTION 8. Section 238-2.3, Hawaii Revised Statutes, is amended to read as follows:

"§238-2.3 Imposition of tax on imported services or contracting; exemptions. There is hereby levied an excise tax on the value of services or contracting as defined in section 237-6 that are performed by an unlicensed seller at a point outside the State and imported or purchased for use in this State. The tax imposed by this chapter shall accrue when the service or contracting as defined in section 237-6 is received by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions from the tax are as follows:
(1) If the importer or purchaser is licensed under chapter 237 and is:

(A) Engaged in a service business or calling in which the imported or purchased services or contracting become identifiable elements, excluding overhead, of the services rendered by the importer or purchaser, and the gross income of the importer or purchaser is subject to the tax imposed under chapter 237 on services at the rate of one-half of one per cent;

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

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

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

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

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

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

(A) Engaged in a service business or calling in which the imported or purchased services or contracting become identifiable elements, excluding overhead, of the services rendered by the importer or purchaser, and the gross income from those services when sold by the importer or purchaser is subject to the tax imposed under chapter 237 at the highest rate;

(B) A manufacturer importing or purchasing services or contracting that become identifiable elements, excluding overhead, of the finished or saleable manufactured product (including the container or package in which the product is contained) and the finished or saleable product is to be sold in a manner that results in a further tax under chapter 237 on the activity of the manufacturer as a retailer; or
(C) A contractor importing or purchasing services that become identifiable elements, excluding overhead, of the finished work or project required, under the contract, and where the gross proceeds derived by the contractor are subject to the tax under section 237-13(3) as a contractor, the tax shall be one-half of one per cent of the value of the imported or purchased services or contracting; and

(3) In all other cases, the importer or purchaser is subject to the tax at the rate of [four] 4.5 per cent on the value of the imported or purchased services or contracting."

PART IV

SECTION 9. Section 238-14, Hawaii Revised Statutes, is amended to read as follows:

"§238-14 Taxes state realizations. All taxes collected under this chapter shall be state realizations[1]; provided that the additional revenues generated and collected from the increase in use tax rates imposed by part III of Act , Session Laws of Hawaii 2019, shall be distributed as follows:
(1) per cent or $ , whichever is greater, of the revenues shall be deposited into a special account in the general fund for appropriation to and expenditure for operations of the department of education under chapter 302A; and (2) per cent or $ , whichever is greater, of the revenues shall be deposited into a special account in the general fund for appropriation to and expenditure for operations of the University of Hawaii under chapter 304A."

PART V

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2050.
Report Title:
General Excise Tax; Use Tax; Increase; Education; UH

Description:
Increases the general excise tax and use tax by 0.5% to provide a dedicated funding source for the department of education and the University of Hawaii. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.